

REPORT TO: Planning Committee

MEETING DATE: Wednesday 3 October 2018

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Application No. **18/00388/PM**

Proposal Restoration of ash lagoons no. 6 and 8, regrading works to ash lagoon no. 7 and associated works

Location **Site At Levenhall Links
Musselburgh
East Lothian**

Applicant Scottish Power Generation

Per Young Planning & Energy Consenting

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

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. It 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: 17/00015/PAN) and thus of community consultation prior to this application for planning permission 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 some 43 people attended the pre-application community consultation event, which was held at the Fisherrow Centre, Musselburgh, on 8th February 2018, and that those attendees made a number of queries and suggestions regarding the proposals. The PAC report informs that feedback forms were received following the consultation event and that written feedback from the exhibition was generally supportive, with a number of attendees making some very positive statements in respect of the proposals.

The application relates to land at Levenhall Links, Musselburgh known as the Musselburgh Ash Lagoons. The application site covers an area of some 53.02 hectares and mainly consists of the very westernmost area of the Musselburgh Ash Lagoons (lagoon 8 and the western area of lagoon 7) and the very easternmost area (Lagoon 6) and includes access routes around the perimeter of the wider Levenhall Links, but excludes much of the central area where previously restored lagoons are located. The lagoons are on the seaward (north) side of the Musselburgh Race Course. The site carries a number of designations in recognition of its importance to wading birds and wildfowl. Lagoon 8 (along with lagoon 5 which is outwith this application site boundary) forms part of the Firth of Forth Special Protection Area (SPA) and the Firth of Forth Site of Special Scientific Interest (SSSI) and is recognised as a site of international importance under the Ramsar Convention. The easternmost side of the application site (lagoon 6) is outwith the area covered by the above nature designations but it is located within the Edinburgh Green Belt. The whole of the site is identified as being a Scottish Wildlife Trust Listed Wildlife Site (Musselburgh Shore and Lagoons). The John Muir Way and the National Cycle Network (route 76) runs along the northern edge of the application site. The westernmost side of the application site is an area defined by The Coal Authority as being a Coal Mining Development High Risk Area. The easternmost side of the application site is an area defined by The Coal Authority as being a Coal Mining Development Low Risk Area.

The application site is bounded to the north by the shoreline of Levenhall Links and on its western side by Fisherrow Sands and the River Esk, to the south by areas of open space including Levenhall Links Leisure Park and also in part by Musselburgh Race Course, to the southwest by the residential streets of the Goose Green area of Musselburgh, to the south east by the residential properties of Westpans, the B1348 public road of Ravenshaugh Road and at the far eastern side of the site by other open space land and a public car park.

The Musselburgh Ash Lagoons were constructed from the disposal of pulverised fuel ash (pfa) created from the operation of the former Cockenzie Power Station. Pfa was a waste product created from coal burning at the Power Station. The initial arrangements for disposal of ash at Levenhall Links were required under Condition 7(i)(a) of a consent issued on 13 December 1961 for Cockenzie Power Station by the then Secretary of State. The 1963 Musselburgh Agreement provides that the Lagoons be filled by pfa to an average height of 16 metres above ordnance datum, grassed and transferred into Council ownership.

Due to an increase in oil prices, the life of the power station was extended, resulting in the production of further ash. Planning permission (Ref: P/0370/83) was subsequently granted in October 1983, permitting the disposal of extra ash in newly created lagoons on top of those previously approved and for a landscape restoration scheme of the entire Ash Lagoons site.. That planning permission superseded the original consent as far as disposal of the ash was concerned.

A further planning permission (01/01209/FUL) was granted on 30th January 2002 for a different scheme of restoration for the lagoon on the north-western part of the Ash Lagoon site (lagoon 8) to that approved through planning permission P/0370/83 in order to take account of lagoon 8 being included within the then newly designated Firth of Forth Site of Special Scientific Interest. The scheme the subject of planning permission 01/01209/FUL was not implemented.

