

REPORT TO: Planning Committee
MEETING DATE: 25 June 2024
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

1

Application No. **24/00324/PM**

Proposal Enabling works comprising the relocation and regrading of materials from on-site earthwork bunds for the creation of developable platforms and associated works

Location **Land at Former Cockenzie Power Station and Coal Store
Prestonpans
East Lothian**

Applicant East Lothian Council
Per SLR Consulting Limited

RECOMMENDATION Consent Granted

REPORT OF HANDLING

PRE-APPLICATION CONSULTATION

As the area of the application site is greater than 2 hectares, the development proposed in this application is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development and thus it cannot be decided through the Council's Scheme of Delegation. The application is therefore brought before the Planning Committee for a decision.

As a statutory requirement for major development proposals this development proposal was the subject of a Proposal of Application Notice (ref: 23/00006/PAN) and thus of community consultation prior to this application for planning permission in principle being made to the Council.

As an outcome of that and as a statutory requirement for dealing with major development type applications a pre-application consultation report is submitted with this application. The report informs that a total of 33 people attended the first public event held in the Port

Seton Centre on 9 November 2023, and that four people attended the second public event held in Prestonpans Community Centre on 12 December 2023 and that those attendees made a number of queries and suggestions regarding the proposals. The PAC report informs that 14 completed feedback forms were received following the first consultation event, and no feedback forms were received following the second consultation event. The development for which planning permission is now sought is of the same character as that which was the subject of the community engagement undertaken through the statutory pre-application consultation of the proposal.

APPLICATION SITE

This application relates to some 37 hectares of land that extends from the coast at Prestonpans, south over the B1348 Edinburgh Road which bisects the site, then eastwards over the B6371 public road, and comprises land of the former Cockenzie Power Station site and the former Power Station Coal Store.

The part of the site comprising of the former Cockenzie Power Station is currently vacant land following the demolition of the power station in 2015 and ground levels within this part of the site range from approximately 1.1m to 1.4m Above Ordnance Datum (AOD). Surrounding that vacant land, ground levels range from approximately 3.5-5m AOD, meaning that the land of the former Cockenzie Power Station is at a lower level than the surrounding land.

The part of the site that comprises the former coal store is vacant land with some light vegetation growth. The former coal store is surrounded on all sides by earth bunds, with the eastern bund split into two sections (northern and southern). The bunds vary in height from approximately 23m to 30m with the overall widths of the bunds varying between some 30m to 40m in the north, south and west bunds and 45m to 63m in the east bund. The north, west and south bunds contain a mixture of vegetation and sparse trees with further dense vegetation and trees to the south and west. Vegetation on the eastern bund (northern section), particularly the outer wall, is denser and contains a mixture of trees and vegetation.

There is an existing concrete tunnel and chamber system (associated with a previous coal conveyor system) within the northern section of the eastern bund which is accessible via a gated entrance in the northeast point of the bund. Between the northern and southern sections of the eastern bund is the concrete base of a wagon-discharge house that was previously demolished. A bund of aggregate is currently stockpiled in the location of the former wagon-discharge house (to provide a 45-degree angle preventing falls from the concrete retaining wall) and this separates the northern and southern sections of the eastern bund. Along the top of the southern section of the eastern bund is a railway line that was historically used to transport coal to this part of the site. There is also an underpass below the railway line which allowed vehicular access to the former coal store yard. An existing former service road runs along the outer side of the northern and eastern bunds which forms a link between the B1348 Edinburgh Road and the B6371 road south of the Alder Road roundabout, with an existing gated access point to the former coal store from the B6371.

The area of land comprising the northernmost part of the application site where it meets the coast is adjacent to the Outer Firth of Forth and St Andrews Bay Complex Special Protection Area. The Firth of Forth Special Protection Area and the Firth of Forth Site of Special Scientific Interest are to the northwest of the northern part of the site.

The part of the application site located to the south of the B1348 road is within the boundary of the Battle of Prestonpans, a battlefield included within the Inventory of Historic

Battlefields. The battlefield site includes the 1722 Tranent to Cockenzie Waggonway, although the Waggonway itself is outwith the application site.

The coastal path, which incorporates part of the John Muir Way, is adjacent to the northernmost part of the application site.

The nearest residential properties to the site are located at Atholl View to the west, albeit the properties on Atholl View have little interaction with the site due to the intervening bund. Also between the northern and southern sections of the application site are residential properties at Whin Park and Inglis Farm.

On the west side of the part of the site comprising of the former Cockenzie Power Station is the site of the onshore electrical transmission infrastructure (on-shore cables and substation) associated with the Inch Cape Offshore Wind Farm which was granted planning permission in principle in February 2019 by Scottish Ministers.

Between the northern and southern sections of the application site is an area of land for which planning permission in principle (ref: 21/00290/PPM) was granted in August 2021 for an onshore substation for the export of electricity from the Seagreen Offshore Wind Farm.

The application site also includes the land for which planning permission was granted in July 2022 (ref: 22/00440/P) for a new link road to be constructed between the B1348 Edinburgh Road and B6371 road at the current Alder Road roundabout, which would primarily follow the existing alignment of the former service road within the site.

PROPOSAL

Planning permission is sought through this application for enabling works comprising the relocation and regrading of materials from the bunds surrounding the former coal store for the creation of developable platforms on the sites of the former Cockenzie Power Station and coal store

upon which future development proposals can be constructed, and associated works. The associated works include the formation of a new temporary haul road, which would run from the northwest corner of the bunds surrounding the former coal store to the B1348 Edinburgh Road, then into the former power station site. Temporary accesses on both sides of the B1348 would be formed to facilitate movement across the haul road into both parts of the application site.

