

Development Management Sub-Committee Report

Wednesday 9 August 2023

**Application for Planning Permission
Granton Harbour, West Harbour Road, Edinburgh**

Proposal: Application under section 42 of the Planning Act to amend conditions 1a and 1b of approval PPA-230-2253 (18/01428/PPP), to extend the duration of the permission for three years to 20th June 2026.

**Item – Committee Hearing
Application Number – 23/00756/FUL
Ward – B04 - Forth**

Reasons for Referral to Committee

The application is referred to the Development Management Sub-Committee as it falls under the definition of a National Development under NPF4 and would otherwise be a major application within the Edinburgh Waterfront. Consequently, under Section 38A of the Town and Country Planning (Scotland) Act 1997 a pre-determination hearing is required prior to determination.

Recommendation

It is recommended that this application be **Refused** subject to the details below.

Summary

The proposal will not have a detrimental impact on the character or special historic interest of the listed buildings. The proposal is acceptable in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

It is recommended that the Section 42 application to amend conditions 1a and 1b of approval PPA-230-2253 is refused as it is contrary to the Development Plan. Due to the insufficient environmental information provided in support of the application, the proposal is contrary NPF4 Policy 1 (Tackling the Climate and Nature Crises), Policy 2 (Climate Mitigation and Adaptation), Policy 3 (Biodiversity), Policy 4 (Natural Places), Policy 10 (Coastal Development), Policy 22 (Flood Risk and Water Management) and the development principles of EW 2(c) as set out in the City of Edinburgh Local Development Plan.

The applicant has failed to provide an appropriate Flood Risk Assessment which covers the whole application site. The potential risk posed to the site in the future from wave-overtopping and associated inundation as a result of potential climate change remains unmodelled. In the absence of any evidence considering the likely effect of sea level rise on wave patterns, it has not been demonstrated that all risks of flooding are understood and addressed, nor that the development would remain safe and operational during floods over its lifespan. Given the significance of this issue, it would not be appropriate to secure this information through use of a planning condition.

The Habitats Regulation Assessment referred to by the applicant is also insufficient as it does not cover the whole site or make reference to the recently designated Outer Firth of Forth and St Andrews Bay Complex SPA. An assessment of the potential impact of development on all designated areas is a policy and legislative requirement.

The existing planning permission in principle for the site (PPA-230-2253, 18/01428/PPP), is a significant material consideration in respect of this Section 42 application to amend its conditions. However, this does not outweigh the need to ensure sufficient environmental information is provided.

SECTION A – Application Background

Site Description

The site comprises approximately 33 hectares of land to the north of West Harbour Road, Granton Square and Lower Granton Road and is known as Granton Harbour.

There are a number of existing industrial units on the site. Part of the site is already developed with residential properties fronting Granton Square (plot 2), and within the site to the north of the existing industrial area (plots 3, 4, 27 and 28). A total of 578 residential units have been completed since 2003. Construction of a flatted blocks on plots S1 and S2 amounting to 308 residential units is currently underway and completion expected soon. The remainder of the site is largely cleared of buildings.

There is an existing canal feature to the north west of the site. The harbour has two basins: the western harbour has been partly infilled and the eastern harbour is used as yacht moorings and is protected by the Eastern Breakwater. The site wraps around the western harbour. The eastern harbour lies to the east of the application site.

The western harbour is protected from the Firth of Forth by the Western Breakwater/ Esparto Wharf. This was constructed between 1842 and 1863 and is category B listed (reference number: 30219, listed on 28 November 1989). The application site is adjacent to a Site of Special Scientific Interest (SSSI), and part of the site adjoins a Special Protection Area (SPA). A rock revetment has been partially constructed within Plot 35A and it is expected that remediation work required to this part of the site will result in further infilling of this plot.

The two harbours are separated by the Middle Pier, a category A listed structure (reference number: 30216, listed on 28 November 1989). The pier contains a stone warehouse (formerly a gunpowder store) that is listed category B (reference number: 30217 listed on 28 November 1989), and Harbour Light, also listed category B (reference number: 30218, listed on 28 November 1989).

Local yacht clubs operate from buildings and boat yards on the Middle Pier. The application site is not within or adjacent to a conservation area. The site is not a scheduled archaeological site but is of importance in industrial archaeological terms for the Middle Pier, Western Breakwater, any remnants of World War 2 naval defences, and any surviving railway lines.

In terms of the surrounding area, the Eastern Breakwater is not part of the application site. It is category B listed (reference number: 30220, listed on 28 November 1989). The sea wall and embankment to the east of mid pier are category C listed (reference number: 45651, listed on 16 September 1998).

The site fronts onto Granton Square which creates a formal space at the entrance to the harbour. West Harbour Road is located to the west of the square and contains a number of buildings, many of them listed, related to uses connected with the harbour, including the lighthouse lantern cupola at 22 West Harbour Road (listed category C(S) reference number: 29925, listed on 20 February 1985).

Description Of The Proposal

The application has been made under Section 42 of the Town and Country Planning (Scotland) Act 1997. Section 42 is for applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. The effect of granting planning permission under Section 42 is that a new planning permission is created.

This application seeks to amend conditions 1a and 1b of approval PPA-230-2253, to amend the duration of the permission in principle for a further three years to 20th June 2026.

Conditions would be amended as follows:

1 (a) Application for the approval of the under-noted reserved matters being made by 20 June 2026, (except where an application for approval of any reserved matters has been refused or an appeal against such refusal has been dismissed, in which case one further such application may be made within six months of the date of such refusal or dismissal, even though the 20 June 2026 date may have expired).

1 (b) The approved development being commenced no later than 20 June 2026 or two years from the date of the final approval of any reserved matters, whichever is the greater.

The previous application made in 2018 (18/01428/PPP, PPA-230-2253) under Section 42 effectively sought an additional time period to allow further Applications for Matters Specified in Conditions (AMC) to be submitted, as the time period for allowing reserved matters (laterally AMC) under the original outline planning permission (01/00802/OUT) was due to expire.

The effect of granting this current planning application would be to grant a new standalone planning permission in principle for the development that was granted planning permission under the previous applications 01/00802/OUT and 18/01428/PPP (PPA-230-2253).

The original outline planning permission (and the subsequent planning permission in principle, PPA-230-2253) established:

- RESIDENTIAL - up to 3,396 units (including those already constructed);
- BUSINESS/COMMERCIAL uses of up to 23,190 sqm;
- PUBLIC AMENITY/LEISURE uses of up to 7,650 sqm;
- RETAIL units, limited in size to 250sqm, with the exception of one retail unit with a maximum gross floorspace of 1,500 sqm;
- MARINA with 630 berths.

Supporting Information

The following information was submitted in support of the application.:

- Covering Letter

Other Supporting Information

- Flood Risk Assessment (dated February 2022, provided in relation to application 21/06413/FUL)
- Habitat Regulations Assessment (dated 15 November 2021, provided in relation to application 21/06413/FUL)

These documents are available to view on the Planning and Building Standards Online Service.

Relevant Site History

01/00802/OUT
Granton Harbour
Edinburgh

Granton Harbour Village, mixed use dev. comprising residential units, hotel + serviced apartments , shops + retail/services, restaurants/cafes , public houses, general business, leisure facilities + marina (revised urban design guidance)

Granted
23 June 2003

18/01428/PPP
Granton Harbour
West Harbour Road
Edinburgh

Extension of time limit of the existing outline planning approval to extend the duration of the permission for five years to 20th June 2023

Deemed Refusal
10 August 2018

Other Relevant Site History

14 March 2009 - Approval of reserved matters to discharge the following reserved matters as attached to outline permission 01/00802/OUT (under condition 2): siting and height of development; design and configuration of public and open spaces; access, road layouts; footpaths and cycle routes; existing and finished ground levels in relation to ordnance datum. This took the form of a masterplan (application number 06/03636/REM).

30 August 2013 - Application to discharge matters specified in conditions as attached to outline permission 01/00802/OUT (under condition 2): siting and height of development; design and configuration of public and open spaces; access, road layouts; footpaths and cycle routes; existing and finished ground levels in relation to ordnance datum. This application sought to vary the existing masterplan as approved through application 06/03636/REM. The applicant requested that this application be withdrawn on 23rd August 2013 before a decision was taken by the Committee (application number 13/01013/AMC).