Cockenzie Power Station closed on the 21st March 2013 and no further disposal of ash is proposed. All but the two remaining ash lagoons at Levenhall Links (numbers 6 and 8) have been restored and transferred into East Lothian Council ownership. The two

remaining lagoons are the subject of a Pollution Prevention and Control (PPC) Permit, issued under the Pollution Prevention and Control (Scotland) Regulations 2012, for which the Scottish Environmental Protection Agency (SEPA) is the responsible Scottish Government agency. The PPC Permit requires the agreement of an Aftercare and Restoration Plan, to be implemented following the cessation of operations at the site.

This current proposal, which has been submitted by Scottish Power Generation, now seeks planning permission for an alternative scheme for the capping and restoration of lagoon 8, as well as a scheme for the capping and restoration of lagoon 6 and regrading works to lagoon 7 as part of the Aftercare and Restoration Plan related to the disposal of pfa from the former Cockenzie Power Station. These are the two remaining ash lagoons at Musselburgh Ash Lagoons which have not yet been restored. At present these lagoons have remained as in-filled lagoons with no capping material or landscaping. It is intended that following restoration of these last two ash lagoons that that ownership of them be transferred to East Lothian Council as per the requirements of the Musselburgh Agreement.

The proposals for lagoon 8 are designed to create a habitat similar to that which birds had when the lagoon was in operation. It would consist of wetland and roosting areas as well as a sand martin bank surrounded by a moat. Footpaths, bird hides, fences and hedges would be formed around the perimeter of the lagoon area. It is proposed that the existing mound of ash be graded across part of the area around lagoon 8 and lagoon 7 which is located to the east of lagoon 8 and that these areas will be graded with gentle slopes to enable ease of maintenance and a network of footpaths similar to those currently on lagoon 7.

The proposal for lagoon 6 is not to infill it with water but instead to profile the area to create different local environments to encourage bird and insect life on to the area and to form a new footpath to the north of it as well as creating other landscaping proposals and boundary treatments around lagoon 6.

It is proposed that the existing infrastructure used for creating and operating the site will be utilised where required for the new systems. This work will include removal of the dust suppression reservoir, wheel wash and palisade compound local to the east entrance along with all their accompanying service connections. These areas will be made good and grassed with the exception of the concrete slab for the palisade compound and wheel wash which will be left in place for potential future new uses.

Provision of new or improved pathways linking the two areas of the application site and linking into the current pathways which traverse the land are also proposed.

The application is also supported by a Planning Statement which includes the proposed Aftercare and Restoration Plan as an appendix and a Habitat Regulations Appraisal (HRA)

Since registration of the application, amendments have been made to the HRA initially submitted and a revised HRA has been subsequently submitted as part of this application.

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 10th January 2018 the Council issued a formal screening opinion to the applicant's agent. 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.

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 approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Policies 1B (The Spatial Strategy: Development Principles), 11 (Delivering the Green Network) and 12 (Green Belts) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies C3 (Protection of Open Space), C6 (Rights of Way), C7 (Core Paths and Other Routes), C8 (Musselburgh Lagoons), DC2 (Development in the Edinburgh Green Belt), NH1a (Internationally Protected Areas), NH1b (Sites of Special Scientific Interest), NH3 (Important Local Biodiversity Sites), T2 (General Transport Impact), DP1 (Landscape and Streetscape Character), DP2 (Design), DP12 (Biodiversity Assessment), DP13 (Biodiversity and Development Sites), and DP16 (Flooding) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

The Proposed East Lothian Local Development Plan was submitted to Scottish Ministers for Examination in 2017 and the Reporters' Examination Report was issued on 14 March 2018. The East Lothian Local Development Plan (ELLDP) was thereafter modified following the Examination. At their meeting on 29 May 2018, the Council approved the ELLDP as the Local Development Plan the Council intends to adopt. The ELLDP reflects the most recent planning view of the Council and is a material consideration in the determination of applications.

