

SPGD

supplementary planning guidance

The lowland crofting handbook

Very low-density rural housing and woodland development



WEST LoTHIAN COUNCIL delivers

westlothian.gov.uk

CONTENTS

| | |
|------------------------------------------------------|----|
| INTRODUCTION | 5 |
| Part 1 WHAT IS LOWLAND CROFTING? | 6 |
| Where will lowland crofting be supported? | 7 |
| Will every farm in the area be eligible? | 7 |
| Who can develop lowland crofts? | 8 |
| What counts as a <i>whole farm</i> ? | 8 |
| Can the farm continue to operate? | 9 |
| Will <i>single crofts</i> be allowed? | 9 |
| Must a crofting scheme be carried out all at one go? | 10 |
| How do the economics of lowland crofting work out? | 10 |
| Why is the council supporting lowland crofting? | 11 |
| Part 2 PLANNING IT OUT | 13 |
| The land use pattern | 13 |
| Woodlands | 13 |
| <i>The wooded landscape</i> | 14 |
| <i>Amenity planting and landscape features</i> | 15 |
| <i>Choice of species</i> | 16 |
| <i>Commercial timber production</i> | 16 |
| <i>Implementing the landscape structure</i> | 16 |
| Biodiversity | 17 |
| Agricultural land | 18 |
| Public access | 18 |
| The farm steading | 19 |
| Croft holdings | 20 |
| <i>Numbers</i> | 20 |
| <i>Sizes</i> | 22 |
| <i>Grouping and positioning</i> | 22 |
| <i>Road access</i> | 23 |
| <i>Safety</i> | 23 |
| <i>Appearance</i> | 23 |
| <i>Maintenance</i> | 24 |
| <i>Water supply and drainage arrangements</i> | 25 |
| <i>Flood risk</i> | 26 |
| <i>Soil</i> | 26 |
| <i>Design matters: the houses</i> | 27 |
| <i>Design matters: the setting</i> | 28 |
| Part 3 MAKING SURE IT WORKS | 30 |
| Legal arrangements | 30 |
| The planning framework | 30 |
| <i>A model planning agreement</i> | 31 |
| <i>Interpreting the planning agreement</i> | 31 |
| <i>Getting the best out of it</i> | 31 |
| Timing: doing things in the right order | 32 |

| | |
|--------------------------------------------------------|-----------|
| Good surroundings: the woods and fields | 33 |
| <i>Looking after the woodlands</i> | 33 |
| <i>Managing for biodiversity</i> | 35 |
| <i>Managing public access</i> | 35 |
| <i>Making good use of the agricultural land</i> | 36 |
| Good neighbours: running the crofts | 36 |
| <i>Using the land</i> | 36 |
| <i>Agricultural buildings</i> | 37 |
| <i>Open storage</i> | 38 |
| <i>Running a business from a croft</i> | 38 |
| <i>Further residential development</i> | 38 |
| <i>Maintenance of common access roads and services</i> | 39 |
| The benefits of working together | 40 |
| USEFUL CONTACTS | 41 |
| APPENDICES | 42 |

Supplementary planning guidance

THE LOWLAND CROFTING HANDBOOK: VERY LOW-DENSITY RURAL HOUSING AND WOODLAND DEVELOPMENT

This version replaces the original handbook issued by the former West Lothian District Council

INTRODUCTION

In a bold attempt to improve landscape, bolster natural heritage, help revive the local rural economy and harnesses the demand for rural living, the former West Lothian District Council initiated its lowland crofting policy in 1994.

Since its adoption the policy has resulted in the establishment of substantial areas of new broadleaved woodland, secured the future of sensitive natural heritage features, facilitated the creation of new wildlife habitats, and improved public access to the countryside by bringing forward new footpath networks.

Whether you are just curious to know what it is all about or whether you are contemplating taking the plunge and embarking on it yourself, it's hoped that this newly revised handbook will provide some of the answers to the most frequently asked questions and also an insight into how the council sees lowland crofting continue to develop in West Lothian.

The handbook divides conveniently into three parts, each designed with a particular audience in mind:

- Farmers and landowners will want to know more about the whys and the wherefores, to help them decide whether the crofting scheme is worth exploring. *Part 1* gives a simple answer to the question *What is lowland crofting?* It then goes into some of the complications, introducing key terms such as:
 - very low density rural housing and woodland development;
 - the whole farm approach;
 - farm restructuring plans.
- *Architects, designers and land agents* of crofting developments will find guidance and perhaps a little inspiration on *planning it out* in *part 2*. Although each scheme will be unique, it may help to see the crofting vision through planners' eyes before setting pen to paper.
- *Prospective crofters* will be most interested in *making it work*, on which *part 3* has some suggestions to offer. *Promoters* and *legal advisers* will also want to find out what is intended by all the fine print.

It may seem a little unusual for a local planning authority to be supporting development in the countryside when most other policies are diametrically opposed to this and it is not for the first time that lowland crofting concept has raised a few eyebrows!

However the council views lowland crofting in a quite different light to other more conventional forms of rural development. It is convinced it can, in the right places, transform the physical and visual environment of West Lothian for the better, and, in a modest way, assist its economy. And it believes crofting developments can benefit farmers and would-be country-dwellers alike.

Part 1: WHAT IS LOWLAND CROFTING?

1.1 There is a long title for lowland crofting that is more explicit. It heads the relevant policy in our local plan and is *very low density rural housing and woodland development*. Throughout this handbook, wherever *lowland crofting* is referred to, that is what is meant.

1.2 Lowland crofting conveys the image of a single house in a few hectares of land with the opportunity for diverse economic activity. The difference in the Lowlands is that it will be nearer the cities and motorways - and well planned to meet 21st century aspirations.

1.3 Very simply, the idea is to divide up poorer-quality farms to provide a small number of rural homesteads, and at the same time transform bleak areas into pleasant well-wooded landscapes.

1.4 To give a simple example, a 40 hectare farm (100 acres) farm might yield:

- 16 hectares of woodland plantations;
- 8 hectares of best land retained in agriculture;
- 12 hectares of land for lowland crofts; and
- 4 hectares of rough ground reserved for nature conservation and public access.

1.5 It is recognised that the term *lowland crofting* is confusing to many people and it is regrettable that even after more than a decade it has still not been possible to find a better short name. It was originally coined by Dr Jim Hunter, then chairman of the Scottish Crofters' Union, to describe how rural Scotland might be revived by increasing the population density to the levels found in thriving crofting areas such as North Lewis and the name has stuck. But lowland crofting is very different from the Highland version and it should not be confused.

1.6 Firstly, it is neither expected nor required that people in West Lothian will live the life of a traditional crofter! It is recognised that many individuals will simply want to enjoy the benefits of living in a rural area and the sheer space around them that the generously sized *crofts* provide and that they will commute to their place of employment in a nearby town. Some people will want to practice hobby farming or perhaps keep horses while others may well earn a living by working from home and running businesses from their crofts. Providing these businesses are compatible with the amenity of the area and with the amenity of other residents, this will be encouraged.



1.7 The council will endeavour to ensure that the worst visual aspects which have come to be associated with traditional highland crofts - the abandoned vehicles, the rush-grown pastures, obtrusive and indistinct bungalows are avoided. The aim will be to produce a well-managed, cared-for, lived-in countryside.

1.8 The scheme will of course **not** come under statutory crofting legislation. The crofts will essentially be large privately owned plots of land in the countryside, but subject to a standardised planning agreement regulating their development.

Where will lowland crofting be supported?

1.9 It is important to be aware that the lowland crofting policy **only applies** in the area west of Bathgate and Livingston, as shown on the map attached as Appendix 2. This area has the poorest environment as a result of past mining activity and because of its limited agricultural value. It is the area most in need of investment: in the landscape, in a better choice of housing, and in small business activity. It is also the area furthest from the development pressures of the cities.

1.10 It is however the council's stated intent that a more focused and more discerning approach should be adopted when considering and selecting candidate sites than was perhaps the case when the initial roll out of the policy was undertaken in the 1990's. In particular, it has been decided that this should focus primarily on the existing landscape character of an area and its potential to benefit from additional woodland planting and that there needs to be a greater awareness of the need to avoid the suburbanisation of the countryside as a consequence of any proposals.

1.11 It is also the case that once approved, the planning conditions and legal agreements allied to lowland crofting schemes will be actively policed and enforced for compliance in order to maximise their contribution to the physical environment and to bolster confidence in the lowland crofting initiative generally.

1.12 When assessing new schemes, *The Landscape Character Assessment for West Lothian* by ASH Consulting Group (SNH Review No 91, 1998) will therefore be used to inform understanding of local landscape character. New schemes should prove that they will not adversely affect local landscape character or visual amenity. There will be a requirement on applicants to submit a landscape and visual impact assessment with their planning application in order to demonstrate that the proposal will yield a clear benefit in terms of enhancing the local landscape character and visual amenity. A biodiversity assessment will also be required as part of the planning process.

1.13 Notwithstanding the fact that a particular site is located within the crofting policy area, in situations where the landscape would be adversely affected by the negative visual and landscape impact of new residential development, proposals will not be supported.

1.14 Quite specifically, there is a presumption against lowland crofting in the Areas of Great Landscape Value (the Bathgate Hills, Blackridge Heights and the Forth Coast). Within Areas of Special Landscape Control and Countryside Belts applicants must clearly demonstrate that landscape, biodiversity and access opportunities are not only not adversely affected but also improved by the proposed lowland crofting scheme.