31 January 2014 - Application approved for matters specified in condition 2 as attached to outline permission 01/00802/OUT: covering siting and height of development; design and configuration of public and open spaces; access, road layouts; footpaths and cycle routes. The application was in the form of a masterplan. It was subject to a number of conditions including the requirement for a revised flood risk assessment and surface water management plan, no construction of new berths within the marina until the implementation of the Western Breakwater, landscape detailed design to be submitted for plot 12, detailed design of the proposed 4 metre wide cycle track on West Harbour Road/Lower Granton Road, restriction on the height of plot 35, and submission of detailed design of plot 12, reserved matters not including matters in connection with Middle Pier, storey heights being maximum heights, consent being for a maximum number of residential units with each plot having housing number and height being determined at detailed design individually, and residential amenity space not being included.

An informative was also added which stated that the new breakwater section to protect the marina would require separate consent from the Council under the Coast Protection Act 1949 (application number 13/04320/AMC).

17 August 2016 - Application approved for matters specified in condition 2 as attached to outline permission 01/00802/OUT: covering siting and height of development; design and configuration of public and open spaces; access, road layouts; footpaths and cycle routes. This was in the form of a masterplan and approved subject to a number of conditions and informatives. These included conditions 1 and 2 which indicated that the reserved matters applied for are not approved in respect of plots 12, 14, 15, 15A, 16 and 17 and S1 and S2. An informative sets out the Council's expectations in relation to the provision of affordable housing as detailed applications come forward on a plot by plot basis (application number 14/05305/AMC).

10 November 2016 - Application for approval of matters specified in condition 2 of outline application 01/00802/OUT covering siting and height of development, design and configuration of public and open spaces, access, road layouts, footpaths and cycle routes. The application sought a number of revisions to the masterplan in relation to a reduction in residential units and location of affordable housing. The committee report

noted that the detailed proposals for plots 12, 14, 15, 15A, 16 and 17 (the local centre), plots S1 and S2 and plots 7B, 8B, 8C, 9A, 9B and 35 were not acceptable. The application was recommended for refusal. The applicant requested that this application be withdrawn before a decision was taken by the Committee (application number 16/02621/AMC).

2 February 2017 - Approval of matters specified in condition 2 of outline application 01/00802/OUT was approved covering siting and height of development, design and configuration of public and open spaces, access, road layouts, footpaths and cycle routes (Scheme 2) approved. However, the matters applied for in relation to plots 8C, 12,14, 15, 15A, 16, 17, S1, S2 and 35 are not approved (application number: 16/05618/AMC).

26 April 2021 - Application approved for approval of matters specified in condition 2, covering siting and height of development, design, and configuration of public and open spaces, access, road layouts, footpaths and cycle routes at Granton Harbour, West Harbour Road. . However, reserved matters relating to plots 12, 14, 15, 15A, 16, 17, 19A and 35A were not approved. The reserved matters covering footpaths and cycle routes in respect of the waterfront cycle/pedestrian route were not approved. The reserved matter covering footpaths and cycle routes in respect of the cycle/pedestrian use on West Harbour Road/Lower Granton Road were not approved. The application did not discharge reserved matters relating to private amenity space or car parking areas for individual plots or any development or works relating to the Middle Pier. (Application reference 17/02484/AMC).

Pre-Application process

There is no pre-application process history.

Consultation Engagement

Archaeology

Communities and Families

Environmental Protection

Transport Planning

Nature Scotland

Scottish Water

Historic Environment Scotland

SEPA

Granton District Community Council

Refer to Appendix 1 for a summary of the consultation response.

Publicity and Public Engagement

Date of Neighbour Notification: 22 March 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): Not Applicable

Site Notices Date(s): Not Applicable

Number of Contributors: 13

Section B - Assessment

Determining Issues

Due to the proposals relating to a listed building(s), this report will first consider the proposals in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development harming the listed building or its setting?
- If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

Section 42 of the Town and Country Planning (Scotland) Act 1997 (the Act) relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

If an application under Section 42 of the Act is granted it creates a new planning permission with a new default time period for implementation unless otherwise determined. Accordingly, the proposals also require to be determined under Sections 25, 37 and 59 of the Act.

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

Do the proposals comply with the development plan?

Therefore, consideration shall be given to the proposed change to the condition and any other conditions attached, in particular whether:

- I. the proposed change to the condition would result in a development that is in accordance with the plan; or
- II. an alternative condition or conditions would result in a development that is in accordance with the plan; and
- III. there are any material considerations that outweigh the conclusions in respect of i) and ii) above.

Assessment

To address these determining issues, it needs to be considered whether:

a) The proposals harm the listed building and its setting?

The following HES guidance is relevant in the determination of this application:

- Managing Change in the Historic Environment: Setting

Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 means that there is a strong presumption against granting planning permission for development which would harm a listed building or its setting. If engaged, the presumption can only be rebutted if the advantages of the scheme are sufficient to outweigh that strong presumption.

The site contains a number of listed structures, notably the A listed Middle Pier and B listed Western Breakwater. There are also the C listed structures to the south of the site along West Harbour Road.

Buildings are not proposed on Middle Pier and the Masterplan drawing states that any proposed building works are indicative only and are not part of the application. If any works affect the character of the listed structures as buildings of special architectural or historic interest, a separate application for listed building consent will be required. Development has been approved in more detail opposite the listed buildings on West Harbour Road.

The principle of mixed-use development was granted through the outline permission (application number 01/00802/OUT). The potential impact on listed structures within the site and their setting has been considered in various iterations of masterplans covering this site. HES has not objected to the current Section 42 application or the most recent masterplan covering the site, set out in the approved application for matters specified in conditions 17/02484/AMC.

The harbour's western breakwater is a category B listed building, originally constructed between 1842 and 1863. It comprises two key components, namely the breakwater itself, which is of stone construction, plus a timber 'esparto' wharf on the harbour-facing

side. A small element of the esparto wharf remains intact in the form of a row of roughly fifteen upstanding timber features remain within the harbour, running parallel to the breakwater. These timber structures are in poor condition and are submerged under certain tidal conditions.

Conclusion in relation to the listed building

The proposal will not have a detrimental impact on the character or special historic interest of the listed buildings. The proposal is acceptable in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

b) Compliance with the Development Plan

The proposals are assessed against the development plan policies, comprising National Planning Framework 4 (NPF4) and the Edinburgh Local Development Plan 2016.

NPF4 policies support the planning and delivery of Sustainable Places, Liveable Places and Productive Places. NPF4 came into force on 13 February 2023. It is significant change to the development plan as it contains new policies which are key considerations. It replaces Scottish Planning Policy and the strategic development plan for South East Scotland. A result of NPF4 is that this development is national development. Several policies in the Edinburgh Local Development Plan (LDP) are now unlikely to be relevant due to being overtaken by equivalent and alternative policies within NPF4. This represents a significant change in policy context since the previous Section 42 application to extend the time period for this outline consent was allowed on appeal in 2019 (Appeal Reference PPA-230-2253).

The relevant policies that have been considered are:

NPF4 Policies

Sustainable Places:

- NPF4 Policy 1 - Tackling the Climate and Nature Crisis
- NPF4 Policy 2 - Climate Mitigation and Adaptation
- NPF4 Policy 3 - Biodiversity
- NPF4 Policy 4 - Natural Places
- NPF4 Policy 7 c) - Historic Assets and Places
- NPF4 Statement of Need 9 - Edinburgh Waterfront
- NPF4 Policy 9 - Brownfield, Vacant and Derelict Land and Empty Buildings
- NPF4 Policy 10 - Coastal Development
- NPF4 Policy 12 - Waste

Liveable Places:

- NPF4 Policy 14 - Design, Quality and Place
- NPF4 Policy 16 - Quality Homes
- NPF4 Policy 18 - Infrastructure First
- NPF Policy 22 - Flood Risk and Water Management

Productive Places:

NPF4 Policy 28 - Retail

LDP Policies

Waterfront Policies:

- Proposal EW 2c
- LDP Policy Del 3 Edinburgh Waterfront

Delivery Policies

- Del 1 - Developer Contributions and Infrastructure Delivery

Design Policies

- Des 1 - Design Quality and Context
- Des 2 - Co-ordinated Development
- Des 3 - Development Design - Incorporating and Enhancing Existing and

Potential Features

- Des 4 - Development Design - Impact on Setting
- Des 5 - Development Design - Amenity
- Des 7- Layout Design
- Des 8- Public Realm and Landscape Design
- Des 10 - Waterside Development

Environment Policies

- Env 15 - Sites of Local Importance
- Env 20 - Open Space in New Development
- Env 21 - Flood Protection
- Env 22 - Pollution and Air, Water and Soil Quality

Housing Policies

- Hou 1 - Housing Development
- Hou 2 - Housing Mix
- Hou 3 - Private Green Space in Housing Development
- Hou 4 - Housing Density
- Hou 6 - Affordable Housing
- Hou 10 Community Facilities

Retail Policies

- Ret 1 - Town Centres First Policy
- Ret 6 - Out-of-Centre Development
- Ret 7 - Entertainment and Leisure Developments - Preferred Locations
- Ret 11 Food and Drink Establishments

Transport Policies

- Tra 1 Location of Major Travel Generating Development
- Tra 2 - Private Car Parking LDP Policy
- Tra 3 - Private Cycle Parking
- Tra 4 - Design of Off-Street Car and Cycle Parking
- Tra 8 - Provision of Transport Infrastructure
- Tra 9 - Cycle and Footpath Network

Impact on Listed Buildings

This has been assessed in Section a) above. The proposal will not have a detrimental impact on the character or special historic interest of the listed buildings. The proposal is acceptable in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

Subject to appropriate conditions, the proposal complies with policy 7 c) of NPF4.