Relevant ELLDP Policies and Proposals PROP MH16: Levenhall Links to Prestonpans: Area for Habitat Improvement, DC1 (Rural Diversification), DC6 (Development in Coastal Areas), DC7 (Development in the Edinburgh Green Belt), DC9 (Special Landscape Areas), DC10 (The Green Network), NH1 (Internationally Designated Sites RAMSAR), NH2 (Protection of Sites of Special Scientific Interest and Geological Conservation Review Sites), NH3 (Protection of Local Site and Areas), NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species), NH11 (Flood Risk), DP1 (Landscape Character), DP2 (Design), OS1 (Protection of Open Space), W1 (Waste Management Safeguards), T2 (General Transport Impact) and T4 (Active Travel Routes and Core Paths as part of the Green Network Strategy) do not represent any significant alteration to the current relevant policies.

Material to the determination of the application is the Scottish Government's policy on development affecting a Special Protection Area (SPA) or Site of Special Scientific Interest (SSSI) given in Scottish Planning Policy: June 2014.

Scottish Planning Policy states that any development proposal likely to have a significant effect on an SPA, and which is not directly connected with or necessary to their conservation management must be subject to an "appropriate assessment" of the implications for the conservation objectives. Such development proposals may only be

approved where: (i) the competent authority has ascertained by means of an “appropriate assessment” that there will be no adverse effect on the integrity of the site; or (ii) where there are no alternative solutions, there are imperative reasons of overriding public interest, including those of a social or economic nature and compensatory measures are provided to ensure that the overall coherence of the Natural network is protected.

Also material to the determination of the application are the written representations received to it. No objections have been received to this application. One representation has been received from an individual. The writer supports the application and commends the proposals to develop the former ash lagoons into a premier wildlife site, to replace vital habitat lost here and elsewhere within the Firth of Forth Ramsar Site and to open opportunities for education and tourism in the area. The writer does however make suggestions relating to the detail of the proposals including that the area of wetland to be created in lagoon 8 should be as large as possible, that care be taken over the proposed height of the mound proposed between lagoon 7 and 8, that wet areas within the new wetland should be enlarged as much as possible and should have varying water depths to provide habitat for different species, that bird hides should be located in more optimal positions adjacent to the moat, that a fifth hide to be positioned on the west side of lagoon 8 should be provided and that future management of vegetation and access issues should be carefully considered.

Musselburgh and Inveresk Community Council have been consulted on the application but have not provided any comments on it.

Policy C8 relates to the whole of the application site and the wider Ash Lagoons area. It states that “The Musselburgh Lagoons will be retained primarily for recreational use. The Council supports the further development of and improvements to Musselburgh Racecourse and Old Golf Course, including the provision of new stables and starter hut and of facilities for users of the lagoons. Development of new or existing uses or facilities will be assessed against their likely impact on: the character and amenity of Musselburgh Conservation Area; natural heritage interests, in particular the Special Protection Area; Musselburgh Old Golf Course and its setting; public access; traffic and parking and residential amenity.”

The easternmost side of the application site (the area in and around lagoon 6) is defined by Policy DC2 of the adopted East Lothian Local Plan 2008 as being part of the Edinburgh Green Belt and is also covered by Policy C3 of the adopted East Lothian Local Plan which identifies this part of the site as being of recreational, leisure and amenity open space. Within East Lothian, the Green Belt surrounds Musselburgh and Wallyford and extends towards Prestonpans and Tranent. The adopted Local Plan states it plays an important role in protecting the landscape setting of Musselburgh and the western edges of Prestonpans and Tranent as well as the landscape setting of the eastern edge of Edinburgh.

Policy DC2 only allows for development in the Green Belt where it is necessary for agricultural, horticultural or forestry operations, for countryside recreation, or where by its scale and nature it will not harm the rural character of the area; and where it meets the requirements of Local Plan Policy DC1 Part 5; and in all cases, where it does not detract from the landscape setting of Edinburgh and its neighbouring towns, or lead to their coalescence.

The proposal the subject of this application is a scheme of restoration of the final two lagoons at Levenhall, to preserve and improve their biodiversity potential and to protect their environmental designations.

As the proposed development is to restore and improve the landscape of the lagoons and to facilitate the continuing existing recreational use of lagoons, it has a clear operational justification of need to be in this location and is consistent with Policies C3 and C8 of the adopted East Lothian Local Plan 2008.