Will every farm in the area be eligible?

1.15 There can be no blanket guarantee given that every farm in the geographical area covered by the policy will ultimately prove suitable for lowland crofting. Each proposal for entry into the scheme will still require to be assessed on its individual merits. Reasons for excluding specific farms will include:

- Proximity to the M8 or A801, in circumstances where a scatter of new houses would be visually unacceptable;
- When there is insufficient capacity in the landscape to satisfactorily absorb a crofting development, especially when the cumulative impact of other crofting schemes skews the density of built development in a particular area;

- Proximity to towns and villages, in circumstances where crofting would create an unacceptable impression of ribbon development or suburbanisation;
- Insurmountable difficulties over road access, drainage arrangements, or water supply;
- Conflict with important mineral reserves or long-term, higher-value development potential;
- Conflict with West Lothian's biodiversity.

1.16 The council will require developers to prepare and submit a supporting statement with their planning application which should seek to justify the development of the site in question with regard to the above.

Who can develop lowland crofts?

1.17 Anyone, providing they conform to the policy. The essential principle is the whole farm approach. This means that the whole farm must be entered into the crofting scheme: a plan for its development, landscaping and management as a whole must be drawn up. Simply identifying a particular field or a parcel of redundant agricultural land for development does not constitute *lowland crofting*.

1.18 There are several ways of organising a crofting scheme:

- The farmer can finance and manage it himself, perhaps retaining a reduced area (or even just the house) if he is retiring or operating a non-agricultural business;
- The farmer can form a partnership with a development agent, putting in the land and the capital respectively, and dividing the proceeds on completion; and
- A development agent can acquire the farm at the outset, and take responsibility for the whole process.

1.19 It is unlikely that crofting will be of interest to commercial developers because of the small numbers and complexities involved. Suitable development agents would include:

- Groups of interested individuals, operating as a consortium or perhaps as a formal co-operative;
- Not-for-profit agencies such as rural housing associations or the Central Scotland Forest Trust;
- Professional arrangers of serviced site schemes, including self-build groups.

What counts as a *whole farm*?

1.20 The lowland crofting policy is designed with a typical West Lothian small farm of 40-80 hectares (100-200 acres) in mind. In the crofting area, these farms are often bare and treeless, under pressure from various encroachment, and becoming uneconomic as support for agriculture reduces. They lend themselves to being converted wholly to crofts and woodland planting, with the farmer perhaps retaining the house and a small parcel of land.

1.21 At the lower end of the scale, and to ensure the appropriate balance between development and environmental benefits, the policy sets a threshold of 40 hectares (100 acres) as the ***minimum area*** that will be considered.

1.22 At the upper end there are some larger farms, and a growing number of amalgamated farms or groups of farms managed together. In such cases, the *whole farm* will be defined by agreement and in a common-sense way as the area of land worked as a farm. What will not be acceptable are proposals for areas with obviously manipulated boundaries, or for units artificially sub-divided for the purpose.

Can the farm continue to operate?

1.23 Yes. It will not be a requirement of entry into lowland crofting scheme that the existing farm ceases to operate as a business. Obviously, the smaller the farm, the less likely it will survive as an economic unit. If it is intended to retain a working farm within the crofting scheme, then a business plan must be prepared to show that the proposals are practical and ensure good long-term management of all the land.

1.24 Special consideration will be given to larger farms (in excess of 80 hectares / 200 acres) and farm groups. In these cases, retention of a viable core farming business will be actively encouraged, and a crofting scheme may be seen as making a valuable contribution to the farm diversification process.

1.25 Where the whole of a larger farm or farm group is not entered into the crofting scheme, a *farm-restructuring plan* will be required. This will define the area being entered into the crofting scheme, on which calculations for woodland planting and numbers of crofts will be based. It will describe how the remainder of the farm will be managed and will provide for the maintenance and improvement of the existing farm woodlands. It will include proposals for new planting, nature conservation measures, and greater public access, to be implemented under the lowland crofting agreement. The landscape benefits of lowland crofting will thus be spread over the whole farm, although not at the same intensity. Far from being burdensome, these works must be designed to improve the value of the remaining farm.

1.26 To summarise, there are three main options for the farmer:

- To wind up the farm, retaining the farmhouse and some of land if desired, but with the best and most productive fields being sold off;
- To enter the whole farm into the crofting scheme, but retaining sufficient land in agriculture to sustain a farming enterprise;
- To enter part of a larger farm or farm group into the crofting scheme, subject to a farm restructuring plan for the whole farm.

Will single crofts be allowed?

1.27 No. If an individual wants to apply for planning permission for what might euphemistically be termed as a *single croft*, or if a farmer wants to sell off distinctive parcels of his land, such proposals will be treated under mainstream policies relating to development in the countryside. Ordinarily, single houses in the countryside will be recommended for refusal of permission unless there is a clear agricultural need or other rural business justification.

1.28 The general policy of restraint on development in the countryside is not altered or diluted in any way by the lowland crofting initiative. It remains essential to prevent an unplanned scattering of houses across the open countryside and the council will continue to vigorously uphold this policy.

1.29 However, the council recognise that there have always been houses in the countryside: this area has relatively few, and a few more could improve it. The problem until now has been that to approve one or two houses here and there without special justification would create a precedent opening the floodgates to uncontrolled sprawl. The crofting concept for the first time enables a fixed limit to be agreed in advance over a whole farm, overcoming the risks of precedent and proliferation.

1.30 Taken together, the two policies add up to a carrot-and-stick approach, of the kind that has worked well in promoting inner-city renewal for example. The relevant policies are reproduced in full in Appendix 1. Supplementary planning guidance on many different aspects of rural development is also available from Planning Services.

Must a crofting scheme be carried out all at one go?

1.31 The overall woodland planting scheme and other environmental benefits which have been prescribed must be implemented at the outset. An exception might however be made where unusually large areas are involved and approval may be given to carry out these works in phases of perhaps 40 hectares (100 acres).

1.32 It is not however necessary for all the crofts to be marketed at the same time. Farmers or development agents may prefer to retain a larger area in farming for a while, or to spread out releases to suit market conditions. Where there is no existing screening or shelter, it may be sensible (or even made a planning requirement), to defer some of the crofts for up to 10 years until tree planting has become established. Maturing landscape may also enhance the value of crofts.

How do the economics of lowland crofting work out?

1.33 A principal motive for introducing this policy is to make land available for extensive woodland planting in order to transform the image and environment of central West Lothian. This land is at present locked up in marginal farms that cannot afford to lose any of their grazing area. The crofting policy is therefore intended to achieve two things financially:

- It generates income from the sale of crofts to pay for the planting and management of the desired woodlands;
- It increases the overall market value of the farm by a factor sufficient to encourage the farmer to release the land for planting.

1.34 At a time when the long-term prospects for farming are at best uncertain, it is no bad thing in both local and national interests to have a mechanism which allows some farmers a modestly attractive exit route.

1.35 Alternatively, other farmers may choose to re-invest the proceeds from crofting in their farm business, perhaps by buying better land elsewhere, by improving the ground, or by building a modern steading. The crofting policy can thus help to sustain viable agriculture as well.



1.36 Lowland crofting proposals should also incorporate opportunities for recreational use and should provide linkages to other rural activities

1.37 In every case, a crofting balance sheet should be produced, setting out in summary form the anticipated costs and proceeds. This is equivalent to a business plan for the venture: it will help both the landowner and the planning authority to assure themselves that the restructuring will be viable.

| Costs | | Proceeds | |
|-------|--------------------------------|----------|-----------------------------------------------|
| 1 | Access roads | 1 | Sale of croft plots |
| 2 | Drainage system | 2 | Sale of steading for conversion (optional) |
| 3 | Water and electricity supplies | 3 | Sale of surplus agricultural land (optional) |
| 4 | Woodland planting and fencing | 4 | Sale of commercial woodlands or planting land |
| 5 | Amenity landscaping | 5 | Forestry and other grants |
| 6 | Public access and biodiversity | | |
| 7 | Development fees and expenses | | |
| 8 | Initial land value/acquisition | | |
| 9 | Interest charges | | |

These components will be examined in more detail in later parts of this handbook.

1.38 Most of these cost elements allow some choice to be made on the quality of services and landscape works put in. Thus, even in the more remote or difficult parts of the area, it should be possible to create a small number of lower-value crofts with investment at the minimum standards of quality. Conversely, greater investment in higher standards may pay dividends in improving marketability of crofts, while also improving the landscape faster.

1.39 Experience suggests that satisfactory financial out-turns should be achievable in most circumstances within the terms of the lowland crofting policy. A final disposal value to the original landowner in excess of agricultural value should be obtainable, covering all borrowing costs and development agents' expenses but making no other allowance for development profit. This suggests that the concept should be of practical value to farmers and landowners as well as of benefit to the area. It is unlikely to upset the local land market by unrealistic inflation of hope value.

1.40 The most significant variable is, of course, the number of crofts permitted. This is dealt with in *part 2*. Suffice it to say here that the council's intention and expectation is that the desired landscape objectives and other community benefits can be achieved without compromising our fundamental planning requirement to preserve the character and integrity of the countryside of West Lothian.

Why is the council supporting lowland crofting?

1.41 There have been schemes to parcel up farmland into plots and smallholdings before, and schemes for new woodland communities. So far as we know, this has never before in Britain been combined with trying to create a whole new landscape.