In a Planning Statement submitted with the application it is stated that it is estimated that 175,000m³ of material would be required to infill the former Cockenzie Power Station land, which would be excavated from the existing earthwork bunds around the former coal store. That material would be transported to the former power station site along the proposed haul road using four articulated dumper trucks, each with a capacity of approximately 18m³. It is anticipated that these vehicles would run continuously throughout a nine-hour working day over a 5-month period, subject to weather conditions at the time of the works. There is expected to be 216 two-way HGV trips per day between the former coal store site and the power station site.

Site working hours are anticipated to be Monday - Friday 07.00 - 18.00 and Saturday 07.00 - 13.00.

The proposed temporary haul route is proposed to be 9m in width and 600m in length and would egress from the northwest corner of the former coal store site and would initially run parallel to the existing access road that serves the former coal store. As it nears the B1348

Edinburgh Road, the haul road would divert away from the existing access road alignment, continuing in a northerly direction and would be constructed to a proposed crossing at the B1348 Edinburgh Road.

It is anticipated that the articulated dumper trucks would be loaded in the former coal store using a single 45 tonne tracked excavator and the trucks would run at staggered intervals, continuously throughout the working day to transfer the material from the former coal store to the former power station site. The articulated dumpers would travel from the coal store along the temporary haul route. The number of crossings per hour would be minimised with two vehicles crossing (in different directions) at the same time, with crossing movements occurring six times per hour. It is anticipated that during the earthworks stage there would be approximately 10 to 12 operatives, with approximately four additional staff members and therefore, based on a worst case of single occupancy vehicle movements, there could be 32 two-way movements, every working day.

It is intended that, upon completion of the proposed development, that the temporary haul route would be removed, and the land restored to its former condition. Material removed from the bunds would initially be used to infill the land of the former power station site and following completion of the upfilling of that land, the remaining material (some 225,000m³) would be regraded over the former coal store site to provide level and developable platforms.

Upon completion of the above works, it is intended that the finished surface of the former Cockenzie Power Station site when infilled would be finished with a Type 1 material (crushed stone) and that the created platforms on the former coal store site would be seeded with a grass mix, the intention being to strengthen the infill material. Once established, the vegetation would assist with binding the surface soil together until the next phase of development comes forward on both sites.

The Planning Statement informs that it is intended that the proposed development would be carried out in two phases. Phase One would be undertaken over a period of some five months and phase two would be undertaken over a period of some nine months.

Phase one would comprise of the formation of the temporary haul road, the removal of the northern, western and southern bunds and the southern section of the eastern bund around the former coal store site and the transportation of bund material from the former coal store site to infill the land of the site of the former power station site.

Phase two would comprise of the removal the northern section of the eastern coal store bund including the concrete coal conveyor tunnel within it, the removal of the base of the former Wagon Discharge House which sits between the northern and southern sections of the eastern bund and the re-grading of the former coal store site with bund material.

THE DEVELOPMENT PLAN

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is the adopted National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (ELLDP).

Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 4 (Natural places), 7 (Historic Assets and Places), 9 (Brownfield, vacant and derelict land and empty buildings), 10 (Coastal Development), 13 (Sustainable

Transport), 14 (Design, Quality and Place), 22 (Flood risk and water management) and 23 (Health and safety) of NPF4 are relevant to the determination of the application.

Proposal EGT1 (Land at Former Cockenzie Power Station) and Policies DC6 (Development in the Coastal Area), DC9 (Special Landscape Areas), NH1 (Protection of Internationally Designated Sites), NH2 (Protection of Sites of Special Scientific Interest and Geological Conservation Review Sites), NH5 (Biodiversity and Geodiversity Interest, including Nationally Protected Species), NH11 (Flood Risk), CH5 (Battlefields), T2 (General Transport Impact), T4 (Active Travel Routes and Core Paths as part of the Green Network Strategy) and DP1 (Landscape Character) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

With regard to Section 24(3) of the Town and Country Planning (Scotland) Act 1997, in the event of any policy incompatibility between NPF4 and the adopted East Lothian Local Development Plan 2018, whichever of them is the later in date is to prevail. In this case, the policies of NPF4 would prevail.

REPRESENTATIONS

A total of 48 representations have been received to the application, all of which object to the proposed development. The main grounds of objection can be summarised as follows:

- * The proposed development would result in noise and dust issues which would be harmful to the amenity of nearby residential properties;
- * the removal of the bunds would result in a loss of wildlife and habitats;
- * the proposed development would disturb bats;
- *the removal of the bunds would release toxic materials and contaminated earth including asbestos which is a health hazard;
- * the proposals are contrary to policies of NPF4;
- * there is no EIA accompanying the application;
- * any loss of ecology and biodiversity should be compensated for and biodiversity enhanced;
- *there is no detail of how the land may be developed following the proposed works;
- * the proposed development would result in increased traffic movements and harm air quality
- * the removal of the bunds would take away core paths and areas that the community use to enjoy walking and cycling, a safe route for children to go to school, for dogs to run off their leads;
- * as the Council own the land, is the applicant and the determining authority any decision would be biased; and
- * notification of the application does not include all residents.

As detailed below there is no requirement for the proposed development to be the subject of an EIA.

There is no impediment to the Council being applicant and, as Planning Authority, deciding on the application. Planning Circular 3/2009 states that sometimes, as well as being the decision-maker on a planning application, a planning authority will have some other interest in the proposed development, for example as the developer or the owner of the land. This in itself is not unreasonable; in fact it is quite normal and occurs regularly. In these circumstances though, it is essential that the planning authority does not allow any possible conflict of interests to have an undue influence on its planning assessment. Planning authorities generally exercise their duties fairly in such matters, recognising how essential it is that probity is scrupulously observed.