Principle

Some development has occurred across the site, though despite a number of plots having extant planning permissions large parts of the site remain largely undeveloped. If the site is developed out in line with the masterplan shown in 17/02484/AMC, a total of 2,457 residential units would be developed across the site with a mix of other uses. However, this remains significantly below the 3,396 units set out in the original outline consent. If Conditions 1a and 1b are amended as proposed, there remains significant scope for intensification of development across the site in the future. In assessing the application with regard to section 42 of the 1997 Act, it is necessary to have cognisance of the development plan where it is reasonable for the planning authority to consider the principle of development.

This development is a national development under the provisions of NPF4 and Section 26A of the 1997 Act as it is in the Edinburgh Waterfront area, and is a mixed use development that would otherwise be of a scale and type that is classified as major by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

NPF4 contains a specific Statement of Need in relation to the Edinburgh Waterfront. It states that this national development supports the regeneration of strategic sites along the Forth Waterfront in Edinburgh. The waterfront is a strategic asset that contributes to the city's character and sense of place and includes significant opportunities for a wide range of future developments. Development is expected to include high-quality mixed-use proposals that optimise the use of the strategic asset for residential, community, commercial and industrial purposes.

The delivery of a strategic housing-led mixed-use development on this application site supports this aim of NPF4.

In terms of the Edinburgh Local Development Plan, the site is located within the Granton Harbour Area at Granton Waterfront, as identified by Proposal EW 2c for housing led mixed use development across Granton Harbour.

The development principles of the LDP set out that proposals will be expected to:

- complete the approved street layout and perimeter block urban form
- provide a housing mix that is appropriate to the site in terms of place-making and would maximise completions within this urban regeneration proposal within the plan period.
- meet the convenience shopping needs of new and future residents by implementing the proposed Local Centre (Proposed S2).
- complete the relevant section of the waterside Edinburgh Promenade.
- provide for retained and improved mooring facilities and boat storage and retain Middle Pier as a 'working pier'.
- include tourism and waterfront-related leisure and entertainment uses.
- provide a strategic flood risk assessment.

LDP Policy Del 3 (Edinburgh Waterfront) supports proposals which meet a number of requirements including the provision of a series of mixed-use sustainable neighbourhoods that connect with the waterfront and proposals for a mix of house types, sizes and affordability alongside the provision of local retail facilities and leisure and tourism attractions and the provision of open space in order to meet the needs of the local community, create local identity and a sense of place.

LDP Policy Hou 1 (Housing Development) states that priority will be given to the delivery of the housing land supply and relevant infrastructure as detailed in the plan including as part of the mixed-use regeneration proposals at Edinburgh Waterfront. Residential development within the site would still be consistent with the current LDP.

The provision of a new marina will contribute to the creation of vibrant, active waterfront environment, contributing to sense of place in compliance with LDP Policy Del 3 and EW2C. The marina development will promote recreational use of the water and complies with LDP Policy Des 10 (Waterside Development). The application site is located within a wider allocation which promotes the development of sites for employment use. Therefore, the principle of developing parts of the site for business and tourism purposes remains consistent with the LDP.

NPF4 Policy 28 c) supports small scale neighbourhood retail of the scale proposed where it would contribute to local living and can be demonstrated to contribute to the health and wellbeing of the local community.

Similarly, LDP Policy Ret 6 (Out-of-Centre Development) sets out the criteria where proposals for out-of-centre retail development will be permitted. Ret 6 requires that proposals for retail in an out-of-centre location will only be permitted where it is demonstrated that: a) the proposal addresses a quantitative or qualitative deficiency; b) all potential sites have been assessed and discounted as unsuitable or unavailable; c) the proposal will not have a significant adverse effect on the vitality and viability of any existing centre; and d) the site is or can be made easily accessible by a choice of transport modes and will reduce the length and overall number of shopping trips made by car.

There has been a move away from major commercial/business development and retail development in locations outwith the city centre within the current LDP. The 23,190 sqm of commercial space in the outline permission would not generally be supported

through the current LDP at this location. Further information would be required in respect of what this commercial use would comprise, in order for it to be assessed whether this use would be in compliance with the LDP. No supporting information in relation to commercial and retail uses has been provided as part of this application.

However, in general terms, it is important to acknowledge that the principle of retail and commercial development has previously been accepted in this location and while it may not comply with the terms of the current LDP, retail and commercial development in this area could support the new communities anticipated in this area and would contribute to the creation of a sustainable 20-minute neighbourhood in line with NPF4.

Elements of the current masterplan, including part of plot 35A and part of the proposed extension of the Western Breakwater, to support the development of the marina, lie outwith the red line boundary of the outline consent. Any proposals falling outwith the red line boundary of the application site would require a separate application for full planning permission.

Subject to other considerations, it can be concluded that the principle of development on this site is established and is supported by NPF4 and LDP policies.

Flooding and water management

Policy 1 of the NPF4 gives significant weight to the global climate and nature crisis to ensure that it is recognised as a priority in all plans and decisions. It is to be applied together with the other policies in NPF 4 and its weight must be considered when considering the proposal in the context of the development plan and material considerations.

Similarly, LDP policy EW2C sets out the requirement for the provision of a strategic flood risk assessment.

The policy emphasis on ensuring development is sustainable, accounting for potential impacts of climate change and ensuring development is supportable in the long-term is reflected in NPF4's policy position in relation to flooding. In light of NPF4, all development must now be assessed against the 0.5% annual exceedance probability flood event (200 year), plus an allowance for climate change. This is a significant change from Scottish Planning Policy (SPP) 2014 where adding a climate change allowance was only a recommendation. NPF4 makes this a policy requirement.

NPF4 Policy 22 (Flood risk and water management) states that development proposals at risk of flooding or in a flood risk area will only be supported if they are for:

- i. essential infrastructure where the location is required for operational reasons;
- ii. water compatible uses;
- iii. redevelopment of an existing building or site for an equal or less vulnerable use; or.
- iv. redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long-term safety and resilience can be secured in accordance with relevant SEPA advice.

The proposed introduction of up to 630 marina berths would comply with criterion ii of Policy 22. However, the proposed mixed-use development of the wider site for residential, retail and commercial purposes would need to comply with criterion iv.

Policy 22 further sets out that for development proposals meeting criteria part iv), where flood risk is managed at the site rather than avoided these will also require supporting information to demonstrate that the proposal does not create an island of development and that safe access/ egress can be achieved. The policy further requires that the first occupied/utilised floor, and the underside of the development if relevant, to be above the flood risk level and have an additional allowance for freeboard.

In line with Regulation 25 of the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2013 the Planning Authority must consult with the Scottish Environment Protection Agency (SEPA) where a development is likely to result in a material increase in the number of buildings at risk of being damaged by flooding. The application site relates to a harbour area, with areas identified on SEPA Flood Risk Maps as having a high likelihood of present and future coastal flooding.

SEPA has been consulted on the application and has objected to the proposal on the basis of lack of information. The current planning permission in principle includes matters specified by condition relating to flooding and sustainable drainage, with specific information required in relation to floor levels (including the submission of all calculations to support the levels, and including a report on sea levels, with climate change, storm surge and wave action). However, SEPA has advised that the assessment of flood risk on a plot by plot basis is not appropriate in this case.

Given the complexities of modelling coastal flood risk, SEPA has advised that a single Flood Risk Assessment (FRA) is required for the whole area proposed for development subject to the current application. This will ensure all development is assessed under the same criteria allowing a wholistic strategic approach to be taken in relation to flood risk management and mitigation. This stance is further strengthened by NPF4 Policy 10 (Coastal development) which states that proposals will only be supported where it is demonstrated that they are supportable in the long-term taking in to account projected climate change and where they do not result in the need for further coastal protection measures taking into account future sea level change; or increase the risk to people of coastal flooding.