1.42 The reasons why the council is supporting this concept in this part of West Lothian are many and varied but include the following:

- **Economic Development** The best way to secure the long-term economic future of the area is to make it an attractive place for living, working, visiting, and above all, setting up business in. And the more businesses that are run by people living locally, the better, whether they are large or small.
- **Landscape** This is generally a bleak area. It needs trees and woodlands to soften it and give shelter. Farmers cannot afford to release land for planting. Crofting provides a mechanism to encourage them to do so.

- **Farming** This is a marginal area for farming. The soils are poor and the climate wet. With subsidies disappearing, smaller farms are becoming uneconomic. We want to see farming continue and thrive here as an important part of life and landscape. Crofting can strengthen the remaining farms, by regrouping or enlarging them around the best land.
- **Housing** The choice of housing is very limited here, by comparison with other rural areas. A better choice, especially for people wishing to have a few acres to use, will improve the attractiveness of West Lothian for job-creating investment of all kinds.
- **Businesses** Many people are discouraged from starting their own businesses because of the shortage of small sites and premises. Crofts will lend themselves to certain types of small business venture.
- **Access and wildlife** People in West Lothian do not enjoy easy access to attractive countryside. Likewise the wildlife value of this area is very debased - much of it is a *green desert* with every inch grazed by livestock. Crofting offers great scope to increase both public access and biodiversity.
- **Image** Central West Lothian has a poor image within Scotland, despite removal of the coal bings. If the word *better* is put in front of each of the previous headings, it all adds up to a fresh, positive approach - and a better image for the area.

1.43 *Policy ENV 3 of the Edinburgh and the Lothian Structure Plan 2015* now contains specific provision for lowland crofting, where justified in local plans, in support of rural diversification, maintaining communities and services or effecting landscape improvement.

1.44 So it should be clear that there is no single main purpose behind the crofting concept - nor any question of making planning concessions to secure other benefits. The council wants all of these components, both on their own merits and for the way they fit together to create a better overall picture. An excellent frame for this picture is provided by a study whose title sums up what we hope to achieve - *Changing the Image - A New Landscape for the Bathgate Area*. This can be viewed at the offices of Planning Services.

1.45 There is no reason why West Lothian should not be as attractive and economically successful as rural Perthshire or the Borders. Crofting can make a major contribution to this by freeing up the land and generating the resources to make it all possible.

Part 2: PLANNING IT OUT

2.1 Taking an area of 40 hectares (100 acres) or more and planning it out for lowland crofting is a significant challenge with few precedents. The inter-war sub-division of farms into smallholdings was very practical but did little for the amenities of West Lothian. Some minimum standards and basic rules can be set, but the guidance offered here prefers to describe what can be aspired to and what pitfalls should be avoided.

2.2 Each case will be different, and a degree of diversity of treatment will be encouraged. In assessing the acceptability of each crofting scheme put forward for planning approval, the council will be looking for four things in particular:

- Full compliance with the planning policy (as amplified in this handbook) in terms of land use pattern, density and layout;
- Technical acceptability in terms of roads and services;
- Clear evidence of an understanding of the crofting concept and of commitment to its full realisation;
- Financial and management capability to implement the scheme successfully.

2.3 Failure to satisfy these last two may not justify outright refusal. It is however more likely to result in difficulties and delay in making the accompanying legal agreements and in complying with conditions. In order to avoid wasted effort, the planning officer assigned to the application will indicate as early as possible if it is considered that a particular scheme is not fulfilling the spirit and purpose of the crofting policy, and that it should be withdrawn, or requires to be redesigned.

The land use pattern

2.4 There are essentially five main components in the restructuring of each farm:

- Woodlands;
- Biodiversity;
- Public access;
- Agricultural land;
- Croft holdings.

It is however possible that other uses will be proposed, such as rural leisure pursuits, and these will be considered as they arise.

Woodlands

2.5 In national terms, the extent of forest cover in the Lothians as whole is not great, constituting only around 2% of the Scottish total. Similarly, the total woodland cover in the Lothians, including semi-natural woodland, represents only 8% of the overall land area. 3.16ha or 0.74% of the total land area of West Lothian is native woodland.

2.6 A feature of much of the farm woodland of West Lothian is a lack of sustainability through management and renewal. Over-mature and unmanaged shelter belts and woodland dominate the countryside and it is important that new opportunities are promoted to address this. Lowland crofting, particularly if used wisely and imaginatively, and also in conjunction with other schemes, has the potential to be a significant force for enhancing woodland cover.

2.7 The financial incentives now in existence to encourage new planting, under the Woodland Grant Scheme (WGS), have much greater emphasis on landscape and environmental benefits, and are linked to guidelines on good landscape design practice. Given that supplements under the WGS, for community woodlands, and a locational supplement for the Central Scotland Forest area, which includes all of West Lothian, also apply to significant areas of the Lothians,

The wooded landscape

2.8 The aim is to reinstate the fine native woodland landscape that this area once enjoyed. Fragments of the original woods can often still be found: these should be the main components of the new landscape structure, restored, linked together, and strengthened on the concept of the creation of a Forest Habitat Network.

2.9 Key features of the landscape created during the estate and agricultural improvements of the 19th century are:

- *Shelter belts* mainly running north-south, but sometimes in grid patterns;
- *Hedges* often grown out into prominent lines of beech trees;
- *Avenues* planted along roads or up estate drives;
- *Small woods* planted for game cover;
- *Estate policies* ornamental plantations around the estates and larger farms.

Most important by far are the shelterbelts. Many were cut down and not replanted: those which survive are undergrazed and in danger of dying on their feet.

2.10 The lowland crofting policy stipulates that a ***minimum of 50%*** of the farm area will be devoted to woodlands and biodiversity. This can include existing woodlands and wildlife habitats, provided that arrangements for their proper management or protection are included in the scheme.

2.11 Unless there is good reason to do otherwise, the required area will be calculated as a percentage of the gross area of the farm or other single land holding. In the case of a large ownership (referred to in *part 1*), it will be calculated on the gross area agreed as acceptable for restructuring into crofting.

2.12 This figure of 50% has been selected for three reasons:

- It strikes a good balance of usable open land and economically manageable woodland;
- It achieves a degree of shelter and enclosure while avoiding oppressiveness and loss of views that is right for the area;
- It makes a major contribution to the target set by the government's Central Scotland Forest initiative.

Even if only a minority of farms are crofted, they will become well-wooded islands giving valuable variety and structure within a generally more open landscape.

2.13 In designing the new woodland pattern, all these traditional features still have some value and will play a part. They are simple, practical and attractive. Of course up-to-date standards and management techniques will be used, and designers will be expected to exercise their creative skills in composing forms and vistas.

2.14 Two main changes in thinking on woodland design will affect the new landscape. Firstly, the original shelterbelts were generally rather narrow: while very elegant, they became vulnerable to wind blow and could not produce enough harvestable timber to make replanting worthwhile.

2.15 New shelterbelts need to include edge planting designed for biodiversity, long life and good appearance, protecting a core of harvestable timber. They should be wide enough



to accommodate public access too. However, such shelterbelts can look rather bulky: they must be more widely spaced, varied in shape, and interspersed with amenity planting.

2.16 Secondly, the traditional small woods and game coverts are difficult to manage. There is a trend towards larger woodland blocks that again can lead to a cruder landscape than before. On a typical farm, there may be scope for one or two such blocks, preferably not exceeding 4 – 6

hectares (10 -15 acres) provided they fit well into the landscape. Designs that concentrate the entire woodland planting requirement into large blocks will not be acceptable. Likewise, while the 50% figure can be exceeded if a landowner wishes, it will not usually be desirable to plant up more than this.

2.17 The traditional landscapes in this part of West Lothian are in fact a series of *rooms*, open fields surrounded by woodlands. To achieve this again, the new woodlands must link together, in a varied and intricate pattern. Dense planting along roadsides should be avoided and larger blocks should be placed in the middle distance.

Amenity planting and landscape features

2.18 Over and above the 50% or so of shelterbelts and woodland blocks, the landscape design must include a reasonable proportion of amenity planting. These so called *macro* landscaping works make the most immediate visual impact and it is important that these works are secured early on in the development of the site. A requirement to this effect will be incorporated in to the planning conditions.

2.19 Hedgerows, roadside trees, and avenues up farm tracks are of great value in the landscape and for wildlife. In designing a pattern of *rooms with views*, they enable people to see into a room through roadside trees, or form one room into another over a hedge. Shelterbelts and woodland blocks can be linked by hedges and tree lines to soften their impact.

2.20 It can be expensive to create hedges, particularly if double fencing is needed. Where drystone dykes can be built or restored, this will be encouraged as an alternative to hedging.

2.21 The designer should include a select number of small features to put fine-grain interest back into the landscape:

- Specimen trees or groups in walled or railed enclosures;
- Ponds and reinstated watercourses;
- Lanes and paths leading into the farm designed to invite public access;
- Purpose-designed stiles and footbridges.

Choice of species

2.22 Soil and climate restrict the choice of species in the crofting area, although given care and shelter the original estate improvers were able to create quite rich policy woodlands.

2.23 Tree species should be chosen with two main purposes in mind. The long-term landscape should be predominantly native broadleaved for biodiversity, visual appearance and for public enjoyment.