In certain circumstances, to protect the integrity of the planning system, where the Planning Authority has an interest, applications must be notified to Scottish Ministers where the proposed development would involve a significant departure from the authority's own development plan or there is an objection by a Government agency, neither of which applies in this case.

Notification of the application has been carried out in accordance with statutory requirements.

COMMUNITY COUNCIL COMMENTS

Cockenzie and Port Seton Community Council have been consulted on the application and object to it, with the main grounds of their objection being summarised as follows:

- * The air quality assessment considers that dust from the various activities requires water suppression;
- * They are unhappy with the potential loss of biodiversity that the proposed development may cause; the former coal store bunds are an important habitat for a number of species, especially birds;
- * a bird survey has been done which highlights the importance of the bunds and the biodiversity loss removing them would cause;
- * the proposal doesn't meet the terms of policies of NPF4;
- * the application does not detail how the infill material being used to fill the power station site is to be compacted or capped;
- * the proposal will cause disruption and pollution from daily lorry movements;
- * there is no EIA accompanying the application; and
- * the bunds may contain contaminated material.

In terms of detail how the infill material being used to fill the power station site is to be compacted or capped, as stated above, the applicant's agent has confirmed that upon completion of the above works, it is intended that the finished surface of the former Cockenzie Power Station site when infilled would be finished with a Type 1 material (crushed stone) and that the created platforms on the former coal store site would be seeded with a grass mix, the intention being to strengthen the infill material.

As detailed below there is no requirement for the proposed development to be the subject of an EIA.

ENVIRONMENTAL IMPACT ASSESSMENT

Under the provisions of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 the proposed development falls within the category of a Schedule 2 Development, being one that may require the submission of an Environmental Impact Assessment (EIA). Schedule 3 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 sets out the selection criteria for screening whether a Schedule 2 development requires an EIA. On 22 October 2022 the Council issued a formal screening opinion to the applicant. The screening opinion concludes that it is East Lothian Council's view that the proposed development is not likely to have a significant effect on the environment such that consideration of environmental information is required before any grant of planning permission. It is therefore the opinion of East Lothian Council as Planning Authority that there is no requirement for the proposed development to be the subject of an EIA.

PLANNING ASSESSMENT

The application site is covered by Proposal EGT1 of the ELLDP, which safeguards the land for future thermal power generation and carbon capture and storage consistent with National Development 3 of National Planning Framework 3 (NPF3).

The pretext to Proposal EGT1 states that NPF3 designates Cockenzie as part of National Development 3 'Carbon Capture and Storage Network and Thermal Generation' and safeguards the former Cockenzie Power Station site for future thermal power generation. It also states that the Council endorses the support expressed in NPF3, hence the Proposal EGT1 allocation in the ELLDP.

However, NPF3 has now been replaced by NPF4. NPF4 does not designate Cockenzie as a National Development for future thermal power generation.

In part 3 of NPF4 it is stated that coastal sites formerly used for baseload power generation - specifically Longannet and Cockenzie - benefit from existing assets and infrastructure that can be repurposed to form the basis of new proposals, and at Cockenzie there is opportunity to generate employment and provide essential infrastructure for net zero.

As stated above in this report, in the event of any policy incompatibility between NPF4 and the ELLDP, whichever of them is the later in date is to prevail. In this case, NPF4 would prevail.

This development proposes the creation of developable platforms on the sites of the former Cockenzie Power Station and coal store upon which future development proposals and infrastructure can be constructed to facilitate future development and generate employment.

In the circumstances of this case, the proposed development would be consistent with the aims for the future use of the Cockenzie power station site (including the coal store) given in NPF4, which outweighs any conflict with Proposal EGT1 of the ELLDP.

With regard to Policies 1 and 2 of NPF4, these aim to encourage, promote, and facilitate development that addresses the global climate emergency and nature crisis and to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change respectively.

The proposed development is to facilitate the future re-use of previously developed brownfield land which aligns with the policy intent that Policies 1 and 2 seek to support, relating to conserving and recycling assets, compact urban growth and rebalancing development. The application site is of a type described on page 16 of NPF4, being a strategic site which was previously a focus for industrial activity, but which has experienced decline, with NPF4 stating that such locations will play a significant role in the transition to net zero as they are served by strategic infrastructure, well located on or close to developed coasts, and could provide added benefits for communities that are in greatest need.

Policy 9 of NPF4 aims to encourage, promote, and facilitate the reuse of brownfield, vacant, and derelict land and empty buildings, and help to reduce the need for greenfield development, and states that development proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings, whether permanent or temporary, will be supported.

The application site comprises large areas of previously developed brownfield land which

is now vacant, and the proposed development is to facilitate the creation of developable platforms on this brownfield land to enable future sustainable development which aligns with the outcomes of Policy 9 to help reduce the need for greenfield development.

On the above considerations the proposed development does not conflict with Policies 1, 2 or 9 of NPF4.

The **Council's Landscape Projects Officer** advise that that formation of the temporary haul road for the movement of material would be removed on completion of the regrading works and the ground restored to former condition, and therefore on completion of the development and following reinstatement works, there would be no noticeable change to the landscape character of the area from the formation and subsequent removal of the haul road.

In terms of the works at the former power station site in the form of infilling of the void left by the removal of the power station building to create a level and developable platform, the Landscape Projects Officer advises that the majority of this part of the site is currently approximately 3.5m below the surrounding ground levels, and other than the change in levels there will be little landscape or visual change as a result of this part of the development.