By their nature the proposals would not harm the rural character of the area and would not detract from the landscape setting of Musselburgh or Prestonpans or lead to their coalescence. The proposals for lagoon 6 and the area around it do not conflict with Policy 12 of SESplan or with Policy DC2 of the adopted East Lothian Local Plan 2008.

The applicant's "Closure, Restoration and Aftercare Plan 2017" sets out in detail the applicant's proposals for the application site. The applicant states in the Plan that they consulted with Scottish Natural Heritage (SNH) and East Lothian Council to ensure that the biodiversity value of the site was fully considered with preparing the Plan. As the Plan developed, further input was sought from the Royal Society for the Protection of Birds (RSPB), and specialised biodiversity surveys were carried out. SEPA were consulted with and kept informed throughout this process. The applicant advises that the design proposals detailed in the Plan have been developed to deliver sustainable habitats that will have an exceptionally high biodiversity value whilst requiring minimum maintenance.

The proposals for Lagoon 8 involve trying to create an area similar to that which the birds had when the lagoon was in operation. The proposal is not to create a completely flooded lagoon (the applicant advises that completed lagoons at Levenhall are very porous and it would take constant pumping to maintain the water levels) but for avian security it is proposed that the roosting area be protected by a moat which is 4 metres wide around the area, and which will be 1 metre deep at its shallowest point. To provide wading areas it is proposed to form these out of ash with a layer of clay on the surface within the confines of the moated area. There will be a pumped supply for filling the moat and the wader areas fitted with weir/sluice drainage systems which will operate through gravity. In addition the proposal makes allowance for a sand martin bank in the south east corner of the moated area. Four bird hides are proposed to be positioned around the perimeter of lagoon 8, three on the south side of the lagoon and one on the east side. The bird hides proposed are designed to be similar to that of the existing bird hides constructed at lagoon 5. The floor area of the bird hides will be concrete, levelled for safe access/egress and use of wheelchair users. The walls will be constructed of precast concrete block or brick and painted in a camouflage colour to soften their profile of the embankments. Viewing places will be designed for wheelchair users to ensure the user will get close to the viewing slot. It is not proposed to construct roofs on the bird hides, minimising the risk of mis-use. Paths and ramps will be constructed to allow access to the hides. Footpaths and hides will be kept at a distance and profiled so that people using them will not be seen by any birds using the area. In addition, the nearest areas where the public has access will be delineated by post and wire fences, complete with hedge row and a steel 5 bar gate will be erected across the access road into the island area of lagoon 8. It is proposed that the existing mound of ash, which had in previous proposals been proposed to be used for the formation of a landform on the north side of the lagoon, instead be graded across the remainder of lagoon 8 and part of lagoon 7. These areas will be graded with gentle slopes to enable ease of maintenance and a network of footpaths, similar to those currently on lagoon 7.

The proposals for lagoon 6 are simpler in nature and are intended to create a large naturally developing area with the base of the main lagoon of lagoon 6 being profiled to create low areas through and covered with a thin clay/sub soil layer. These areas will be designed to puddle and create different local environments to encourage bird and

insect life on to the area. The landscaped area to the west of the lagoon will be graded and covered in growing medium (recycled from lagoon 7)/topsoil and left to self-seed. It is proposed that it will have a water supply and drainage system similar to Lagoon 8 left in place allowing for redevelopment in the future should it be considered desirable. A new footpath would be formed and post and wire fences would be erected.

The proposed restoration works and associated paths, boundary treatments and structures would be readily visible in public views from through the overall lagoons area and beyond. In the public views of it, when seen in relation to the previously restored areas of the wider lagoons area the proposals by virtue of their form, appearance, design and surface finishes would have a positive impact on the visual aesthetic of the land of the application site. Consequently, the proposals would not harm the landscape character and visual amenity of the area. On these considerations the proposals are consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), DP1 and DP2 of the adopted East Lothain Local Plan 2008.