2.24 The preferred species are therefore oak and ash, with birch, willow, alder, gean and rowan in support. Beech and sycamore are less valued for nature conservation. They have a landscape contribution to make if deployed with care, the former characteristically along roadsides and in hedgerows, and the latter as single trees or in policy woodlands.

2.25 Extensive use of coniferous monocultures will be resisted. Non-native conifers will only be considered as short-term elements in a planting scheme where they enable rapid landscape improvement to be achieved on poor soils and exposed sites. Scots pine and larch are not strictly native but have been widely used in the past and can provide a useful contrast in a predominantly broadleaved landscape.

Commercial timber production

2.26 The use of broadleaved woodlands, together with coniferous nurse crops, for commercial production will be encouraged, as a means both of giving value to the initial farm restructuring, and of ensuring long-term good management. However economic realities mean that this can only be a secondary objective and it will not be allowed to override landscape, conservation and access considerations in the design.

2.27 Crofting proposals that essentially create coniferous forests will not be acceptable.

Implementing the landscape structure

2.28 The woodlands must be designed and implemented as a single exercise before the crofts are developed (see *part 3*). It is unrealistic to expect all the individual crofters to take responsibility for planting and managing small shares of the whole pattern, and this would make it near impossible for the council to secure successful implementation. The design must therefore show the landscape structure as physically separate from the crofts, laid out and fenced off for sensible independent management.



2.29 Within the individual crofts the owners will of course be free to plant trees to their own choice: these **will not** however contribute to the 50% requirement.

2.30 The detailed planting specification and its implementation must be to full professional standards and advice should be sought from the Forestry Commission at the outset.

Biodiversity

2.31 Biodiversity interest is confined to small fragments of the typical West Lothian farm at present. There are very few nature reserves or Sites of Special Scientific Interest in the crofting policy area.

2.32 Restructuring whole farms provides an unprecedented opportunity for raising the biodiversity value and interest of the area. This can be achieved in four ways:

- By designing and managing all the woodlands with the creation of rich, diverse, self-sustaining habitats in mind;
- By managing the retained fields on conservation principles;
- By encouraging the crofters to think green;
- By setting aside land to be managed primarily or exclusively for nature conservation.

While the greatest total benefit will be achieved from the first three, the last will increase public awareness, and could well enhance the appeal and value of the crofts.

2.33 The first step will be to survey the farm and identify the existing areas of biodiversity value that require to be protected such as heather mosses or flower-rich meadows. Steep slopes and stream-side flats are also particularly valuable and should generally not be planted with dense woodland.

2.34 The features of the farm which best lend themselves to habitat creation can then be mapped -such as valleys, rock exposures, or pockets of unusual soil conditions.

Priorities for small-scale creative conservation work in this part of West Lothian include:

- Making ponds and allowing drained hollows to revert to wetlands;
- Setting aside conservation headriggs at the edges of improved grassland, to encourage wildflower colonisation;
- Planting hedgerows and pockets of native shrubs as good small bird habitat;
- Creating or protecting sites suitable for animals such as badgers.

2.35 Every crofting scheme will require to include a range of such conservation features, as an integral part of the landscape structure and management plan. There may also be scope to create more extensive wildlife habitat, perhaps combined with open public access.

Examples of larger-scale imagination include:

- Allowing the poorer fields to regenerate to heathland or scrub woodland with open glades;
- Developing wildlife corridors along river valleys;
- Rejuvenating raised bogs by impeding drainage;
- Reverting improved grasslands to herb-rich permanent pasture.

2.36 If a larger area of existing or potential nature conservation value can be agreed upon, then this can be included as contributing to the 50% minimum requirement referred to under *Woodlands*.

2.37 To go back to the purpose of all this effort, it should be to give people in central Scotland a richer environment and greater opportunities to enjoy nature. The temptation to devote all the resources to rare species should be avoided here: the simple aims should be to increase the quantity of wildlife, to increase its variety, and to make it accessible to the public.

2.38 Advice on designing for nature conservation is readily available from the council, the Farming and Wildlife Advisory Group and Scottish Natural Heritage.

Agricultural land

2.39 Ordinarily, save in the most marginal areas, farms will have some *best fields*. These might be retained as a working farm or smallholding around the existing steading. Alternatively, they may usefully be disposed of to strengthen the viability of a neighbouring farm (but will not count double if that in turn is proposed for crofting). Bringing adjoining farmers into discussions will be encouraged.

2.40 Well maintained fields are an important component of the West Lothian landscape. It is therefore a requirement that 20-50% of the gross area might typically be retained in agriculture. The fields should be suitably enclosed and sub-divided with shelterbelts, tree lines and hedgerows.

2.41 It is highly desirable that a professional land agent be engaged to advise on the restructuring of farmland.

Public access

2.42 The Land Reform (Scotland) Act 2003 was enacted in early 2005, with the associated Scottish Outdoor Access Code setting out the rights and responsibilities of the public and land managers.

2.43 The public now has extensive access rights for walking, cycling and horse riding as well as to water for canoeing and swimming. These rights must be exercised responsibly, as set out in the code. Land managers must respect these rights and the council, as an access authority under the act, has a duty to uphold them. *Rights of Way* under the *Countryside Act* are unaffected by this new legislation and existing ones are protected and new ones can be asserted or vindicated as before.

2.44 Access rights apply to much of Scotland but it is clear the public, particularly in significantly urbanised areas such as West Lothian, wish to use paths rather than venture onto field margins or rough moor land. The development of new paths is therefore of crucial importance in encouraging increasing numbers of people to explore the outdoors. Lowland crofting developments could make an important contribution towards the creation of a path network across the district and could be particularly beneficial on the edge of existing settlements, linking with the existing footpath network. The routes may follow the croft holding access roads, or lie within shelterbelts. Where possible, they should follow attractive natural features such as streams, hedges, or hillcrests.

2.45 Experience shows that if people are welcomed onto the land, with good way-marked paths, they will generally respond well and keep to the routes provided. The more they enjoy the countryside, the more they respect it. And the more well behaved members of the public there are about, the more they will, by their presence, deter abuse and anti-social behaviour.

2.46 Previously, many of the older crofting developments only stipulated the provision of grass paths. Some paths were designed for walkers only whilst others were seen as being multi-use. Unfortunately many of these paths were muddy and were in remote areas and not easily accessible to nearby communities they were little used.

2.47 Over recent years, to address this problem, the council has sought to include more surfaced paths in developments. The Land Reform Act has heightened the importance of good path construction. It is now much more difficult to stipulate that a path is only for a



particular user group i.e. walkers. In theory walkers, cyclists and horse riders enjoy equal rights of access. In practice this is difficult because they require different standards of path design and construction. However, as lowland croft schemes come forward there will be a presumption in favour of all paths being multi-use, constructed to an appropriate specification, and the cycle route groups SPOKES and SUSTRANS, the British Horse Society and the council's Access Officer are all well placed to advise on what this should entail.

2.48 With regards to their accessibility it is important that developers set their proposal in an access context. They will need to identify how their proposed path network connects to surrounding paths or access land and indicate where there are gaps that need to be addressed.

2.49 It is recognised that some communities and access user groups do not feel that the anticipated public access benefits upon which past crofting schemes were approved have been fully realised. Not only is there a concern over the condition of paths and lack of maintenance but also that opportunities have been missed to join path networks together. Greater emphasis will therefore be placed on the creation of paths, even if external links beyond the site boundary have not yet been secured.

The farm steading

2.50 Where a traditional farm steading exists, its retention and conversion to living accommodation, whether or not the farmer is staying on, should be explored as a first option.

2.51 Conversion of steading buildings of traditional character for residential use is already encouraged throughout the council area and can make a significant contribution to the total number of new houses in the countryside that are consented to annually.

2.52 The resultant accommodation should be generously sized rather than crammed in. The rougher parts and smaller outbuildings can make useful storage or workshop space, and there is no need to over-restore them to squeeze in extra houses.

2.53 If conversion is being considered it is particularly important to be mindful of bat and barn owl roosts and to be aware of legal obligations under both EU and UK legislation concerning the disturbance of wildlife and wildlife habitats. Pre-planning surveys should therefore be undertaken.

2.54 Likewise, the farmyard should not be carved up into little gardens or, worse, turned into a car park parking lot. The whole point of a steading conversion is to have plenty of space and a relaxed atmosphere - not a city mews courtyard.

2.55 Modern farm buildings fall into two types. There are well-built steel or concrete frame sheds which are worth keeping. There is also usually a clutter of odd buildings of doubtful value and poor appearance. If the farmer is staying on with a reduced area of land, the steading should be rationalised around the best buildings. It may also be possible to relocate certain buildings. If the farm steading is ceasing to operate, then the best buildings may well be of interest to the new owners of restored or croft houses. They may suit hobby farming or small businesses; (see *part 3*).

2.56 In all crofting schemes, the council will require action to be taken to tidy up or remove ramshackle buildings, abandoned machinery and the farm dump. Planting up around the steading will be required if it is at all unsightly.

Croft holdings

2.57 This component is considered last in order to emphasise that the structure of fields and woods and amenities must be conceived first: the crofts must fit into the landscape. Naturally, the landscape structure will be designed to create sensible and attractive locations for the crofts.

2.58 The factors to consider in planning out each farm will include:

- The number of crofts;
- The sizes of the holdings;
- The grouping and positioning of the crofts;
- Road access;
- Main services;
- Design matters - the houses;
- Design matters - the setting.