SEPA has advised that compliance with criteria set out in Policy 22, part iv and Policy 10 cannot be determined without a detailed FRA confirming the flood mechanisms, design flood levels and areas of inundation at the site. Until this information is provided, it is not possible to determine if the development proposal meets the requirements set out in NPF4 and it would not be possible to support an extension to the duration of the planning permission under these circumstances.

The applicant submitted no strategic Flood Risk Assessment or Surface Water Management information as part of the documents submitted with the application. The applicant has been made aware of the objection to the proposed application by SEPA, and the Council has requested that a comprehensive FRA is provided in line with requirements set out by SEPA to assess potential flood risk across the whole site. The applicant has declined to provide a FRA which assesses the whole site.

The applicant has referred the Council to a FRA which was submitted in February 2022 in support of application 21/06413/FUL which relates to Plot 35A, a single 3 hectare plot to the north of the site. The Council refused planning permission for this application on 11 January 2023 on the basis that the FRA provided by the applicant did not provide sufficient information to quantify present and future flood risk to the site, and in particular the risk posed to the site by wave-overtopping, taking into account worst-case 1 in 200 year water levels.

The applicant submitted an appeal to the Planning and Environmental Appeal Division (DPEA) in February 2023 (appeal reference: PPA-230-2407). This appeal was dismissed on 18 July 2023 on the basis that the FRA provided was insufficient to address policy requirements set out in the City of Edinburgh Local Development Plan, NPF4 and the requirements of SEPA guidance.

SEPA has provided detailed feedback on this FRA in consultation responses provided in relation to application 21/06413/FUL. In previous consultation responses relating to the FRA submitted in relation to application 21/06413/FUL, SEPA has identified that this FRA does not make a full and robust assessment of all potential flooding mechanisms, specifically in relation to the risk posed to Plot 35A by wave-overtopping, taking into account climate change. The FRA in question made an assessment of wave-overtopping based on present day water levels and not the 1 in 200 year water levels which are required by policy. SEPA further identified that by the year 2100 current modelling suggests that the Eastern Breakwater will be submerged on average once a year and will therefore provide limited protection during storm events.

In dismissing appeal PPA-230-2407 the DPEA Reporter stated that "It seems likely to me that wave transmission into the harbour would be significantly increased if extreme water levels were above the breakwater's crest due to sea level rise. The appellant's own evidence acknowledges that differences in water level are significant in the assessment of waves. Consequently, I share SEPA's concern that wave heights within the harbour could be substantially greater in future than those assumed by the appellant. In the absence of any evidence considering the likely effect of sea level rise on wave patterns, I conclude the appellant has not demonstrated that all risks of flooding are understood and addressed, nor that the development would remain safe and operational during floods over its lifespan."

Existing Eastern and Western Breakwaters offer some flood protection to the application site. However, SEPA has previously advised the Council that by the year 2100 current modelling suggests that the Eastern Breakwater may be submerged on average once a year and will therefore provide limited protection or no protection in a storm event. This is reflected in the SEPA Flood Hazard Maps. The degree of protection offered by the Eastern Breakwater will decrease as the sea level rises and the transmission waves into the harbour area will increase as a result.

The DPEA Reporter further noted in their consideration of Appeal PPA-230-2407 concluded that both the existing Western and Eastern Breakwaters were informal flood defences and that NPF4 Policy 22 was "unambiguous" that they should not be taken into account as part of any FRA relating to the site and that the applicant would be required to consider an undefended scenario, assuming no flood defence benefit from these structures.

The risk this poses to future development across the site remains unmodelled. Ensuring all areas of the application site remain free from flood risk may require work to upgrade the breakwaters. A full understanding of potential flood risk across the site is required to ensure adequate mitigation measures can be put in place. This may require new conditions or an amendment to the matters specified by condition to ensure future development is free from flood risk.

The FRA referred to by the applicant is not appropriate to support this application. The FRA has been prepared in relation to only 1 plot and not the whole application site as recommended by SEPA. This document is also out of date. Section 1.3 of this report notes that if it is submitted for regulatory approval more than 12 months following the report date, it is recommended that it is referred for review to ensure that any relevant changes in data, best practice, guidance or legislation in the intervening period are integrated into an updated version of the report. In this case the report makes no reference to NPF4 and still refers to SPP which has been superseded, it also makes no reference to SEPA guidance which was updated in April 2023, superseding previous guidance published in March 2022.

Although an Environmental Statement was provided in support of the original Outline Planning Permission, granted in 2003, this did not cover flooding. As noted above, in the 20 years since the original consent was granted and in the 4 years since appeal PPA-230-2253, planning policy has significantly changed in light of a greater understanding of the potential risks associated with climate change. Since outline planning permission was granted through 01/00802/OUT in 2003 and since appeal PPA-230-2253 there have been significant improvements to understanding of flood risk through advances in flood modelling techniques, longer coastal and hydrometric data record lengths, updated climate science and improved records of observed flooding impacts. Furthermore, SEPA has produced various updates to the Flood Hazard Maps (the latest V2 maps were published in November 2020). Planning applications are reviewed on the best available information and legislation, policy and guidance available at the time of submission. In line with current guidance and the information available, SEPA has objected to this scheme.

The Council acknowledges that some development has occurred across the site, though despite a number of plots having extant planning permissions large parts of the site remain largely undeveloped. If the site is developed out in line with the masterplan shown in 17/02484/AMC, a total of 2,457 residential units would be developed across the site with a mix of other uses. However, this remains significantly below the 3,396 units set out in the original outline consent. If Conditions 1a and 1b are amended as proposed, there remains significant scope for intensification of development across the site in the future. This strengthens the need to ensure a Flood Risk Assessment is provided which takes full account of the site.

Due to the insufficient level of information provided in relation to flood risk, the proposal is contrary to NPF4 Policies 1, 2, 10 and 22, and the development principles of EW 2(c) which requires a strategic flood risk assessment to be submitted. No FRA was submitted with the application. SEPA has objected to the application on the basis of lack of information and has clearly set out the requirement for a FRA which covers the whole application site, identifying all mechanisms of flooding and areas of inundation, taking into account climate change as required by policy. The applicant has refused to provide this information and the FRA referred to by the applicant which was submitted in support of application 21/06413/FUL is insufficient.

Biodiversity and protected designations

The application site is adjacent to the Firth of Forth Special Protection Area (SPA), designated for its wintering bird interest, as well as the Firth of Forth Ramsar Site and Site of Special Scientific Interest (SSSI). The site is also adjacent to the Outer Firth of Forth and St Andrews Bay Complex SPA, designated for wintering and breeding waders, wildfowl and seabirds and in proximity to the Forth Islands SPA.

NPF4 Policy 4 (Natural Places) parts b) and c) set out specific policy requirements safeguarding the interests of international, national and locally important sites including SPAs, Ramsar and SSSI designations. These criteria include the requirement to make an appropriate assessment of the implications of proposed development for the conservation objectives of such sites.

NPF4 Policy 3 (Biodiversity) also states that development proposals for national or major development will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks. To inform this, best practice assessment methods should be used. The proposal further states that proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats.

Since outline consent was granted in 2003 through 01/00802/OUT and since approval PPA-230-2253 (18/01428/PPP) the St Andrews Bay Complex has been designated as a Special Protection Area in December 2020. The status of these sites of international importance means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the "Habitats Regulations") apply. Consequently, the impact of the proposed mixed-use development on these designated areas must be considered, and in line with Annex H of Circular 3/2022, a Habitat Regulation Assessment must be provided.

NatureScot was consulted on the scheme and has advised that the applicant must submit an updated Habitat Regulations Assessment (HRA). This must include an assessment covering the changes in designations/new designations, but also other changes that have occurred in the intervening time since the original assessment, such as other development that could contribute to cumulative considerations.

The applicant was advised of the need to provide an updated HRA but has declined to do so. The applicant has referred the Council to a HRA provided in support of application 21/0614/FUL relating to Plot 35A to the north of the site. This HRA, prepared in November 2021 relates to the potential impacts associated with development of Plot 35A and does not consider the implications of development of the whole 33-hectare application site or the cumulative impact of any new development since the original consent. This HRA also makes no mention of the Outer Firth of Forth and St Andrews Bay Complex SPA which has been designated since the original consent and was not covered in previous environmental assessments.