The westernmost side of the application site is within the Firth of Forth Special Protection Area (SPA), a complex of estuarine and coastal habitats in south east Scotland stretching east from Alloa to the Coasts of Fife and East Lothian. Beyond that SPA, further to the north, is the Forth Islands Special Protection Area and beyond that the Outer Firth of Forth and St Andrews Bay Complex proposed SPA (pSPA). It is also within the Firth of Forth Site of Special Scientific Interest (SSSI), which is important for a variety of geological and geomorphological features, coastal and terrestrial habitats, vascular plants, invertebrates, breeding, passage and wintering birds.

The Habitat Regulations Appraisal (HRA) submitted with the application assesses the potential impacts of the proposals on these environments and proposes measures to mitigate for the proposed development.

Scottish Natural Heritage (SNH), the Council's Principal Countryside Officer and the Royal Society for the Protection of Birds (RSPB) Scotland have all been involved at various stages with the proposal for lagoon restoration and are all generally supportive of the broad principles of landscape restoration proposed through this application.

SNH advise that restoration of lagoon 8 will lead to improvements in the overall condition of the SSSI and SPA and will also help to connect people with nature by creating a high quality amenity resource. Restoration of lagoon 6 will also bring important benefits to biodiversity and amenity. In relation to the HRA, SNH advise that subject to some changes and clarifications which they have detailed in their consultation response, the HRA can be used as a basis for the Council's own 'Appropriate Assessment'. SNH advises that they support the conclusions of the HRA, which depend upon the application of the mitigation described in Table 8-1 of the HRA. The implementation of these measures can be secured by conditions of a grant of planning permission. SNH further advise that they support the requirement for the applicant to produce a Construction Method Statement and Phasing Plan to control the construction process. This requirement can be secured by a condition of a grant of planning permission.

RSPB Scotland also welcome the proposals which they have had input to prior to the submission of the application. They do not object to the proposals and support the findings of the HRA. They make a number of observations on the details of the proposals including that it is important to ensure that, in order to minimise the impact of visitor disturbance to birds using lagoon 8, bunds and access paths should be designed and positioned in order to ensure that visitors are not visible to birds on the

lagoon, the sand martin bank should be fully enclosed by a predator-proof fence to exclude badgers and foxes, which are known to dig up Sand Martin nests, the construction and position of the form across the moat should ensure that access by mammalian predators is prevented, bird watching hides should be inconspicuous while maintaining the optimum height for viewing of the lagoon and wader areas and an additional hide should be positioned on the west bund of the lagoon to maximise viewing conditions.

The HRA has been amended in light of SNH's comments and the Council's Principal Countryside Officer has undertaken an Appropriate Assessment of the 'likely significant effects' of the proposals on the designated site on behalf of the Council. His conclusion is that the Council concurs with the summary of potential impacts and recommended mitigation measures set out in the amended HRA. It is considered that with the implementation of the recommended mitigation measures, the proposed development will not have a significant effect on of the Firth of Forth SPA, or other Natura site, either alone or in combination with other proposals.

The Council's Principal Countryside Officer otherwise comments that the Council's Countryside Services welcome the plans and commends Scottish Power Generation for their public consultation exercise and partnership approach to the restoration. Countryside Services support the broad principles of landscape restoration proposed but make a number of detailed comments on certain aspects of the proposals and recommends a number of conditions to be imposed in the event that planning permission be granted for the proposals.