Numbers

2.59 The policy stipulates **a maximum** of 10 houses per 50 hectares (124 acres). This figure has been selected to reflect the pattern found in parts of the country where there is a tradition of scattered rural settlement. Examples are few in this area because of its mining and farming history, but can be seen in the Avon Valley and Bridgecastle area, and to a lesser degree in Harburn. At this density, the character of the area remains distinctly rural, while having a pleasing atmosphere of life and variety. As densities rise above this level, the character becomes suburban: the policy is designed to avoid this happening.

2.60 By way of example, the density of the former DAFS smallholdings is typically 50% higher than the crofting maximum, and does result in a landscape dominated by the scatter of houses. If you imagine these holdings spaced out with 50% or more woodland cover in and around them, the effect would be much more acceptable.

2.61 In calculating the number of croft houses that can be supported, the gross area of the farm (or other area acceptable for entry into the scheme) will normally be taken, unless it is of very irregular shape or a large part is clearly unsuitable for development. In other words the density of the area actually being crofted must not become excessive: as an extreme example, to put 10 houses on an isolated field and plant up a large area of moorland some distance away would not qualify.

2.62 The density must obviously take account of existing houses as well as proposed crofts. The number of crofts will therefore be reduced by:

- Any existing or approved dwelling units on the farm itself;
- Any separately owned house or sites within or closely adjacent to the overall farm boundaries. These can only be defined case by case, with the purpose being to avoid unacceptable proliferation of houses within the vicinity of any given farm, notably where a farm boundary is irregular or fragmented.

2.63 The future of the farm steading will be looked at as part of the numbers calculation. If the traditional steading buildings have already been converted, or plans are in hand, they will count towards the density. Even if there are no proposals, some allowance will still have to be made for the future scope for steading conversion, unless the management plan for the remainder of the farm clearly makes this unlikely.

2.64 This means that there is no benefit in selling off the steading separately before applying to enter the crofting scheme. Indeed, a crofting development will be improved by having a generous steading conversion at its heart.

2.65 It is important to recognise that the figure of 10 per 50 hectares is a maximum and not the normal expectation. Several reasons may call for a density below this maximum to be set:

- If the farm is a very large one: the density should taper downwards for areas in excess of 100 hectares (247 acres);
- If the farm is on the edge of town, where any impression of ribbon development is to be avoided;
- If there is a high density of houses in the general area of the farm;
- If surrounding farms have already been approved for crofting so that the cumulative effect of large numbers of crofts is becoming excessive;
- If the area is already well wooded or of good agricultural quality;
- If there are environmental or service constraints - for example if the farm is very open to view, or there are pollution problems in local burns.

2.66 Each case will have its own unique circumstances and will be examined sympathetically to achieve a good overall structure. However, it must be made clear that otherwise attractive packages will not be accepted at the cost of excessively high densities: there are a large number of eligible farms and the landscape objectives for the area do not depend on any specific farm being crofted. The maximum density is fixed by the policy and no exceptions above it can be made. The figure may be reviewed in the light of experience but can only be amended by an alteration to the local plan.

Sizes

2.67 The policy specifies a minimum croft size of 1.0 hectares (2.5 acres). The purpose of this is to ensure that each house has ample space for its own domestic enjoyment and landscaping, and that a suburban appearance is avoided. A clear distinction is essential between rural crofts and the typical urban single house plot of a quarter acre or less.

2.68 Laying out all the crofts at this minimum size will be discouraged. A wide choice of sizes should be offered giving an average in the range 1.0 hectares - 2.5 hectares (2.5 - 6.5 acres).

2.69 There is no maximum size, so that if an individual wishes to have a workable holding of say 8 hectares (20 acres), this will be encouraged. It should be possible to vary plot sizes by amendment to the planning consent as the crofts are marketed, provided they don't fall below the minimum threshold of 1.0 hectare. The proportion of the typical farm devoted to crofts is therefore likely to be in the range of 20-40%.

Grouping and positioning

2.70 Three basic patterns for rural housing exists: regular, clustered, and scattered.

2.71 Regular spacing is typical of planned estates, but save for the former DAFS smallholdings is not characteristic in West Lothian and should be avoided.

2.72 Clustering has obvious attractions of economy if new access roads and services are required. There are few good precedents for rural clusters in West Lothian: they tend rather to be miners rows or wayside ribbons such as Entryfoot. Clusters should be enclosed by existing woods, or relate to some natural feature or older building. The group of newer houses at Bridge Castle is a good example of a well-contained and integrated cluster. The original steading may also lend itself to a cluster, with new croft houses carefully placed around converted buildings. By contrast, a group stuck out in the middle of a field will just not work! If there are no existing features to relate to, new ones can be created.

2.73 A dispersed scatter is the most characteristic and acceptable pattern for West Lothian. Single houses are the most easily absorbed into the countryside, providing they are well spaced apart and sensibly sited. If well designed, they can provide attractive incidents and variety in the local scene.

2.74 Positioning crofts with apparently natural randomness as part of a renewed landscape does in fact need great care and skill: a carefully controlled scatter is the aim. Sites beside main roads should almost always be avoided. Some may be placed along country lanes, but they should generally be at least quarter of a mile apart. Pairs of houses can be successful, provided they are of similar design. Unless there is a case for creating a local roadside feature, houses should be set well back from the road up private tracks.

2.75 Whether the crofts are located singly or in clusters, their sites should relate wherever possible to existing features such as field boundaries, or failing that to planned features. Sites will almost always be on agricultural land, rather than taking bites out of existing woods or areas of conservation value. More advice on designing the croft however and their settings follows at the end of this section.

Road access

2.76 Although the traffic involved in a crofting development should generally be light, the road access arrangements must be well thought out. Three principles must be followed:

- *Safety* traffic hazards must be avoided, whether coming out onto fast main roads or putting pressure on narrow lanes.
- *Appearance* rural character must not be sacrificed to over-designed access roads.
- *Maintenance* croft access must not be allowed to deteriorate and become dangerous and unsightly.

Safety

2.77 Much will depend on what kind of public roads go past the farm. Quiet country lanes may lend themselves to direct frontage access for individual crofts. However, if a lane is well used by walkers or riders, or if it has dangerous bends, the number of crofts using it should be restricted - unless perhaps a path can be provided within the fields.

2.78 Where a busy main road is involved, individual accesses will not usually be acceptable, and a well-designed single access point should be made. It is possible that access costs or problems will occasionally rule a farm out for crofting.



2.79 Designing safe accesses comes down to three basic principles: visibility, room to manoeuvre, and surface control (avoiding loose stones, mud, or water coming out onto the public road). All three must be achieved without sacrificing rural character.

Appearance

2.80 The greatest visual impact of any crofting development - apart from the houses themselves - will be made by the road junctions. There are many bad examples of unsightly accesses along rural roads in West Lothian, bringing all the engineering features of suburban housing estates out into the countryside. Worst faults include high concrete kerbs, hedges taken out for many yards on either side, walls and fences set back on artificial splays, and tarmac bellmouths far wider than the lane itself. There are happily some good examples showing how safe accesses can be created with minimal intrusion.

2.81 Access points will be of three kinds:

- Driveways serving individual crofts;
- Shared driveways serving up to say 4 dwellings;
- Access roads serving a number of dwellings (say 5 or more).

2.82 Higher standards will clearly be needed for the latter, whether the road is an upgraded farm track or purpose-made, but the same design tips apply to all. The best solution of course is just to look at a good traditional farm entrance and do the same.

- *Kerbing* There should be no visible kerbing. No kerb is needed to separate the access from the public road. If edge kerbing is required to support the formation it should be flush (preferably rough haunching) and allowed to grass over.
- *Surface* The entrance at least should be tarmac married in to the public road. Individual accesses may become unsurfaced after say 5 metres, shared driveways after perhaps 10-30 metres, depending on site conditions. Access roads will normally be blacktop throughout.

- *Width* Individual accesses - typically 3 metres.
Shared driveways - 4 metres at the entrance, then 3 metres, with informal widenings for passing if very long.
- *Access roads* 5 metres at the entrance, then 4 metres with occasional informal widenings.
- *Bellmouth* No bellmouth should be needed for individual accesses. Wide bellmouths are not needed for cars. Where occasional large vehicles might run over the verge, a bellmouth area can be reinforced with hardcore and grassed over.
- *Sightlines* New accesses should be located where there is naturally good visibility - on the outside of a bend, or where there is a reasonable verge. It should be assumed that vehicles will stop before exiting, so that a sightline setback of 2.5 metres will suffice (save perhaps on main roads). Removal of trees, hedges or walls for sightlines will not usually be acceptable. Relocating walls or fences on an angled sightline splay never looks right. If a sightline has to be formed, the new wall or hedge should simply be set back parallel to the road, creating a wide verge, or it might perhaps be formally shaped as an estate gateway. Another possibility is to have an unfenced edge to a new woodland, with avenue trees planted along the front.

2.83 The typical farm road is unsurfaced and single track, with no sightline splays and a modest bellmouth informally shaped by use. It works perfectly well and can serve a few crofts with very little upgrading.

2.84 With private driveways, arrangements should be made for refuse collection and perhaps certain deliveries at the road end. Access points should be safe enough for these vehicles and school buses to stand.

2.85 Designing new access routes also needs care. They should follow existing features such as field edges where possible; failing that, one side at least should be fenced and planted. The lie of the land should be followed, and the line and width should wander slightly: the original country lanes were not surveyed ruler-straight!