Due to the insufficient level of information provided by the applicant in relation to the potential impact of development on sites of international and national importance and the failure to provide an updated HRA as set out in the consultation response provided by NatureScot, the proposal is contrary to NPF4 Policy 4 (Natural Places) and NPF4 Policy 3 (Biodiversity). It is not possible to determine if existing conditions remain appropriate or if further conditions are required without an updated HRA.

Infrastructure

A planning permission which is granted in respect of a section 42 application represents a new and separate planning permission from the original permission and is capable of separate implementation.

Since the original consent was granted through 01/00802/OUT there has been significant change in the Development Plan, including the 2023 adoption of NPF4. The terms of the legal agreement associated with the original consent are outdated and do not cover present infrastructure requirements associated with a development of this nature. The Council considers that applying the legal agreement associated with the original outline planning permission to a grant of planning permission of the current application would be in breach of Development Plan policies LDP DEL 1 and NPF4 Policy 18.

It is acknowledged that the Reporter in the PPA-230-2253 Section 42 decision did not opt to update the legal agreement to reflect current infrastructure requirements in 2019. Since that decision NPF4 has become part of the Development Plan and the relevant Circular has been updated.

In relation to Section 42 applications, Annex H of Circular 3/2022 states that Planning Authorities should consider the need to secure any section 75 legal obligation (or other agreement) to the new permission, where it is intended this should still apply.

NPF4 Policy 18 (Infrastructure First) states that the impacts of development proposals on infrastructure should be mitigated. Development proposals will only be supported where it can be demonstrated that provision is made to address the impacts on infrastructure. LDP Policy Del 1 and the Council's finalised Developer Contributions and Infrastructure Delivery guidance are also relevant.

The Council would therefore look to secure a legal agreement to reflect the requirements of the current Development Plan covering matters relating to healthcare, education, transport, affordable housing and the ongoing maintenance of sea defences.

Education

The relevant education clause in the legal agreement for the original outline permission (01/00802/OUT) required a payment of £1,366 per residential unit (index linked).

Significant plan led housing growth at Granton Waterfront will affect Forthview, Granton and Pirniehall primary schools and their feeder high schools, Broughton and Craigroyston High Schools. A site for a new primary school to serve housing growth in Granton Waterfront was identified in the 2018 Education Appraisal and the 2021 Education Appraisal. A statutory consultation is required to establish a new school, its catchment boundaries, and the high school it is aligned to.

A 21-class primary school with a 192 nursery will be required to support the latest housing output assumptions for Granton Waterfront. Additional classes at the catchment denominational primary school and additional secondary school places at the catchment denominational and non-denominational secondary schools will also be required. The secondary school the new primary school will be aligned to will be identified as part of the statutory consultation to establish a new primary school.

The education infrastructure actions identified in the 2018 Supplementary Guidance are not appropriate to mitigate the cumulative impact of development that would be anticipated if this proposal progressed.

In November 2022, the Finance and Resources Committee (Sustainable Capital Budget Strategy 2022-33) accepted the recommendation that the Council can no longer underwrite capital projects for education infrastructure to support LDP learning estate projects. This recommendation was also accepted by the Full Council in February 2023 (Sustainable Capital Budget Strategy 2023-2033 - referral from the Finance and Resources Committee). A fully funded business case to be approved by the Council's Finance and Resources Committee is now required to progress any new education infrastructure project. Accordingly, it is necessary the Council secures the full contributions required from housing developments to deliver new education infrastructure.

To mitigate the cumulative impact of development that would be anticipated if site EW 2a and the other Granton Waterfront housing sites are progressed, the proposed development is therefore required to make a contribution towards the delivery of the following actions based on the established 'per house' and 'per flat' rates set out below.

- £12,875 per flat
- £39,109 per house

With a land cost of:

- £30 per flat
- £82 per house

All infrastructure contributions shall be index linked based on the increase in the BCIS Forecast All-in Tender Price Index from Q4 2022 to the date of payment. Land contributions shall not be index linked.

Healthcare

The application site is located within the Granton Waterfront Healthcare Contribution Zone, identified within the Council's finalised Developer Contributions and Infrastructure Delivery Supplementary Guidance (August 2018). Developer contributions are required to support the delivery of a new medical practice to mitigate impact of new residential development in Granton Waterfront.

Healthcare contributions were not included in the original legal agreement relating to 01/00802/OUT. Infrastructure requirements have evolved since this time. A contribution of £945 per new dwelling would be required in line with guidance.

Transport

A number transport contributions in the existing section 75 have already been paid or delivered, including:

- Eastern Corridor Transport Improvement contribution - £115,000.
- Waterfront Corridor Transport contribution - £50,000.
- Lower Granton Road realignment contribution - £1,000,000.
- Cycle route from Lower Granton Road at Granton Square to West Harbour Road.
- Improvements to Granton Square (signalisation of the existing Granton Square roundabout).

For clarification, it is important to note that the level of transport contributions set out in the legal agreement also covered development at Western Harbour.

The Council acknowledges that transport contributions required through this legal agreement were met by Forth Ports, the applicant of the original outline permission. However, the signalling improvements to Granton Square and the cycle route have not been delivered.

No transport information has been submitted in support of the section 42 application.

Affordable Housing

The original section 75 legal agreement required the developer to deliver at least a specified minimum amount of affordable housing across the site. The minimum was the lesser of 510 units or 15% of all residential units constructed on the site.

The Affordable Housing was to be provided across six areas and was based on a total number of 3,396 homes, 15% is 509 units. The wording of the original section is prescriptive in terms of timescales, phases and numbers within which the affordable homes should be delivered across these areas. These terms are now unachievable.

Local Development Plan Policy Hou 6 (Affordable Housing) now requires 25% of the total provision to be affordable housing. As this is the Council's most up to date position, this should be applied to this application. Additionally NPF4 Policy 16 e) states that development proposals for market homes will only be supported where the contribution to the provision of affordable homes on a site will be at least 25% of the total number of homes, unless the LDP sets out locations or circumstances where: a higher contribution is justified by evidence of need, or a lower contribution is justified. To achieve this, the most appropriate approach is to apply a 25% requirement across the site, with the 546 affordable units already consented deducted from the total.

For the 3,396 units granted under the original permission, 25% would result in 849 affordable units being required. Accounting for the 546 units already completed or under construction this results in a requirement for a further 303 units to be delivered.

However, account needs to be taken of the approved development within the site and also the indicative figures within the most recent masterplan. At this point in time, and based on the approvals and figures in the most recently approved masterplan, the total amount of residential development across Granton Harbour is at 2457 units. An affordable housing requirement of 25% would result in 614 units.

Based on completed and committed development on Plots 3, 27, S1 and S2, 546 affordable units will be delivered on site. This leaves a residual requirement of 68 affordable units. If 152 units are consented and delivered on Plot 26, the total number of affordable units, based on a requirement of 25% would be met. However, there remains potential for the masterplan to be amended and for up to 3,396 units to be delivered across the site. If consent were granted in this instance, it would therefore not be unreasonable to have a new legal agreement to ensure that affordable housing at 25% up to maximum of 3,396 units is secured.

Flood Defences

Section 11 of the legal agreement relating to the original consent requires the site owner to undertake maintenance of the Western Breakwater and a Deed of Conditions from 2006 relating to the application site places a burden on owners to ensure an inspection and maintenance regime in respect of current and future sea defences on the site.

If permission is granted in this case it is recommended that matters relating to the inspection and maintenance of all structures that serve as a flood defence measure form part of a Section 75 agreement.

Design and liveable places

Policies 14, 15 and 16 of NPF 4 support development that delivers quality places, spaces and environments that can further contribute to achieving 20-minute neighbourhood principles. The delivery of good quality homes in the right location is also supported. LDP policies Des 1 to Des 5 and Des 7, Des 8, Des 10 and Des 11 also sets out requirements for new development in the city and require proposals to be based on an overall design concept which takes influence from positive characteristics of the surrounding area to deliver high quality design.

A number of objections from members of the public have focused on detailed design issues such as the introduction of high-rise buildings to the area and the layout and proposed density of development across the site, as well as an overall lack of public greenspace. All matters relating to design, including siting of development, height, external finishes and the design and layout of public space and landscaping would be matters to be specified in condition. The purpose of this application is not to consider these matters in detail, but to consider whether a variation of conditions is appropriate or required. In this instance it is recommended that should planning permission be granted, all matters relating to design, landscaping and the detailed configuration of public and open spaces remain as matters specified in condition, with future applications required to demonstrate compliance with current planning policy.