With regard to the removal of the bunds around the former coal store and regrading of the site to create three developable platforms of different heights, the Landscape Projects Officer advises these works result in the most landscape and visual change. However, the Landscape Projects Officer also advises that the existing bunds are visually intrusive, with their height preventing views into the former coal store area and also preventing views across the area and landscape beyond; their steep slopes have limited their colonisation with vegetation which has led to large green mounds that block views and add little to the visual amenity value of the area.

The applicant has submitted an arboricultural assessment and a landscape and visual appraisal (LVA) with the application. The LVA includes 6 viewpoints showing the views from around and into the site to assess the proposals impacts on visual amenity.

In terms of specific landscape appraisal, the Landscape Projects Officer advises the following:

Viewpoints 1 and 2 are taken along Edinburgh Road, with Viewpoint 2 also representative of the view from the edge of the Cockenzie Conservation Area. These viewpoints have glimpsed views south to the bunds around the coal store. These views are broken by vegetation and other development in the foreground. The bund around Appin Drive is a far more significant and intrusive landscape feature in this view. The removal of the bunds around the coal store will create minimal landscape and visual change on completion of the development from these viewpoints.

Viewpoint 3 is taken from the informal path along the top of the bund surrounding the properties to the west of the site at Appin Drive. This viewpoint provides panoramic views over the area including to the coast to the north. The coal store bunds form an incongruous intrusion in this view; they have an engineered shape and little vegetation cover. Their removal would return the site to a more natural level that ties in more with the landscape character of the area. The removal of the bunds would enable wider views over the landscape to the southeast and is likely to have a positive impact on views from this viewpoint.

Viewpoint 4 is from the southwest of the site at Preston Crescent on Core Path route 145.

It is representative of the views of local residents as well as recreational users of the core path. The bunds around the coal store are visible in this view constraining wider views across the landscape character area and to the coast. The low height and limited vegetation cover in a lower elevation than the viewpoint of the southern and western bunds reduces their visual impact. However, the higher bund to the east is more intrusive. The removal of all the bunds would open views to the north and the coast and would create a landscape more in keeping with the wider landscape character of the area and is likely to have a positive impact on views from this viewpoint.

Viewpoint 5 is taken from Core Path route 145 to the north of the site. It is representative of recreational users of the core path and play area as well as residents of the housing to the north. The eastern bund appears as a large, incongruous structure in this view. Its impact is partly reduced by tree planting on the mound to its north which offers some screening and is proposed to be retained. The northern bund appears as a solid structure with little vegetation cover out of place within the landscape and completely constraining wider views to the south across the landscape character of the area. The removal of the bunds will enable wider views over the landscape to the south and is likely to have a positive impact on views from this viewpoint.

Viewpoint 6 is from the B6371 to the east of the site. At the entrance to the site midway along the eastern boundary with the B6371 and at the northern end of the coal store area there are views of the bunds. As previously noted, most views of the site from the east are limited and heavily screened by established tree belts that are to be retained. In addition, the housing to the northeast is screened by an established belt of trees to the east side of the B6371. The bunds constrain views to the west and form an incongruous intrusion in this view. They have an engineered shape and little vegetation cover. The northern section of the eastern bund is particularly large and intrusive. Their removal would return the site to a more natural level that ties in more with the landscape character of the area. The removal of the bunds would enable wider views over the landscape to the west and is likely to have a positive impact on the limited views into the site from this viewpoint.

In conclusion the removal of the bunds and regrading of the site would have an overall positive effect on views across the area and would enhance the landscape character of the area.

Due to the existing levels and landform on both the former power station and coal store sites, the proposed relocation and regrading of materials from the bunds for the creation of developable platforms on those areas of land would be capable of being carried out without a harmful visual impact on the wider area. The resultant landform would be well integrated into the landscape and would not be harmful to the landscape character and appearance of the area.

The applicant's submitted LVA describes the vegetation on the bunds as "light vegetation growth", and it notes that the northern, western and southern bunds contain a mixture of vegetation and sparse trees, there is further dense vegetation and trees to the south and west (these should not be impacted by the removal of the bunds and regrading of the site), vegetation on the eastern bund (northern section), particularly the outer wall of this bund which contains a mixture of trees and vegetation and to the east and southeast are established areas of trees that are not impacted by the proposals and can be retained and protected during any works.

The Landscape Projects Officer notes that all the regenerating vegetation on the bunds would be lost with their removal and the regrading of the former coal store. It is proposed that the former coal store would be temporarily greened with the addition of grass seeding to tie in with the surrounding vegetation of agricultural land and coastal grasslands,

however it is not proposed to carry out mitigating tree planting on the site at this time due to the nature of the application the purpose of which is to provide platforms for future development but not bringing forward development for these platforms, meaning any mitigating planting that could be carried out on the site would likely need to be removed again to bring forward future development proposals.

The Landscape Projects Officer advises that Policy 1 of the Council's Tree and Woodland Strategy for East Lothian (TWS) has a presumption against loss of existing woodland, trees and hedges, and notes that where consent is to be given for removal of trees and / or hedges, compensatory planting with native species will be expected except where circumstances do not allow. The expectation of this policy is that replacement planting should be provided on the site and where it can be shown that this is not possible then the first alternative site preference is within East Lothian.

To address the loss of trees from the site the applicant is proposing to mitigate for the loss of this vegetation by providing a financial contribution to the Council to carry out planting on suitable land in the local area and for its future maintenance, which would be a suitable method of compensatory planting in accordance with Policy 1 of the TWS.