Maintenance

2.86 Arrangements for managing croft services are considered in *part 3*. The most satisfactory solution for access roadways is to have them adoptable by the council. Whether the initial capital cost can be afforded will determine this or a lesser standard being chosen.

2.87 The council's Transportation Manager should of course be consulted on all aspects of road safety and access design from the early stages.

Water supply and drainage arrangements

2.92 Water should generally be available by extension from existing farm supplies. Some locations may however prove difficult to supply at reasonable cost. Applicants will be required to agree detailed arrangements for the supply of water at an early stage in the design process. This will necessitate consultation with Scottish Water, SEPA, council planning officers, and, in the case of a private supply, the council's environmental health officers.

2.93 In the UK, water is cleaned to a much higher standard than needed for washing, garden watering and toilet flushing. Collecting rainwater and using it for some of these can save both energy and money and *roof harvesting* of rain is therefore advocated. At its simplest a water butt can be connected to the down-pipe and the collected water then used for many purposes. A more sophisticated arrangement can be used for toilet flushing.

2.94 Drainage is a key issue. Few sites will have easy connections to mains drainage. Septic tanks discharging to watercourses will generally be unacceptable, as the area is drained by a number of small burns, many of which are already polluted. Septic tank and soakaway systems may prove acceptable in some individual cases, but not for clusters.

2.95 Individual treatment systems such as Biodisk offer theoretical improvements but can cause worse pollution if they break down. Mini sewage treatment plants may be appropriate for clusters. Long connections to main drainage may have to be considered, perhaps with costs shared by several crofted farms or other beneficiaries

2.96 Applicants will be required to agree detailed arrangements for the treatment of foul and surface water drainage an early stage in the design process. This will necessitate consultation with Scottish Water, SEPA, council planning officers, and, when appropriate, the council's Flood Prevention Manager and Transportation Manager.

2.97 The council, as planning authority, will be seeking an innovative strategy for sustainable drainage that complies and, ideally, exceeds the minimum standards laid out in contemporary guidelines and regulations. It is advised that SEPA require drainage proposals for all new developments to comply with the requirements of the Water Environment (Controlled Activities)(Scotland)Regulations 2005. Furthermore, foul discharges which are not connecting to a Scottish Water sewage network will require SEPA authorisation and surface water drainage will be required not to result in pollution of the water environment. The SEPA website provides useful downloadable advice:

www.sepa.org.uk/pdf/publications/wdf/suds_leaflet.pdf

2.98 Applicants will ordinarily be required to submit a site specific Drainage Impact Assessment (DIA) as part of their planning application. The Assessment must be comprehensive and must address the issues of foul and surface water and, where applicable, ground water including land drainage. It must detail the measures that are proposed to deal with quality, quantity, environmental and amenity issues associated with surface and ground water pre and post development. In preparing their DIA, applicants are referred to the document *Drainage Impact Assessment – A Guide for Scotland* published by SEPA.

2.99 There is a general requirement for developers to fully grout any existing land drainage system to prevent the passage of ground surface and ground water beneath infrastructure.

Flood Risk

2.100 It is also important that flood issues are adequately addressed in terms of SPP7 *Planning and Flooding* by developers when formulating proposals. Particular attention is drawn to Section 3(b) of the risk framework which states that undeveloped and sparsely developed areas in medium to high risk areas are generally not suitable for development, as are greenfield sites within the 1 in 200 year return period flood envelope. SEPA's website on flooding, which includes links to the Flood Map and SEPA policy, can be accessed via the SEPA website at www.sepa.org.uk/flooding The council has also produced a separate SPG on *Flood risk and Sustainable Drainage* which is currently obtainable on request and will at a future date be downloadable from the councils website at www.westlothian.gov.uk

2.101 The council recommends that all applicants adopt a precautionary approach with regard to the matter of flood risk. However where a development site is adjacent to a watercourse, including one or more culverted watercourses, ponds or a functional flood plain, there will ordinarily be a requirement to submit a full Flood Risk Assessment complying with Annex B of the Scottish Environment Protection Agency Policy No 4 *A SEPA Planning Authority Protocol* and CIRIA Report C624 *Development and Flood Risk: Guidance for the Construction Industry* (ISBN: 096017624x). A suitably qualified and experienced hydrologist or chartered civil engineer must carry out such a study.

Soil

2.102 The council has a Soil Sustainability Plan, due to the heavy local soils and the typically poor drainage characteristics, applicants must strip topsoil and store it in accord with guidelines / conditions issued by the planning authority.

2.103 Electricity and telephone connections should likewise generally be available. Cats cradles of overhead lines must, however, be avoided, and proposals which require them in conspicuous or sensitive locations may well be turned down. If scattered crofts cannot be served off existing supplies or by underground connections, this may favour a more clustered pattern. Overhead lines to each individual croft will not be accepted.

2.104 Any external lighting that is required on croft holdings should be minimalised to what is absolutely essential and should be controlled by a timing device in order to reduce the negative effect of the character and setting of rural areas and on wildlife. It should in any event accord with Scottish Government Guidance (2007) *Controlling Light Pollution and reducing Energy Consumption*.

2.105 Ground, air and water source heat pumps should be considered as a mechanism for providing space heating and to pre-heat domestic hot water. Installing them with other building works at the time of construction can substantially reduce costs.

2.106 Planning applications should not be submitted until all the means of servicing have been established. Crofting schemes will be expected to show no significant environmental disadvantages. They will conversely be encouraged to demonstrate *green* qualities, notably in tapping renewable energy sources (wind, solar, methane, biomass).

Design matters: the houses

2.107 The appearance of the croft houses is of paramount importance in the public eye. This will be dealt with in two stages: the design guide for each scheme will set parameters, and the applications for individual houses will put them into practice.

2.108 This part of West Lothian is not generally of special landscape quality or historic interest, save for two Areas of Great Landscape Value and an Area of Special Landscape Control. Nevertheless, a balance must be struck between allowing complete individual freedom of expression and preventing visual excess and clutter that would be detrimental to the rural character of the area.

2.109 It is a particular requirement that a Project Architect, preferably one sympathetic to Scottish rural housing design, be engaged to design the crofting layout and to propose a design treatment, if not to design each individual house.

2.110 Planning Advice Note 72 - *Housing in the Countryside* sets out key design principles which need to be taken into account: by applicants when planning a new development and gives some good illustrations of what can be achieved.

2.111 Detailed advice regarding the form and design of new houses is also provided in Supplementary Planning Guidance issued by the council entitled *Planning & Design Considerations – New Housing in the Countryside*. Unless the design guide for each scheme suggests otherwise, the advice set out in these documents should be assumed to be applicable to proposals for croft houses.

2.112 As a general rule, single-storey houses will be preferred and should be modelled on traditional rural cottages. The typical roofspan of a farm cottage is 6 metres and this provides a useful benchmark. Steeper roof pitches – 35 degrees rather than 22.5 degrees – look good and allow attic bedrooms to be created and will be encouraged.



2.113 Two-storey houses will however be considered where deemed appropriate but since they are more conspicuous, they must be kept to more traditional proportions. The typical roof-span of a West Lothian farmhouse is 8 metres and this should not be exceeded. Very bulky houses, larger than the original farmhouses will not be acceptable and sprawling ranch houses are wholly inappropriate. While timber framed construction is not ruled out, it is rarely the case that *off the peg* standard house types will prove acceptable.

2.114 The design of scattered houses should reflect their positioning. Thus a site in a field corner beside a lane would be better suited by a single-storey house of cottage proportions, while a larger two-storey house should be set back in more spacious and formal surroundings.

2.115 Pairs or clusters of houses will benefit from a unified design treatment: whether this is insisted upon will depend on the visibility and setting of the cluster.

2.116 As a special variant on the cluster, proposals may come forward for groups of houses physically linked or closely knit on the lines of a farm steading. Such *steading groups* may have difficulty meeting the minimum plot size. This should still be achieved where possible – perhaps with the land detached from the dwelling, or held in common. Numbers are unlikely to exceed four or five in such groups.

Design matters: the setting

2.117 Composing the right setting for the crofts matters just as much as getting the design of the houses right.

2.118 There are two basic approaches to placing houses in the countryside successfully. The safe way is to hide them, in folds of the land, or by screening. This should perhaps be followed in most cases. It is quite possible though for houses to make a positive contribution to the view, if they are well designed and linked in to the pattern of fields and woods. Sometimes it is best to leave the secluded corners unfilled - they are often the most attractive bits of the farm - and to create new points of interest in the dull parts.

2.119 Looking at the pattern of houses and cottages in this part of West Lothian is instructive. Some are hidden amongst policy woodlands but most are open to view, whether near the roadside or across the fields. In the bleaker stretches, the farm steadings with their few old trees are often the only positive features.