As set out in the principle section above, the Council remains supportive of the mixed-use development of Granton Harbour. Continued development of the site could contribute to the creation of vibrant communities within the area, contributing to the physical and economic regeneration of the area. A number of public comments have expressed dissatisfaction with the lack of development within the application site over a 20-year period and a lack of facilities in the area. The provision of healthcare and education infrastructure has been discussed above. Although the Council is recommending refusal of this application, this is based on a failure of the applicant to provide detailed environmental information, required to comply with current planning policy. The outline consent includes allowances for the development of commercial, retail and leisure uses. Such uses would be in keeping Policy 14 of NPF4 and the 20-minute neighbourhood concept.

NPF4 Policy 16 (Quality Homes) requires development proposals that include 50 or more homes to be accompanied by a Statement of Community Benefit. This Statement must explain the contribution of the proposed development will make:

- i. i to meeting local housing requirements, including affordable homes;
- ii. ii providing or enhancing local infrastructure, facilities and services; and
- iii. iii improving the residential amenity of the surrounding area.

As the current Section 42 application, if consented, would in effect grant a new planning permission for up to 3,396 residential, the Council requested a Statement of Community Benefit from the applicant to support this application. The applicant declined to provide a specific Statement of Community Benefit but has highlighted that the Cover Letter provided with the application notes that the current masterplan for the application site includes the provision of affordable housing and the introduction of a range of uses such as an hotel, marina, health hub; neighbourhood shopping facilities and a business centre. The Cover Letter is available in full on the Planning Portal.

If planning permission is granted in this instance, it is recommended that a condition is included to require the provision of a Statement of Community Benefit, for all applications relating to residential development which involves 50 or more units.

Amenity

Policy 23 of NPF 4 supports development that will have positive effects on human health and protect people and places from environmental harm. Policy Des 5 (Development Design - Amenity) sets out further policy requirements for new development to achieve a good standard of amenity for new development and to protect sensitive neighbouring land uses.

Objections from neighbours have expressed concern regarding the potential for a loss amenity due to loss of daylight, sunlight and privacy. Conditions associated with the existing outline consent include the requirement for all applications to be accompanied by a Noise Impact Assessment (NIA), condition 22 requires information relating to ventilation to be provided for all commercial uses to ensure that odour does not result in a loss of amenity for residential neighbours and condition 20 requires noise from all plant equipment to comply with the NR 25 criteria when measured from any living apartment.

However, the conditions set out no specific requirements in relation to the provision of information relating to the protection of existing and future residential amenity in terms of sunlight, daylight or privacy. In order to comply with the current Development Plan and associated guidance, the matters specified by condition set out in condition 2 would require updating to require the provision of daylight, privacy and overshadowing information to assess the amenity of future occupiers within the development and impacts on neighbouring amenity.

The Council's Environmental Protection team has raised concerns regarding noise from industrial uses within the surrounding area and the potential for this to impact on the amenity of future residential occupiers of the site. In the consultation response provided, Environmental Protection notes that the previous NIA provided 20 years ago as part of the original application, assumed the application site, including existing industrial uses, would be developed out by 2017. Environmental Protection highlight that to date industrial uses remain in operation within sections of the application site and that they would not support residential uses next to industrial units or other noise producers. Environmental Protection has also highlighted that over the years noise complaints have been received from existing residents in relation to a range of matters, including noise from ships idling and ship dismantling and recycling operations.

Section 8 of the original legal agreement placed an obligation on Forth Ports, the original owner of the site, to phase out industrial uses within Granton Industrial Estate. This did not place an obligation on Forth Ports to cancel leases and it was accepted within the legal agreement that there were some units over which Forth Ports had no control. No timescale can therefore be put on when industrial, noise generating uses will be absent from the application site.

The Council requested that the applicant provide a NIA in support of this application. The applicant declined to do so, stating in correspondence that no new noise emitting uses were in operation since the approval of the submission of the previous Section 42 application in 2018. The Council notes that Condition 3a) of consent PPA-230-2253 requires all applications within the application site to be accompanied by a NIA. In the event planning permission is granted, this condition should be maintained.

Air Quality

NPF4 Policy 23 (Health and Safety) part d) states development proposals will consider opportunities to improve air quality and reduce exposure to poor air quality. An air quality assessment may be required where the nature of the proposal or the air quality in the location suggest significant effects are likely.

Environmental Protection was consulted on the scheme and has advised that an updated Air Quality Assessment should be provided in support of this application. An Air Quality Assessment was detailed in the Environmental Report linked to 01/00802/OUT, though this is now outdated and does not take account amendments to national air quality legislation.

The applicant's old assessment used the Design Manual for Roads and Bridges (DMRB) air quality dispersion model. Environmental Protection would not support the use of this model. Environmental Protection advises that the ADMS-Roads model with the most up to date emission factors would now be the most relevant means of assessment.

The applicant will need to take into consideration the committed developments near the development site. Since the original application there has been significant changes in local air with regards the declaration of Air Quality Management Areas (AQMA) near the development site.

Many Air Quality Management Areas have been declared by the City of Edinburgh Council, all but one has been declared for nitrogen dioxide (NO₂). Those which are closest to the development site include Bernard Street, Central and Great Junction Street AQMAs all of which have been declared due to NO₂ exceedances which are principally due to road vehicle emissions. This development along with other proposed/committed development in the area will increase pressure on the local road network and may further impact on existing AQMAs or require the declaration of new ones. Salamander Street has also been declared a AQMA for Particulate Matter primarily due to the industrial operations in the area. This will need to be assessed and it would be Environmental Protection has recommended that onsite air quality monitoring is carried out over a 6-month duration.

Environmental Protection has recommended that the following air quality impacts are included in an updated assessment:

- Air quality impacts on existing local residents
- Air quality impacts on Edinburgh AQMAs
- Potential impacts on future residents of existing air quality.

A climate emergency and zero carbon targets have also evolved since the previous applications were consented, this is reflected specifically in NPF4 Policy 1 (Tackling the Climate and Nature Crises) and Policy 2 (Climate Mitigation and Adaptation). It also underpins a range of other policies within the Development Plan.

The applicant will need to consider this and ensure the future development meets these. This will need to include the development meeting heating and energy demand through onsite renewables, ensuring that car parking numbers are kept to a minimum and ensuring that development supports active travel.

The Council requested that the applicant provide an updated Air Quality Assessment in support of this application. The applicant declined to provide an updated assessment.

If planning permission is granted in this case, it is recommended that a condition is included requiring the provision of an Air Quality Assessment.

Parking and Active Travel

LDP Policies Tra 2 (Car Parking) and Tra 3 (Cycle Parking) of the LDP sets out the requirement for private car and cycle parking. Tra 4 Design of Off-Street Car and Cycle Parking sets out parking design considerations. NPF4 policy 13 Sustainable Transport similarly supports safe walking and cycling connections, while policy 14 Liveable Places promotes the six qualities of successful places, which includes designing for pedestrian experience to deliver 'connected' places.

All matters relating to car and cycle parking, access, road layouts and alignments, servicing areas, hours of operation and servicing, footpaths and cycle routes are reserved matters as part of consent PPA-230-2253. It is recommended that if permission is granted in this instance that these matters remain specified by condition. Condition 4 of consent PPA-230-2253 requires the building line fronting West Harbour Road to be designed to incorporate a footpath, cycle path and tram reservation. It is recommended this condition is also retained.

Reducing the need to travel unsustainably is the highest priority in the sustainable transport investment hierarchy. NPF4 Policy 13 states that development proposals will be supported where it can be demonstrated that the transport requirements generated have been considered in line with the sustainable travel and investment hierarchies. It is recommended that if planning permission is granted in this instance that a condition is included requiring that all future applications are supported by a Transport Statement which addresses the points set out in NPF 4 Policy 13b). This is particularly relevant given concerns raised by environmental protection regarding the potential for increased traffic generation to impact air quality.

Zero waste

NPF 4 policy 12 aims for the reduction and reuse of materials in construction, with a view to supporting the circular economy.

The reserved matters set out in Condition 2 do not include any requirement for the applicant to submit details relating to waste management associated with development across the application site. Given the significant emphasis on sustainability, supporting the circular economy and mitigating future climate change within the current Development Plan, the matters specified by condition would require updating to include matters relating to waste management.

Sustainability

A climate emergency and zero carbon targets have also evolved since the previous applications were consented, this is reflected specifically in NPF4 Policy 1 (Tackling the Climate and Nature Crises) and Policy 2 (Climate Mitigation and Adaptation). It also underpins a range of other policies within the Development Plan.