The Landscape Projects Officer advises that the cost for supply, planting and ten-year maintenance of new trees to mitigate for those proposed to be removed from the former coal store bunds is £49,230. Such a contribution can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicant has confirmed in writing that they are willing to enter into such an agreement.

The Landscape Projects Officer also recommends that temporary protective fencing be erected in order to protect trees that are to be retained on the wider site of the former coal store.

Subject to the above recommended control the proposed development does not conflict with Policy DP2 of the ELLDP.

The **Council's Senior Environmental Health Officer** advises he has appraised the Construction Noise and Vibration Impact Assessment submitted with the application and advises that noise arising as a result of the proposed development may exceed threshold limits at nearby residential properties, but the submitted assessment assumes all equipment operating simultaneously which is unlikely, and the works would be temporary in nature and any potential noise impacts could be minimised through mitigation measures identified by the submission of a Noise Management Plan. The Senior Environmental Health Officer also advises that construction vibration as a consequence of the proposed development would not result in any harm to the amenity of occupiers of any nearby residential properties.

In terms of air quality, the Senior Environmental Health Officer has appraised the Air Quality Assessment submitted with the application and advises that there would be no harmful impacts on air quality. He further advises that a Dust Management Plan should be submitted which would ensure any dust impacts on nearby residential properties are controlled.

The Senior Environmental Health Officer therefore recommends that a Noise Management Plan and Dust Management Plan be submitted which should identify potential noise and dust impacts during construction and specify mitigation measures to minimise any such

impacts.

Subject to the above planning control the proposed development would not have a harmful impact on the amenity of any nearby residential property or neighbouring land use.

The **Council's Environmental Health Officer (Contaminated Land)** advises that he has reviewed the applicant's submitted Land Quality Risk Assessment and Water Environment Risk Assessment reports and confirms he is satisfied with the conclusions that no potential risks to on-site human health, or the water environment have been identified and consequently there are no potential contaminant linkages considered to be present at the site. However, the Environmental Health Officer (Contaminated Land) advises that the exception is the presence of asbestos containing materials that have been identified both within the bunds at the former coal store and the void stockpile at the former power station site. The Environmental Health Officer (Contaminated Land) recommends that a Remediation Statement be submitted to detail the steps to be undertaken to deal with the asbestos in order to remove unacceptable risks to all relevant and statutory receptors, followed by the submission of a Validation Report that demonstrates the effectiveness of the remediation carried out.

The Environmental Health Officer (Contaminated Land) also recommends that in the event that unexpected ground conditions (contamination) are encountered at any time when carrying out the permitted development, work on site shall cease and the issue shall be reported to the Planning Authority immediately.

These requirements can be controlled by conditions attached to a grant of planning permission.

Subject to the above recommended controls, which can reasonably be imposed as conditions on a grant of planning permission, the proposed development does not conflict with Policy 14 of NPF4 or with Policies DP2, NH12 or NH13 of the ELLDP.

As the application site is located within the boundary of the battlefield site of the Battle of Prestonpans, Historic Environment Scotland (HES) have been consulted on the application.

HES advise that the area has been heavily impacted by previous industrial activity and therefore raise no objection to the application, being satisfied that the proposed development would not have a significant adverse effect on any key features of the Battle of Prestonpans Battlefield Site.

On these above considerations the proposed development does not conflict with Policy CH5 of the adopted East Lothian Local Development Plan 2018, Planning Advice Note 2/2011: Planning and Archaeology or Scottish Planning Policy 2014.

As part of the application site lies within an area identified to be at high risk from past mining activities, The Coal Authority have been consulted on the application.

The Coal Authority advise that based on a review of its own records and in reviewing the applicant's submitted Coal Mining Risk Assessment report which concludes that there is no risk to the proposed development from former coal mining activity and no further investigation and / or mitigation measures are considered necessary, they have no objection to the application. Therefore it can be concluded that the proposed development would not be at risk from former mine workings.

The area of land comprising the northernmost part of the application site where it meets

the coast is adjacent to the Outer Firth of Forth and St Andrews Bay Complex Special Protection Area (SPAs). The Firth of Forth SPA and the Firth of Forth Site of Special Scientific Interest (SSSI) are to the northwest of the northern part of the site.

With regard to international designations, Policy 4 of NPF4 states that development proposals that are likely to have a significant effect on an existing or proposed European site (Special Area of Conservation or Special Protection Areas) and are not directly connected with or necessary to their conservation management are required to be subject to an "appropriate assessment" of the implications for the conservation objectives.

The status of these sites means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "Habitats Regulations") or, for reserved matters the Conservation of Habitats and Species Regulations 2010 as amended apply. Consequently, the competent authority is required to consider the effect of the proposal on these sites before it can be consented (commonly known as Habitats Regulations Appraisal).

Under the Habitats Regulations, decision makers (known as competent authorities in the legislation) can only agree to development proposals which are unconnected with the nature conservation management of the site after having confirmed that they will not affect the integrity of the Natura site. The process of coming to this judgement is commonly referred to as Habitats Regulations Appraisal (HRA).

The applicant has submitted a Habitat Regulations Appraisal - Screening report with the application.

As a result, NatureScot have been consulted on the application.

In consideration of the above HRA process NatureScot do not advise that there would be any adverse effects upon the integrity of the Forth of Forth SSSI.

With regard to HRA Stage 1, NatureScot states that the proposal is not connected to conservation management of any European site.

With regard to HRA Stage 2 (is the proposal 'likely to have significant effects' upon the European sites), NatureScot advise that given the relative proximity to the SPAs the proposed development is likely to have a significant effect on European sites and therefore, East Lothian Council, as competent authority, is required to carry out an appropriate assessment.