2.120 Several design points can be taken from the existing pattern:

- *Orientation* The lie of the land across the whole area is consistently east-west (or to be precise, WSW-ENE). The river valleys, ridges, and main roads all follow this alignment, and the farmhouses and cottages almost always follow suit. Croft houses will blend in well if they do likewise. Where there is a scattered pattern of croft houses it is even more important to place them (loosely, not rigidly) on this common alignment. This has two practical advantages:
 - on sloping sites;
 - the amount of excavation or underbuilding is minimised;
 - the main rooms will face south, so catching the sun.
- *Local fit* If there is a good view to be had in some other direction, do not turn the house to face it, but put windows in the gable or corner, or add a wing at right angles. This general rule on east-west orientation should not be followed slavishly if it does not fit the local scene. Where a croft is to be placed near a road or in a field corner or by a woodland edge, it should be aligned parallel to it (or, with care, at right angles). Nothing makes a new house stand out more than placing it at an odd angle to surrounding features.
- *Farm steadings* nearly always have their buildings arranged in a rectangular pattern. Often the only exception is the circular or octagonal horse-mill. It follows that croft houses near old steadings will work best if they take up the same alignment. By extension the same thinking applies to new groups of croft houses.
- *Skylines* The pattern of ridges running across this area means that many farms and cottages are conspicuously located on the skyline. The usual strong resistance to skyline development need not always apply here. Where exposed sites are selected, there should be mature trees to soften the impact in the view, and special care with design will be expected.
- *Shelter* The prevailing wind is westerly, although cold east winds are also a problem. The houses themselves, their outbuildings, and their grouping and siting can all be designed to create shelter from east and west. Where there are already mature trees on site, houses should be located in closer proximity

to them to give a better sense of scale to the development. New tree planting should be concentrated on the west side of the crofts. Open aspects to the south are traditional, and to a lesser extent to the north.

The temptation to plant quick-growing conifer hedges for shelter should be avoided. There are several bad examples in the area and which stick out as alien green walls; they grow too tall in any case and look even worse if pruned.

2.121 The general spirit of all the advice offered in this part of the handbook on designing crofting developments is to *keep it simple, fit in with what's there and if in doubt, don't!* These recommendations also lead to the most economical solutions for the crofter. It is not however the council's intention to stifle originality, to hide everything out of sight, or to forbid modern design. Developers who are up for the challenge and are prepared to invest additional time, skill and money in trying to achieve a contemporary and innovative form of development will be supported and encouraged.

2.122 What people see - in the countryside just as in an art gallery - is a complete picture. A successful crofting scheme will be judged as a picture: it must all hang together. There will be highlights in the view, but it must not be too busy or crowded. The background all has to be filled in with care. Discordant touches are to be avoided (once built they cannot easily be painted over!). Small details will give the picture its depth and character - the stile for a new footpath, a well-placed outbuilding, and a pleasing stand of trees in a field corner.

2.123 Many people will contribute to the whole picture - the original landowner, the landscape planner, the architects and builders, the woodland and wildlife manager, the first crofters, and their successors. All have their own positive contribution to make: if they are fired with extra enthusiasm by the ideas of this handbook, then so much the better.



Part 3: MAKING SURE IT WORKS

3.1 This handbook can only give general guidance. Every case is likely to prove very different, each farm having its own problems and opportunities.

3.2 In the first instance, it is essential that potential developers engage in pre-application discussion with the council. Experience suggests that schemes that are submitted *cold* are more likely to take longer to process. The detail of a crofting scheme should be developed in close co-operation with planning officers, other relevant officers of the council, and where necessary, outside agencies and other external agencies, for example SEPA and Scottish Water. This allows the developer to proceed with greater certainty and reduces the risk of a scheme being sent back to the drawing board for fundamental changes.

3.3 It is quite a challenge to plan out a whole farm as a successful crofting landscape. It is even more of a challenge to get the best out of it, and to make sure that it works!

3.4 Management arrangements must be also made by the developer at the outset that will last for more than a lifetime. The developer is required to produce long term management plans which demonstrates how the residual fields, woodlands, areas of nature conservation, landscaping and paths will be managed and these will be subject to consultation with for a ten year period and which should be endorsed by the relevant key consultees, for example SEPA, SNH, The Forestry Commission. In any event, two main interests must be satisfied:

- *Public interest* In ensuring that the new woodlands and other amenities are properly established and that the whole site is well looked after.
- *Crofters interest* In having ample scope to do their own thing, while ensuring that there are some limits on neighbours and that there is no risk of the site deteriorating into rural scruffiness.

Legal arrangements

3.5 The tried and tested way of protecting private individual interests is through the title deeds. The deeds for each croft will define its boundaries, all mutual responsibilities for maintaining access roads and services, and any other restrictions on the management and use of the land the original developer of the crofts sees fit to impose.

3.6 Anyone buying a croft (especially as a first purchaser) will no doubt make sure they obtain thorough legal advice on the transaction. The difficulties that can arise with shared driveways or common areas are well known. Getting everyone's responsibilities clearly spelled out is essential.

The planning framework

3.7 The public interest is of course protected by the planning system. Usually it is sufficient to make sure a development works by imposing conditions on the approval of planning permission.

3.8 Lowland crofting however needs more than this, mainly because the people building the individual crofts will not be always responsible for all the landscape works. Each farm will therefore require to be made the subject of a planning agreement, ordinarily made under *Section 75 of the Town and Country Planning (Scotland) Act 1997*.

3.9 This agreement is made between the original owner and the council as planning authority. It is recorded in the *Register of Sasines* as a burden on the whole farm (or area

entered into the crofting scheme). It runs with the land, and therefore continues to be binding on each croft and on all the remaining land. Some of its terms will be satisfied as the crofts are developed. Those which cover the long-term management of the land will continue in perpetuity, and can only be varied or dropped by further agreement between the council and the current owner(s) concerned. Clearly such an agreement is not to be entered into lightly.

3.10 Many people will immediately think of a Section 75 Agreement in its commonest use, which is to restrict a new house in the countryside to someone engaged in agriculture. This is not the intention here. *Section 75 of the Town and Country Planning (Scotland) Act 1997* simply enables the planning authority to make an agreement with a landowner regulating the use of the land. The croft houses will not be restricted in their occupation and can be freely resold to any purchaser. That purchaser will of course inherit those Section 75 obligations that still apply to the croft - as spelled out below.

A model planning agreement

3.11 *Appendix 3* provides a model form of *Section 75 Planning Agreement* to suit the typical crofted farm. It is not intended to be a rigid model since every farm will have its own peculiarities and special needs and each agreement will therefore require to be tailored to suit. Nevertheless, it is a good starting point.

3.12 This part of the handbook goes through each aspect of managing a crofting development, explaining what needs to be achieved.

Interpreting the planning agreement

3.13 Seeing all the clauses laid out end to end may put some potential crofters off, and may give landowners the impression that they would be severely restricted and subjected to close control. This is not the intention. The agreement should however be seen as a set of safeguards. The council certainly has no wish for a *hands-on* involvement in managing each crofting scheme, and will be only too delighted if it never has to invoke legal action to enforce the agreement.

3.14 Steps where the crofting developers have to come to the council for approval of their actions have been kept to a minimum. If it is desired to eliminate uncertainty, some of the steps could be agreed and written in at the outset - for example, the intended ultimate ownership of the woodlands.

3.15 Where the council has rights of approval or refusal under the agreement, it will be bound to exercise them reasonably and without delay. Provision is made for independent arbitration in the event of disagreement.

Getting the best out of it

3.16 These legalistic factors may seem off-putting and heavy-handed. This part of the Handbook balances the negatives and the safeguards by also highlighting the scope for getting the best out of these new-found opportunities. It will equally make it clear where constraints are not being applied, and where creative use of the land will be encouraged. At each step a balance will have to be struck between freedom and precaution.

Timing: doing things in the right order

3.17 With the typical town development of single house plots, the developer builds the road to a certain level, puts in the main services, sells the plots, waits for the houses to be built, and then finishes the road and landscaping. With lowland crofting the order of events is somewhat different, and will be monitored more closely than might otherwise be the case.

3.18 There will be three main stages where the crofting developer must do things, before people can move in to their croft houses:

- Before the croft plots are advertised for sale or a planning application is submitted for any development on any croft holding.

The council will require to see and approve the *particulars of sale* and the *title conditions*. These must adequately secure the subsequent maintenance of any facilities to be shared with other croft holdings. The particulars of sale must explain that the croft holding is part of a lowland crofting scheme in respect of which has been agreed with the council and should refer to the availability of this handbook. They should also include a plan of the whole layout, a copy of the *Section 75* legal agreement and a *Lowland Crofting Scheme Plan* which is the agreed plan illustrating the way the lowland crofting scheme is to be implemented on the crofting land.

The council will require to see and approve a design guide which has been prepared by the developer or the owner and which sets out, for the whole development, the design principles, materials and maximum floor area limits of each croft holding. An example of this is produced as Appendix 4.

The parties will be required to appoint a project architect to co-ordinate and oversee the implementation process. Until the development of the lowland crofting scheme has been completed the parties shall ensure that the project architect has approved all aspects of the design of each croft holding and the project architect shall ensure that the design guide for the development has been complied with.

- Before any construction work on any croft holding.

The woodlands areas shall be fenced off with stockproof fencing of a specification to be approved by the council's authorised officer, and be planted in accordance with the plan and specification to be prepared in accordance with the planning permission.

All amenity tree and hedgerow maintenance and planting and incidental woodland planting and paths work which requires to be submitted for approval in terms of the planning permission shall be made the subject of a binding contract and implemented within a prescribed time period.

The multiuse paths shall be signposted and defined on the ground and shall comply with the terms of the Land Reform (Scotland) Act 2003.

Construction of houses shall not commence until the parties have constructed the relevant access points of the public highway and have completed the whole of the relevant access roads leading to the crofting land.

- Before any croft holding is occupied.