The applicant will need to consider this and ensure the future development meets these requirements. This will need to consider how future development can meet heating and energy demand through onsite renewables, ensuring that car parking numbers are kept to a minimum and ensuring future development supports active travel.

With this in mind, it is recommended that if planning permission is granted in this instance, that a condition is included which would require all future applications to be accompanied by a sustainability statement, outlining how proposals have considered and incorporated the principles of sustainable development within schemes.

Ground Conditions

LDP Policy 22 states development will only be supported where there will be no significant adverse effects on: air, and soil quality; the quality of the water environment; or on ground stability and where appropriate mitigation to minimise any adverse effects can be provided. NPF4 Policy 9 states that where land is known or suspected to be unstable or contaminated, development proposals will demonstrate that the land is, or can be made, safe and suitable for the proposed new use.

Given existing and previous industrial uses within the application site and the substantial land reclamation which has previously occurred, consent PPA-230-253 requires all reserved matters applications are accompanied by relevant site surveys. It is recommended that if consent is granted in this instance that condition 3b is retained.

Archaeology

An archaeological mitigation strategy was agreed for the redevelopment of Granton Harbour in response to the original 2001 Outline application. Although various elements of the archaeological strategy have been undertaken in the intervening period, principally by CFA Archaeology, not all of the required mitigation has been undertaken.

Principally, in this case, mitigation is still required to be undertaken in areas that will affect/expose historic fabric relating to the listed middle pier (Masterplan plots: 14, 15, 15A & 17) which runs along the eastern part of the site and on-site interpretation and conservation of historic marine infrastructure/streetscape in these areas. In addition, archaeological excavation will be required across the site of the 19th century shipyard located in the SW corner of the application area (Masterplan plots: 22 & 23) as well as historic building recording and preservation of the listed structures on the Middle Pier. Any works that may impact the remains of the esparto wharf would also likely require a programme of archaeological works to ensure they are adequately recorded.

Accordingly, if permission is granted an updated condition is recommended to ensure the completion of this programme of archaeological works and the retention and conservation of significant maritime/ industrial historic fabric within the development.

Conclusion in relation to the Development Plan

The principle of the housing-led mixed-use development of the application site is supported in NPF4 and the City of Edinburgh Local Development Plan. However, due to the failure to provide sufficient supporting environmental information, including a strategic Flood Risk Assessment covering the whole site, taking into account sea level rise and the potential impact of climate change on potential wave-overtopping, and a Habitat Regulations Assessment, the proposal is contrary to NPF4 Policy 1 (Tackling the Climate and Nature Crises), Policy 2 (Climate Mitigation and Adaptation), Policy 3 (Biodiversity), Policy 4 (Natural Places), Policy 10 (Coastal Development), Policy 22 (Flood Risk and Water Management) and the development principles of EW 2(c) as set out in the City of Edinburgh Local Development Plan.

Further conditions would also be required as a result of any amendment to Conditions 1a and 1b including an amendment to Condition 2 to require any future applications to include specific information relating to amenity issues such as impact on sunlight, daylight and privacy. The condition would also need to be amended to require the provision of waste management information.

Given the change in Development Plan policy further conditions would also be required to ensure that future applications are supported by a Transport Statement, a Sustainability Statement and where appropriate a Statement of Community Benefit. Given the designation of Air Quality Management Areas across the City and in line with recommendations from the Council's Environmental Protection Team it would also be recommended that if planning permission was granted that a condition is included requiring the provision of an updated Air Quality Assessment.

A planning permission which is granted in respect of a section 42 application represents a new and separate planning permission from the original permission and is capable of separate implementation. If permission was granted in this case, the Council would look to secure a legal agreement to reflect the requirements of the current Development Plan covering matters relating to healthcare, education, transport, affordable housing and the ongoing maintenance of sea defences.

The proposal is contrary to NPF4 and the City of Edinburgh Local Development Plan and the proposal is therefore not in accordance with the development plan.

c) There are any other material considerations which must be addressed?

The following material planning considerations have been identified:

The existing planning permission in principle for the site (PPA-230-2253, 18/01428/PPP), is a significant material consideration in respect of this Section 42 application to amend its conditions. Development across the site has happened under the previous outline planning permission (01/00802/OUT) to which the PPA-230-2253, 18/01428/PPP application relates. These permissions and the fact that development has been carried out provide a strong rationale for continuing development across the site in order that placemaking objectives and regeneration of Granton Harbour can be achieved.

Emerging policy context

On 30 November 2022 the Planning Committee approved the Schedule 4 summaries and responses to Representations made, to be submitted with the Proposed City Plan 2030 and its supporting documents for Examination in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. Examination of the Proposed City Plan 2030 is ongoing. At this time little weight can be attached to it as a material consideration in the determination of this application.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Public representations

The application received 9 objection comments and 4 support comments. These comments are summarised below.

Material objections

- Concerns regarding layout and density of development; this is addressed in section c) above.
- Drainage issues; this is addressed in section c) above.
- Lack of greenspace and public recreation space; this is addressed in part c) above.
- Loss of privacy, daylight and sunlight; this is addressed in part c) above.
- Lack of facilities; this is addressed in part c) above.
- Parking/road safety/ traffic noise; this is addressed in part c) above.

Support

- Extension will allow further development to cater for community needs; this is addressed in section c) above.
- Work has been initiated and developer should be allowed to finish; this is addressed in section c) above.
- Extension will allow for continued investment in the area; this is addressed in section c) above.

Non-Material Comments

- Lack of development progress; this is not a planning matter.
- Inappropriate high-rise development; this is a detailed design matter that would be addressed through further detailed application determined in line with the Development Plan. It is not a matter for this application.
- Loss of landscape features; this is a detailed design matter that would be addressed through further detailed application determined in line with the Development Plan. It is not a matter for this application.
- Corruption; this is not a planning matter.
- Excessive factor and maintenance charges; this is not a planning matter.
- Others should be given the opportunity to develop the site; this is not a planning matter.
- loss of private views; this is not a planning matter.
- Loss of access to the shore; this is not a planning matter.
- Can't allow planning permission in perpetuity; the application has been assessed against relevant legislation.

Conclusion in relation to identified material considerations

The original permission (01/00802/OUT and the subsequent planning permission in principle PPA-230-2253, 18/01428/PPP and the associated development already carried out, combined with the need to deliver placemaking objectives and regeneration of Granton Harbour is a matter that supports the development of the site.

No equalities or human rights issues were identified in the assessment of the proposal. The material considerations do not raise any other matters which would result in recommending the application for approval.

Overall conclusion

The proposal will not have a detrimental impact on the character or special historic interest of the listed buildings. The proposal is acceptable in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

It is recommended that the Section 42 application to amend conditions 1a and 1b of approval PPA-230-2253 is refused as it is contrary to the Development Plan. Due to the insufficient environmental information provided in support of the application, the proposal is contrary NPF4 Policy 1 (Tackling the Climate and Nature Crises), Policy 2 (Climate Mitigation and Adaptation), Policy 3 (Biodiversity), Policy 4 (Natural Places), Policy 10 (Coastal Development), Policy 22 (Flood Risk and Water Management) and the development principles of EW 2(c) as set out in the City of Edinburgh Local Development Plan.

The applicant has failed to provide an appropriate Flood Risk Assessment which covers the whole application site. The potential risk posed to the site in the future from wave-overtopping and associated inundation as a result of potential climate change remains unmodelled. In the absence of any evidence considering the likely effect of sea level rise on wave patterns, it has not been demonstrated that all risks of flooding are understood and addressed, nor that the development would remain safe and operational during floods over its lifespan. Given the significance of this issue, it would not be appropriate to secure this information through use of a planning condition.

The Habitats Regulation Assessment referred to by the applicant is also insufficient as it does not cover the whole site or make reference to the recently designated Outer Firth of Forth and St Andrews Bay Complex SPA. An assessment of the potential impact of development on all designated areas is a policy and legislative requirement.