East Lothian Council, as the competent authority, has carried out an appropriate assessment. It concludes that subject to mitigation measures as set out in the applicant's submitted Shadow Habitat Regulations Appraisal Screening and Appropriate Assessment Report being secured, which includes the appointment of an Ecological Clerk of Works to be on site to supervise the mitigation measures, which can be secured through the imposition of a condition on a grant of planning permission, that the proposed development would have no adverse effects on the integrity of the following European sites:

- * Firth of Forth Special Protection Area (SPA);
- * Outer Firth of Forth and St Andrews Bay Complex SPA;
- * Fala Flow SPA;
- * Forth Islands SPA; and
- * Imperial Dock Lock, Leith SPA.

Accordingly, subject to mitigation the proposals do not conflict with Policy 4 of NPF4, Policies DC6 (Development in the Coastal Area), NH1 (Protection of Internationally Designated Sites) and NH2 (Protection of Sites of Special Scientific Interest and Geological Conservation Review Sites) of the ELLDP.

With regards to biodiversity matters the applicant has submitted a Biodiversity Assessment, an Ecological Impact Assessment, an Invertebrate Survey Report, bat survey information, a Species Protection Plan - Bats report and an Outline Biodiversity Enhancement and Restoration Plan.

With regard to biodiversity advice, NatureScot advise that they note the submitted Planning Statement and Ecological Impact Assessment informs that the concrete tunnel within the northern section of the eastern bund has been identified as a potential hibernation structure for bats and as a result, bat activity surveys and hibernacula surveys have been ongoing since November 2023 and that it is intended that survey work will continue in order to conclusively establish if bats are using the tunnel during different seasons; also that due to these ongoing surveys, it is proposed that the northern section of the eastern bund is not removed until the ecological survey work has been completed (phase two works), mitigation measures established and where necessary, a licence from NatureScot has been obtained to remove the tunnel.

NatureScot advise that it is likely that at least one important bat hibernation roost is located on the site within the old coal store area, and they understand that survey work is ongoing, however state that more detail is needed to reassure them of what is there. NatureScot continue that given the potential for bats roosting within this area, their advice is that the best outcome for the bat interest on site would be that at least part of the tunnel network is retained but, if this is not possible and that the intention is to completely remove all trace of the tunnels which bats may be currently using as hibernation roost(s), comprehensive mitigation would need to be provided including creation of a suitable like for like artificial hibernaculum as close to the existing hibernation roost as possible.

As mentioned earlier in this report, the proposed works would be carried out in two phases, with phase one including the removal of the northern, western and southern bunds and the southern section of the eastern bund around the former coal store site, and with phase two comprising of the removal the northern section of the eastern coal store bund including the concrete coal conveyor tunnel within it, the removal of the base of the former Wagon Discharge House which sits between the northern and southern sections of the eastern bund and the re-grading of the former coal store site with bund material.

In response to the above advice from NatureScot, the applicant's submitted Species Protection Plan - Bats report, concludes that the phase one works can be carried out without harm to bat roosts identified within the northern section of the eastern coal store bund subject to mitigation measures, and that further mitigation measures will be secured prior to the commencement of the phase two works in the form of the provision of new artificial hibernation roosts, with a potential location for these roosts being in the field immediately south of the site, adjacent to the linear habitat provided by a well-vegetated disused railway which would provide proportionate compensation.

NatureScot have appraised this information and advise that they have no objection to the phase one works taking place. They further advise that they have no objection to the phase two works taking place subject to the submission of further information in the form of updated bat survey data and an updated Species Protection Plan for Bats report which should identify mitigation measures for the protect bats in the form of the provision of new artificial hibernation roosts.

The submitted Outline Biodiversity Enhancement and Restoration Plan (OBERP) states that habitat enhancement and compensatory measures will be provided in the following areas:

- o an area of land between the Edinburgh Road and the former power Station site;
- o within a proposed drainage swale in the north of the former coal store; and
- o land to the south of the former coal store.

The above areas of land are under the ownership and control of the applicant.

The OBERP informs that the intention is to create natural spaces that provide benefits for wildlife to compensate for the loss of habitats on the former coal store site, which will be achieved through habitat creation and enhancement measures to form connected green wildlife corridors and blue features in a restored ecologically diverse landscape, and that this would improve the ecological and functional diversity of the habitats on and surrounding the site, through which opportunities for protected and notable species will increase.

The submitted Species Protection Plan - Bats report sets out a summary of mitigation measures to be implemented during the phase one works to ensure there is no disturbance to bats that may be present in the tunnel and chamber system in the northern section of the eastern bund at the former coal store site. It informs that prior to the implementation of the phase two works, new artificial hibernation roosts would be constructed, with the potential location for these roosts in the field immediately south of the former coal store site, adjacent to the linear habitat provided by a well-vegetated disused railway.

The **Council's Biodiversity Officer** has appraised the applicant's submitted supporting documents and confirms that she has no objection to the phase one works taking place, being satisfied there would be no harmful impact on ecological and biodiversity interests on the site (including bats) subject to them being carried out in accordance with the mitigation measures in section 8 of the Species Protection Plan - Bats report, and also subject to the submission of an updated Invertebrate Survey Report and that site clearance is carried out in accordance with the measures outlined in the Ecological Impact Assessment report and that it be done outwith the birds breeding season unless in accordance with a Precautionary Method of Work.

The Biodiversity Officer further advises that she has no objection the phase two works taking place, subject to the submission of further bat survey information and a final Biodiversity Enhancement and Restoration Plan which shall set out in detail the habitat enhancement and compensatory measures to take place, the location for these measures and which should also include provision for new artificial hibernation roosts for bats to be formed prior to the phase two works taking place.