The Council's Principal Countryside Officer advises that conditions should be imposed on a grant of planning permission to ensure that a Water Engineering Plan (to demonstrate how the water supply system, including pumps, pipes and automated water control, will operate for lagoon 8, boating pond, wader scrapes (lagoon 5) and lagoon 6) , a Landscape Management Plan (to define where trees and shrubs will be planted and where seed mixes will be sown and amongst other things to detail landscape treatment of the wash plant adjacent to lagoon 6), a Construction and Vehicle Management Plan, a Dust Suppression Plan and a Phasing Plan should be submitted prior to the commencement of development. He also recommends that detailed designs for the proposed sand martin bank, the design and positioning of bird hides, a detailed contour plan of lagoon 8 demonstrating the potential flooding depths of each area and specification, depth and formation techniques of the puddle clay liner to be used in both lagoons as well as the specification of any artificial liners and details of inert material to be used be submitted for the prior approval of the Planning Authority. The Principal Countryside Officer agrees with RSPB and the writer of the individual representation submitted to this application that a 5th bird hide, to be positioned on the west side of lagoon 8 should be provided and that the bund around lagoon 8 must be high enough and the adjacent paths set low enough to prevent people breaking the horizon/sky line and being visible to birds on lagoon 8. These matters can also be secured by conditions of a grant of planning permission. Elsewhere on the site the Principal Countryside Officer recommends that seating areas be provided along the sea wall perimeter of the site, fencing around both lagoons should be three wire with netting/mesh to prevent dogs and foxes accessing the lagoons.

In relation to new path provision and upgrades to existing paths throughout the site, the Principal Countryside Officer initially recommended that paths should be 3 metres wide, with a bound surface and a maximum gradient of 1:20. Following a meeting with the applicants and their agents to discuss this matter it has been agreed with the Principal Countryside Officer that it would be reasonable to allow paths throughout the

site to be a minimum of 2.5 metres in width rather than the 3 metres initially specified. The Principal Countryside Officer is satisfied that this would still allow reasonable access for pedestrians and cyclists throughout the site. The John Muir Way currently runs to the west and north of Lagoon 8. This route is also part of the National Cycle Network (route 76). The route currently has a mixed surface of tarmac and gravel in different sections. The Principal Countryside Officer advises that this route should be upgraded to a bound surface along its entire length to improve the condition of the path for shared use. This is not included within the proposals and although some recent discussion has taken place between the applicant and Council officials on this matter a solution for the surfacing of this path has not yet been reached and no consultation on this matter has been undertaken with Scottish Natural Heritage, who may have an interest in how such a proposal may affect the SSSI and SPA. It would therefore be prudent to impose a condition on a grant of planning permission to ensure that this path is hardsurfaced along its entire length as recommended by the Council's Principal Countryside Officer unless otherwise agreed in writing with the Planning Authority in consultation with Scottish Natural Heritage.

The Council's Landscape Project Officer advises that the proposed works, in time, should significantly benefit the overall Levenhall Links site in respect of the biodiversity, user interface and landscape character and its special qualities and features. He advises that he is satisfied with the general principles of the proposals from a landscape perspective and considers that the Council's Countryside Services should have a major feed into the detailed design of the proposals in respect of the final product to link and marry with the general principles and philosophy of the wider natural environment.

The Landscape Project Officer advises that it is important that specific controls are considered in respect of the level of disturbance to the existing wildlife and user interface during the development process. The Habitat Regulations Appraisal (HRA) submitted with the application addresses the main issues of potential impacts for natura sites and recommends mitigation measures and the Landscape Projects Officer advises that it would be beneficial for a suitably experienced and qualified environmentalist / clerk of works in relation to this type of construction activity to be retained on site to supervise the works in relation to adhering to the necessary mitigation measures to assure that there will be no significant impacts and therefore no significant effects from the works identified in this application. This can be controlled through a construction management condition imposed on a grant of planning permission.

In conclusion, subject to the aforementioned planning controls, Scottish Natural Heritage, the RSPB Scotland and the Council's Countryside Services and Landscape Project Officer are satisfied that the integrity of the SPA and SSSI would not be compromised and that the proposals would contribute positively to the landscape, biodiversity, recreation and amenity interests of the lagoons. . Thus, the proposals would be consistent with Policies 1B and 11 of the approved South East Scotland Strategic Development Plan (SESplan) and with Policies C7, NH1a, NH1b, NH3 and DP13 of the adopted East Lothian Local Plan 2008.

As stated previously in this report, the applicant's agent advises that the lagoons the subject of this application are the subject of a Pollution Prevention and Control (PPC) Permit, issued under the Pollution Prevention and Control (Scotland) Regulations 2012, for which SEPA is the responsible Scottish Government agency. The PPC permit requires the agreement of an Aftercare and Restoration Plan, to be implemented following the cessation of operations at the site. The Applicant's agent advises that the applicant has liaised closely with SEPA on the Aftercare and

Restoration Plan and has received support, in principle, for the proposed development.