The existing planning permission in principle for the site (PPA-230-2253, 18/01428/PPP), is a significant material consideration in respect of this Section 42 application to amend its conditions. However, this does not outweigh the need to ensure sufficient environmental information is provided.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reasons

Reason for Refusal:-

1. The proposal is contrary to NPF4 Policy 3 (Biodiversity). The applicant has provided no supporting information specific to this application, covering the whole application site in relation to the potential impact of development on biodiversity. Due to the lack of information provided it is not possible to conclude if there are any potential adverse impacts, including cumulative impacts, of development on biodiversity, nature networks and the natural environment or whether mitigation measures are required to ensure the natural environment is protected.
2. The proposal is contrary to NPF4 Policy 1 (Tackling the Climate and Nature Crises). Due to the insufficient environmental information provided the proposal does not give significant weight to the climate and nature crises.
3. The proposal is contrary to NPF4 Policy 2 (Climate Mitigation and Adaptation). Due to the insufficient information provided in relation to flood risk it is not possible to determine whether proposed development can be sited to adapt to current and future risks from climate change.
4. The proposal is contrary to NPF4 Policy 10 (Coastal Development). The applicant has not provided a Flood Risk Assessment which covers the whole application site. Due to insufficient evidence provided in support of the application it is not possible to conclude whether development will be supportable in the long-term taking into account future sea level rise or whether there will be an increase in people at risk of coastal flooding. It is also not possible to conclude whether further coastal protraction measures would be necessary to mitigate flood risk.
5. The proposal is contrary to NPF4 Policy 22 (Flood Risk and Water Management). The applicant has not provided a Flood Risk Assessment which covers the whole application site. There is insufficient evidence to conclude that all risks from flooding, including potential wave-overtopping, are assessed and addressed. No assessment has been undertaken with the respect to the potential impact of sea level rise on wave heights and the potential risk this poses to the application site.
6. The Proposal is contrary to Policy 4 (Natural Places). The applicant has failed to provide a Habitat Regulations Assessment which is specific to the proposed development and which covers the whole application site. Due to the insufficient level of information provided it is not possible to determine whether there would be a negative impact on designated sites of European, national and local importance including the Firth of Forth and Outer Firth of Forth and St Andrews Bay Complex Special Protection Areas, the Forth Islands Special Protection Area, the Firth of Forth Site of Special Scientific Interest and the Firth of Forth Ramsar Site.

Background Reading/External References

To view details of the application go to the [Planning Portal](#)

Further Information - Local Development Plan

Date Registered: 21 March 2023

Drawing Numbers/Scheme

01

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Christopher Sillick, Planning Officer
E-mail:christopher.sillick@edinburgh.gov.uk

Summary of Consultation Responses

NAME: Archaeology

COMMENT: No objection subject to a condition requiring the completion of an archaeological programme of works.

DATE: 29 March 2023

NAME: Communities and Families

COMMENT: The Education (Scotland) Act 1980 places a statutory duty on the Council, as education authority, to secure adequate and efficient provision of school education, including early learning and childcare and special educational needs.

Residential development is expected to pay for or contribute towards the costs of delivering education infrastructure required to mitigate the impacts on the learning estate from pupils that are expected to be generated from new housing developments and would not have otherwise be necessary except for the development.

To mitigate the cumulative impact of development that would be anticipated if site EW 2a and the other Granton Waterfront housing sites are progressed, the proposed development is therefore required to make a contribution towards the delivery of the following actions based on the established 'per house' and 'per flat' rates set out below:

- £12,875 per flat
- £39,109 per house

With a land cost of:

- £30 per flat
- £82 per house

DATE: 26 July 2023

NAME: Environmental Protection

COMMENT: It is recommended that an Air Quality Assessment is provided which includes the following:

- Air quality impacts on existing local residents
- Air quality impacts on Edinburgh AQMAs
- Potential impacts on future residents of existing air quality

The applicant's old assessment used the Design Manual for Roads and Bridges (DMRB) air quality dispersion model. Environmental Protection would not support the use of this model.

It should also be added that over the years we have received noise complaints from residents occupying properties near to the port. According to the old noise impacts assessment the development site under the original plans would have been developed out by 2017. It is understood that a legal agreement would be required to ensure that the industrial uses would be phased out as the leases terminated. Environmental Protection will require further clarification on this as a similar case has resulted in this type of legal agreement not being enforced. Environmental Protection would therefore not be able to support residential use adjacent to Industrial or other noise producers until their operations have fully ceased including buildings being demolished.

Ground conditions relating to potential contaminants in, on or under the land with the potential to affect the proposed development will require to be assessed in line with current best practice guidance. It is the responsibility of the developer to ensure that the site is or can be made suitable for the proposed use/s. Any necessary remediation measures require to be approved by the Planning and building Standards Service.

DATE: 3 April 2023

NAME: Transport Planning

COMMENT: No comment provided.

DATE: 31 July 2023

NAME: NatureScot

COMMENT: As the application would result in a separate planning permission, Habitat Regulations and other legislation applies. The applicant needs to submit a new HRA that includes the changes in designations/new designations, but also other changes that have occurred in the intervening time since the original assessment, such as other development that would contribute to cumulative considerations.

DATE: 22 June 2023

NAME: Scottish Water

COMMENT: No comment provided.

DATE: 31 July 2023

NAME: Historic Environment Scotland

COMMENT: No objection to the proposal.

DATE: 12 April 2023

NAME: SEPA

COMMENT: The information supplied with this planning application is insufficient to allow a determination of the potential impacts of flood risk at this site. We therefore submit a holding objection and request that determination be deferred until the information outlined below has been provided for assessment. If the planning authority is not minded to request this information, or the applicant does not provide it, then this representation should be considered as an objection from SEPA.

In light of NPF4, all development must therefore now be assessed against the 0.5% annual exceedance probability flood event (200 year) including an allowance for climate change.

We consider the site to fall under Policy 22a) (iv) of NPF4 which states:

Policy 22 a) Development proposals at risk of flooding or in a flood risk area will only be supported if they are for:

iv. redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long-term safety and resilience can be secured in accordance with relevant SEPA advice.

NPF4 requires that for sites that fall under this category, 'the applicant must demonstrate that:

- all risks of flooding are understood and addressed;
- there is no reduction in floodplain capacity, increased risk for others, or a need for future flood protection schemes;
- the development remains safe and operational during floods;
- flood resistant and resilient materials and construction methods are used; and future adaptations can be made to accommodate the effects of climate change.'

These criteria cannot be determined without a detailed Flood Risk Assessment (FRA) confirming the flood mechanisms, design flood levels and areas of inundation at the site. Until this information is provided, it is not possible to determine if the development proposal meets the requirements set out in NPF4 and we are unfortunately unable to support an extension to the duration of the planning permission.

In this case, given the complexities of modelling coastal flood risk, a single FRA is required for the whole area proposed for development subject to the current application. This will ensure all development is assessed under the same criteria allowing a wholistic strategic approach to be taken in relation to flood risk management and mitigation.

We have previously provided detailed technical advice for a FRA submitted in support of 21/06413/FUL. Whilst the FRA still requires further revision to demonstrate that development in the area would meet the requirements of NPF4, it may be possible for the applicant and flood risk consultant to build on this work to produce a final FRA for the Granton development (as defined in the current application) as a whole.

DATE: 1 May 2023

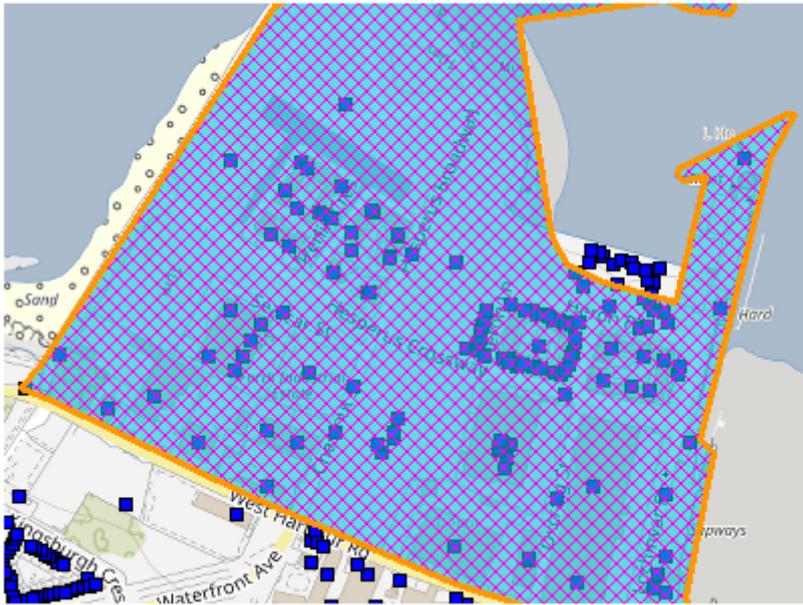
NAME: Granton District Community Council

COMMENT: No comment provided.

DATE: 31 July 2023

The full consultation response can be viewed on the [Planning & Building Standards Portal](#).

Location Plan



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