Subject to the above recommended control, which can be imposed as conditions on a grant of planning permission, the proposed development does not conflict with Policies 3 or 4 of NPF4 or with Policies NH1, NH2 or NH5 of the adopted East Lothian Local Development Plan 2018.

The Scottish Environment Protection Agency (SEPA) have appraised the Flood Risk Assessment submitted with the application and raise no objection to the application, being satisfied that the proposed works would not result in any flood risk to the site or surrounding area.

The **Council's Civil Engineer Technician - Flooding**, advises he raises no objection to the application on the grounds of floor risk. He is also satisfied with the drainage arrangement for the development, subject to the submission of a Pre-Construction Risk Assessment for the drainage works and a Construction Phase Surface Water Management Strategy.

The Scottish Environment Protection Agency (SEPA) raise no objection to the application on the grounds of flood risk.

Scottish Water raise no objection to the proposed development.

The above requirements could be controlled by a condition(s) attached to a grant of planning permission and subject to this the proposed development is not contrary to Policy NH11 of the adopted East Lothian Local Development Plan 2018.

The **Council's Road Services** have appraised assessment of the traffic impacts of the proposed development within the applicant's submitted Transport Statement and Outline Construction Traffic Management Plan, and are satisfied that the proposed development can be accessed safely from the adjacent road network without compromising the safety or efficiency of existing road users and that the traffic impact associated with the proposed development would have no adverse impact on the operation of the local road network.

The submitted Outline Construction Traffic Management Plan states that all construction traffic will arrive and depart the site from the B6371 to the east, coming from the A1 and the B6371 to the south and not from the B1348 Edinburgh Road.

Road Services therefore raise no objection to the application subject to the following requirements:

(i) the submission of an updated Construction Traffic Management Plan to include a scheme of monitoring and engagement to understand how motorised and non-motorised general traffic interacts with the crossing controls on the B1348, including on pupil movements on the route to and from Preston Lodge High School; and

(ii) the submission of a programme for monitoring the condition of the public road to be used by construction traffic for the period of development.

The **Council's Access Officer** has appraised the applicant's submitted Outline Access Management Plan, and advises that an informal path would require to be temporarily diverted during site construction works and that a formal Public Access Management Plan should be submitted to detail any temporary rerouting of informal active travel routes in the local area.

Subject to the above recommended control, which can be imposed as conditions on a grant of planning permission, the proposed development does not conflict with Policies T1 and T2 of the ELLDP.

In conclusion, the proposal is considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

RECOMMENDATION:

It is recommended that planning permission be granted subject to:

1. The undernoted conditions.
2. The satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other agreement designed to secure from the applicant a financial contribution to the Council of £49,230 for the cost for the supply, planting and ten-year maintenance of new trees to mitigate for those proposed to be removed from the former coal store bund.
3. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of a Section 75 Agreement or other agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions to be secured by an agreement the proposed development is unacceptable due to the loss of trees, contrary to Policy 1 of the Council's Tree and Woodland Strategy for East Lothian (TWS) and Policy DP2 of the ELLDP.

- 1 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving finished ground levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 2 An updated Construction Traffic Management Plan (CTMP) to minimise the impact of construction activity on the amenity of the area, including from the effects of noise and dust, shall be submitted to and approved by the Planning Authority prior to the commencement of development. The CTMP shall recommend mitigation measures to control construction traffic, shall include hours of construction work and routes of construction traffic to/from the site. It shall also make recommendations in respect of how building materials and waste will be safely stored and managed on site.

The CTMP will show that all construction traffic will arrive to and depart from the site from the B6371 to the east, coming from the A1 and the B6371 to the south.

The CTMP shall also include a scheme of monitoring and engagement to understand how motorised and non-motorised general traffic interacts with the crossing controls on the B1348 public road, including on pupil movements on the route to and from Preston Lodge High School.

Thereafter, the CTMP shall be implemented and complied with in accordance with the approved details for the period of construction of the development hereby approved.

Reason:

To minimise the impact of construction activity in the interests of the amenity of the area.

- 3 Prior to the commencement of the development hereby approved a programme for monitoring the condition of the public road to be used by construction traffic throughout the period of the development shall be submitted to and approved in writing by the Planning

Authority. The public road to be monitored shall be 20 metres in each direction of the construction traffic crossing point of the B1348 Edinburgh Road.

The programme shall include details of the monitoring inspection schedule and a plan of how any emergency repairs shall be identified and repaired for damage to the road surface that could represent a significant road safety risk arising from the construction of the development.

Thereafter the approved programme of monitoring shall be implemented. Any remedial works shown by the monitoring as arising from the construction of the development shall be undertaken by the applicant within 3 months of the completion of the final monitoring undertaken, unless an alternative means of securing the works is approved in writing by the Planning Authority.

Reason:

To ensure that damage to the public road network resulting from the proposed development is rectified.

- 4 Prior to the commencement of development, a Public Access Management Plan shall be submitted to and approved in writing by the Planning Authority. The Public Access Management Plan shall include details of any temporary rerouting of informal active travel routes in the local area, including a timetable for the implementation of the measures.

Thereafter, the Public Access Management Plan shall be implemented and complied with in accordance with the approved details, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure continuity of active travel routes in the interests of public access.

- 5 Prior to the commencement of development, an updated Drainage Impact Assessment (DIA) shall be submitted to and approved in writing by the Planning Authority.