SEPA have been consulted on this application and have advised they have no objections to this planning application and no issues with the restoration proposals with regard to the water environment, flood risk and sustainable waste management. They have provided regulatory advice for the applicant which they have forwarded to the applicant's agent for his information.

The Council's Manager for Structures, Flooding and Street Lighting raises no objections to the proposals on the ground of flood risk. He recommends that a condition be imposed if planning permission is to be granted to ensure that a Water and Drainage Assessment covering all surface water and drainage systems proposed for the application site be submitted prior to the commencement of works. This matter can be controlled by the imposition of a condition on a grant of planning permission in which case the proposal would be consistent with Policy DP16 of the adopted East Lothian Local Plan 2008.

Scottish Water have been consulted on the application but have not provided any comments on it.

The Council's Archaeology/Heritage Officer advises that there would be no direct or indirect impacts on archaeology interests as a result of the proposals. He therefore raises no objections to the proposals.

The Council's Road Services raise no objection to the proposals being satisfied that they would not have a detrimental impact on road or pedestrian safety.

Accordingly, on these matters of road and pedestrian safety, the proposed development does not conflict with Policies T2 and C6 of the adopted East Lothian Local Plan 2008.

The nature of the proposed development is such that it would not result in a harmful loss of amenity, through overshadowing or overlooking, to any neighbouring use or residential property.

The Council's Environmental Protection Service advises that they have no comment to make on the proposals. They are satisfied that any required environmental monitoring is currently and will continue to be carried out as part of the surrender process for the existing PPC permit at the site.

The Coal Authority have been consulted on the application due to the westernmost side of the application site being in an area defined by The Coal Authority as being a Coal Mining Development High Risk Area. The easternmost side of the application site is an area defined by The Coal Authority as being a Coal Mining Development Low Risk Area. The Coal Authority advise that as the proposal is for restoration works they are content that the nature of these works is such that they do not consider a Coal Mining Risk Assessment would be proportionate or necessary in this case. They therefore have no objection to the proposals. The Coal Authority have, in the interests of public safety, provided an Informative Note which has been forwarded to the applicant's agent for their information.

RECOMMENDATION

That planning permission be granted subject to the undernoted conditions:

- 1 Details of the phasing of the restoration of the site, including the landscaping of it, shall be submitted to and approved by the Planning Authority. The restoration and landscaping of the site shall thereafter be carried out in accordance with the details so approved unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the timely phasing of the restoration in the interests of the amenity of the area.

- 2 Prior to the commencement of site restoration, a Water and Drainage Assessment covering operation details for all surface water and drainage systems, including pumps, pipes and automated water control for lagoon 8, the boating pond, wader scrapes (lagoon 5) and lagoon 6 shall be submitted to and approved by the Planning Authority. The submitted detail shall include a timetable for the delivery of all identified mitigation measures.

The restoration shall thereafter be carried out in accordance with the details so approved.

Reason:

To ensure that the development is not at risk from flooding, there is no increase in flood risk elsewhere and appropriate long-term maintenance arrangements are in place.

- 3 Prior to the commencement of site restoration a Construction Management Plan, including a Vehicle Management Plan and Dust Suppression Plan, shall be submitted to and approved an advance in writing by the Planning Authority following consultation with SNH.