The DIA shall include detail of the drainage infrastructure including SuDS and swales and shall show there to be no right-angled bends in the piped network. The DIA shall also include a timetable for the installation of the drainage infrastructure.

The drainage infrastructure as so approved shall be implemented in its entirety, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the development is appropriately protected against flood risk and does not give rise to increased flood risk elsewhere.

- 6 Prior to commencement of development, a Dust Management Plan (DMP) shall be submitted to and approved in writing by the Planning Authority. The DMP shall identify all potential sources of dust that may arise as a result of the development hereby approved and shall specify any mitigation measures considered necessary to ensure that the amenity of nearby residential properties is not harmed from impacts of dust throughout the period of the development hereby approved.

Thereafter the measures identified in the approved DMP shall be implemented as so approved.

Reason:

In the interests of protecting the amenity of neighbouring residential properties.

- 7 Prior to commencement of development a Noise Management Plan (NMP) shall be submitted to and approved in writing by the Planning Authority. The NMP shall identify all potential sources of noise that may arise as a result of the development hereby approved

and shall specify any mitigation measures considered necessary, including details of monitoring and compliance with Threshold Values at Noise Sensitive Receptors as detailed in Table 4-4 of the docketed Construction Noise and Vibration Impact Assessment dated 14 March 2024, to minimise noise impacts upon noise sensitive receptors throughout the period of the development hereby approved.

Thereafter the measures identified in the approved NMP shall be implemented as so approved.

Reason:

In the interests of protecting the amenity of neighbouring residential properties.

- 8 Prior to the commencement of development, a detailed Remediation Statement shall be submitted to and approved by the Planning Authority. The Statement shall demonstrate how the identified asbestos contamination (particularly within the Coal Store material - 6F2) will be dealt with in order to remove unacceptable risks to all relevant and statutory receptors. The Statement shall detail all works to be undertaken, proposed remediation objectives and remediation criteria as well as details of the procedures to be followed for the verification of the remedial works.

Thereafter the detail of works to be undertaken shall be implemented as so approved.

Following completion of the measures identified in the approved Remediation Statement, a Validation Report shall be submitted and approved by the Planning Authority to demonstrate the effectiveness of the remediation carried out.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable in the interests of the amenity of the area.

- 9 In the event that unexpected ground conditions (contamination) are encountered at any time when carrying out the permitted development, work on site shall cease and the issue shall be reported to the Planning Authority immediately. At this stage a Site Investigation and subsequent Risk Assessment may have to be carried out, if requested by the Planning Authority. It may also be necessary to submit a Remediation Strategy should the reporting determine that remedial measures are required. It should also be noted that a Verification Report would also need to be submitted confirming the satisfactory completion of these remedial works.

Reason:

To ensure that the site is clear of contamination.

- 10 The phase 1 works of the development hereby approved as shown on docketed drawing no. CLUW-PLAN-012 Rev P0 shall be carried out in strict accordance with the mitigation measures in section 8.0 of the Species Protection Plan - Bats report dated 28 May 2024 by SLR Consulting that is docketed to this planning permission.

Reason:

To safeguard potential bat roosting space in the interests of the biodiversity of the site.

- 11 Prior to commencement of development an updated Invertebrate Survey Report shall be submitted to and approved by the Planning Authority. It shall inform measures to be included in the submission of a final Biodiversity Enhancement and Restoration Management Plan as required by Condition 15 below.

Reason:

In the interests of the biodiversity of the site.

- 12 No tree clearance shall take place during the breeding bird season (March-August), unless in strict compliance with a Precautionary Method of Work Plan for breeding birds, including

provision for pre-construction surveys, that shall be submitted to and approved in advance by the Planning Authority.

Reason:

In the interests of the biodiversity of the area.

- 13 All site clearance works shall be carried out in strict accordance with of the Ecological Impact Assessment report dated 5 June 2024 by SLR Consulting that is docketed to this planning permission.

Reason:

In the interests of the biodiversity of the area.

- 14 Prior to the commencement of phase 2 of the development hereby approved as shown on docketed drawing no. CLUW-PLAN-012 Rev P0 an updated Species Protection Plan - Bats report shall be submitted to and approved by the Planning Authority in consultation with NatureScot, which shall include further bat survey work and outline mitigation measures to protect bats in the construction of the development.

Any mitigation measures highlighted to be required as a result of the approved Species Protection Plan - Bats report shall thereafter be carried out in accordance with a timetable to be submitted to and approved in advance by the Planning Authority.

Reason:

In the interests of the biodiversity of the area.

- 15 Prior to the commencement of phase 2 of the development hereby approved as shown on docketed drawing no. CLUW-PLAN-012 Rev P0 a final Biodiversity Enhancement and Restoration Plan (BERP) shall be submitted to and approved by the Planning Authority in consultation with NatureScot. The BERP shall set out in detail the habitat enhancement and compensatory measures to take place, the location for these measures and shall also include provision for new artificial hibernation roosts for bats to be formed prior to the phase 2 works taking place. The BERP shall also include a timetable for its implementation.

Thereafter, the BERP shall be implemented and complied with in accordance with the approved details, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of protecting and enhancing biodiversity on the site and within the surrounding area.

- 16 The mitigation measures for the prevention of disturbance and/or displacement of SPA species throughout the period of the development hereby approved shall be implemented in strict accordance with those detailed in Table 4-7: Construction Mitigation Measures and Tables 4.6.1 to 4.6.5 inclusive within the Shadow Habitat Regulations Appraisal Screening and Appropriate Assessment Report dated 14 March 2024 by SLR Consulting that is docketed to this planning permission.

Reason:

To ensure the specified mitigation measures are fully implemented in order to safeguard SPA species.