The Construction Management Plan shall include the following mitigation measures:

- Work shall be planned and scheduled to limit damage to the Firth of Forth SPA and its qualifying features and to the Firth of Forth SSSI and its protected species, habitats and geodiversity features;

- The timing of works shall avoid the breeding season where possible;

- The timing of works shall avoid dawn and dusk where possible as these are usually the times of day when birds are most active, and any reduction in potential disturbance is welcomed;

- All site staff shall be provided with information regarding the sites' ecological sensitivities as part of the Health and Safety Induction;

- All site staff shall be aware of the need for careful working practices to avoid environmental damage;

- An Ecological Clerk of Works (ECoW) shall be employed during construction to advise on the timing and/or duration of operations, monitor bird activity and undertake nest checks, bird counts, and offer advice to the general public, and the contractors regarding notable species, sensitive areas and legal obligations;

It shall also include the following details:

- Mitigation measures to control noise, dust, construction traffic (including routes to/from site and delivery times);

- Hours of construction work;

- Routes for construction traffic;

- Wheel washing facilities; and

- Measures to address public access and active travel during construction, particularly relating to the Core Path network around the site, and other paths through the site and detailing any alternate temporary provision measures.

Thereafter all construction works associated with the site restoration hereby approved shall accord with the approved Construction Management Plan, unless otherwise approved in writing by the Planning Authority following consultation with SNH.

Reason:

To protect the Firth of Forth Special Protection Area and Site of Scientific Interest from significant

disturbance arising from the site restoration works hereby approved, and in the interests of the amenity of the area.

- 4 No restoration works shall take place until there has been submitted to and approved in writing by the Planning Authority a Landscape Management Plan covering all of the application site and shall include details of:

-The height and slopes of any mounding on or recontouring of, the site;

-Tree and shrub sizes, seed mixes, species, habitat, siting, planting distances and a programme of planting and aftercare;

-Details of soil depths within lagoons 6 and 8;

-Landscape treatment of the current wash plant adjacent to lagoon 6;

-The detailed design of the sand martin bank to be formed in lagoon 8;

-A ditch to be re-established along the north and western sides of lagoon 8

The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development. These details shall include a description of woodland management to be carried out in woodland on the south side of lagoon 6.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the phasing plan approved in respect of Condition 1 above.

Any trees or plants which within a period of five years from the completed restoration of the site, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

- 5 Site restoration shall be carried out in strict accordance with the mitigation measures set out in Table 8-1 of the Habitat Regulations Appraisal docketed to this planning permission.

Reason:

In the interests of ecology.

- 6 Notwithstanding that which is detailed in the docketed drawings, a total of 5 bird hides shall be provided around lagoon 8. Details of the bird hides, including their positioning, finishing and form shall be submitted to and approved by the Planning Authority. The submitted details shall also include a timetable for their provision. Provision of the bird hides shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of the amenity of the area.

- 7 Prior to their erection on the site, details of the fencing, gates and other means of enclosure to be erected on the site shall be submitted to and approved in advance by the Planning Authority. Unless otherwise approved by the Planning Authority fencing around the lagoons shall be three wire with netting/mesh to prevent dogs and foxes accessing the lagoons. The submitted details shall also include a timetable for their provision.

Development shall thereafter be carried out in full accordance with the details so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interest of the amenity of the area.

- 8 Prior to their erection on the site, details of seating areas along the sea wall perimeter of the site shall be submitted to and approved in advance by the Planning Authority. The submitted details shall also include a timetable for their provision.

The seating shall thereafter be carried out in full accordance with the details so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interest of the amenity of the area.

- 9 Unless otherwise agreed in writing by the Planning Authority, the existing shared use path to the west and north of Lagoon 8 shall be hardsurfaced over its entire length and to a width of 2.5 metres. Prior to the commencement of development details of the hardsurfacing of the shared use path shall be submitted to and approved in writing by the Planning Authority. following consultation with Scottish Natural Heritage Those details shall include a timescale for the hard surfacing of the shared used path. The hardsurfacing of the shared use path shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of the amenity of the area and recreational access.

- 10 Unless otherwise agreed in writing by the Planning Authority, all of the new and altered paths shall have a bound surface and a width of 2.5 metres.

Reason:

In the interests of the amenity of the area and recreational access.

- 11 Prior to the commencement of site restoration details of the depths of water and material specification for lagoons 6 and 8 shall be submitted to and approved by the Planning Authority. The details shall include the specification of any artificail liners and details of any inert material to be used. It shall also show the use of puddle clay for the lining of the lagoons. Site restoration shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interest of the ecological value of the site.