The council will require to see written confirmation that parties have made adequate arrangements for the disposal and treatment of sewage either by

connection to the public sewer or by installation of a private sewage treatment plant, that these facilities have been implemented and are operational, and that binding maintenance arrangements are in place. This is particularly important when plant is not intended for adoption. Timing clauses will put strong pressure on the crofting developer to put the services in to the right standard at the outset. These obligations are also necessary in order that crofters can see their future surroundings clearly taking shape before they commit themselves to buying.

Croft purchasers will want to make sure for themselves the exact standards of drainage being provided, and how all other services (water, power, telephones) will be laid on. As with any other development, the council is not responsible for any aspect of service availability or provision.

It would be most unfortunate if people bought croft plots in good faith and then found the council preventing work on their houses for reasons beyond their control. This is why landowners are advised not to sell plots until the necessary works are done. It would also be prudent for croft purchasers to obtain written confirmation from the council that the landowner has completed the necessary works to approved standards, before committing themselves.

Where there is a failure to maintain any private sewage treatment works or other shared facility the council shall be entitled to enter onto the land and carry out the necessary works and recharge these to the owner.

Good surroundings: the woods and fields

Looking after the woodlands

3.19 New woods do not just take care of themselves. The *establishment period* is crucial and must be planned for from the outset. It is anticipated that the woods will be eligible for forestry authority grants. A new grant scheme based on land management contracts was introduced in 2007.

3.20 The parts of the woodland areas that attract a grant from the forestry commission on completion of planting shall be maintained by the developers to a standard that will attract final grant payment from the authority after a period of five years from the date of completion of planting.



3.21 If forestry commission grant is not being sought, the developers and the owners will maintain the woodland areas jointly during that period of five years following the completion of planting.

3.22 It is strongly recommended that a recognised landscape or forestry contractor be engaged to do the planting and initial maintenance. Any deficiencies during this period will then be made good under the contract.

3.23 Immediately prior to the commencement of any development in accordance with the *Lowland Crofting Scheme Plan* the developers or owners will be required to deposit a bond with the council issued by a recognised UK financial institution. The value of the bond will be negotiable and will be determined by the scale of the development and the extent of the works necessary to secure the implementation of the crofting scheme.

3.24 The bond may be called up by the council in the event of the developer or owner failing to satisfactorily implement, maintain or manage the woodland areas. The woodland areas, once planted and established, shall continue in such use and the developers and owners shall be required to prepare and submit to the council for approval a woodland management agreement. This shall set out arrangements for the continued maintenance and management of these areas.

3.25 Unless the developer is to retain the woodlands as a whole or in part the fragmentation through piecemeal sale will be discouraged. The obligations imposed in this agreement shall not prevent the disposal by sale or lease of the woodland areas but any such disposal during a period of seven years from the completion of the planting, or the first disposal of such an area by sale or lease shall be subject to the prior approval of the council.

3.26 There are several potential *takers* for the woodlands:

- *Commercial forestry companies* may be interested in acquiring woodland blocks, to produce timber for pulping or chipboard, but probably only once well established in view of their small size;
- *Private individuals* are increasingly interested in owning small woods, whether for pure pleasure, or to manage for wildlife or sporting interests, or as a convenient source of firewood. Such individuals might live locally, or in the city;
- *A group of crofters* may wish to acquire the woods in order to protect their amenities. This would normally involve making some formal joint ownership and management arrangement;
- *Voluntary or charitable bodies* may well be prepared to take over management of woods with significant wildlife, landscape or public access value. If this is intended, it makes sense to involve them from an early stage in the design and management plans. They will usually want the woods to be endowed with sufficient income to cover their running costs. Examples of such bodies include the Central Scotland Forest Trust, the Woodlands Trust, the Scottish Wildlife Trust, and local community groups.

3.27 There is an increasingly recognised value of fast-growing hardwoods such as willow and alder as a commercially harvestable source of fuel. There is a potential use of landscape *rooms* inside the long-term tree belts but the landscape implications will be closely considered before being an accepted land use on a crofting site.

3.28 Finally the agreement will have clauses dedicating the woodlands to that use in perpetuity, and preventing development of any kind within the woodland area without the council's consent. This does not mean that the pattern of woodlands will be fossilised and sterilised forever. There may well be good reasons in the future to adjust the boundaries or even remove a particular area of wood, which the council can agree to. Similarly, the development of leisure activities or timber related businesses, for example, within the woods might well be encouraged. The main purpose of such a clause is to remove the potential for pressure at a future date for additional residential development in the woodland areas.

Managing for biodiversity

3.29 The easy bit is to mark areas for nature conservation on the plan: the hard but interesting bit is to actually create a meaningful wildlife habitat where, often, little value existed before, and to protect and enrich it over the years.

3.30 In the first instance, it shall be a requirement that the planning application should be supported by a thorough audit / baseline survey of existing biodiversity interest.

3.31 A *Wildlife Management Plan* should also be prepared to cover the whole farm. This can suggest ways of getting the most out of the fields, woods and crofts - both separately and, crucially, as an interacting system. Given that all three components may end up in separate and multiple ownership, it is vital to recognise that the boundaries are often the most fruitful and sensitive areas for wildlife. There is no point creating wildflower meadows rich in insect life if adjacent fields are being sprayed with pesticide! Similarly, if one objective for the woodlands is to have thick bushy edges, the owner of the fields alongside must share this view - and not see it as untidiness to be machine cut into a neat hedge.

3.32 Where land is to be specifically reserved for biodiversity, a management agreement of some kind will be necessary. This could transfer ownership of the land to a suitable wildlife charity, or possibly to the council, as a local nature reserve. Alternatively, the land might simply be managed by a group of interested crofters, or by the farm or woodland owner. In either case, the agreement will stipulate the uses to which the land will be put and the practices that will or may not be applied. It may also regulate public or private access onto the land.

3.33 Just as with woodlands and public access, the *bond* referred to earlier may be called upon to ensure that the nature conservation value becomes properly established.

Managing public access

3.34 Since enactment of the *Land Reform Act*, all recognised paths, such as those that have been developed through the planning system, are protected by the council using its access authority powers.

3.35 Once the multiuse paths shown on the *Lowland Crofting Scheme Plan* have been defined on the ground in accordance with the terms of the *Section 75 Agreement*, they shall be made accessible in terms of the *Land Reform (Scotland) Act*. The parties shall be required to ensure that paths remain free from obstruction or safe for use and that the paths are in reasonable condition for passage by the public to the satisfaction of the council. Furthermore, the developers and owners shall be obligated not to carry out any activity on the land adjoining the paths that may be incompatible with their safe use for passage by the public.

3.36 A path agreement under the act could be entered into to define the path's management but this should not ordinarily be necessary as the burden of managing the access should be borne by the developer or passed on down by the developer to the residents.

3.37 No closure or diversion of any path shall be permitted without the prior written approval of the council.

3.38 If the paths are properly specified and constructed during development then the maintenance should be fairly routine for 20/25 years. This depends on factors such as level of use, gradients and vandalism i.e. illegal use of the paths by motorbikes and vehicles. There may be a need to review barriers or install barriers depending on calls for access from certain user groups or as a response to damage and problems caused by a particular group. At some point significant reconstruction of the path will also be required.

3.39 Responsibility for maintenance will rest with the landowner), unless the council chooses to *adopt* it. The council will however be entitled to carry out any works of maintenance or improvement if it sees fit, at its own expense as with any right of way. If any works are required because the landowner has deliberately blocked or disrupted the access, then the cost may be recharged. The landowner will usually be a farmer, woodland owner, or trust rather than an individual crofter.

Making good use of the agricultural land

3.40 The *Section 75 Agreement* will cover proper management of the best fields to be retained for agriculture.

3.41 All fields shown in the *Lowland Crofting Scheme Plan* as retained agricultural land shall be managed for agriculture to the satisfaction of the council. Should the council consider that any fields are causing an unacceptable visual or functional nuisance the owners of the land will be given formal notice and a reasonable time period to remedy the situation, failing which the council will then be entitled to enter onto the land and carry out the necessary works and recharge these to the owner.

3.42 The first disposal of the fields after crofting sub-division will require the council's approval. This may be stated in the original planning application or left for later decision. First use covers either retention by the original farmer or sale/long lease to another farmer or user.

Good neighbours: running the crofts

3.43 Positive encouragement will be given to all crofters to put their land and property to good use, in ways that might not be practicable or desirable in towns. This must inevitably however be tempered by a minimum degree of restraint and regulation, in the interests of neighbours and the wider public.

Using the land

3.44 The opportunity to have several hectares of land at your disposal is a rarity, to be put to good advantage. There are many possibilities for crofters to consider:

- *Running a smallholding as a business* (whether full or part-time). Given the relatively poorer land quality in most of the area, this is unlikely to be commercially viable in most instances unless of course a specialised market is in mind - for example, organic or free-range produce. It is not anticipated that many crofts will actually operate as agricultural or horticultural enterprises.
- *Hobby farming*. There are many people who would like to cultivate fruit and vegetables, or breed rare animals, or keep bees. Lowland crofts would be ideal for hobby farming.

- *Horses.* Significant demand is expected from people wishing to keep their horses



on their own land. Two notes of caution here: advice should be taken on the minimum area needed (at least 0.8 – 1.2 hectares (2-3 acres) of good grazing per horse), and on managing the ground. Land grazed only by horses can soon deteriorate into rushes or thistles. It should be regularly cut and if possible grazed by other animals. If several crofters can manage their paddocks jointly, to rotate them for hay and grazing, so much the better.

- *Woodland and wildlife.* Some crofters may want to create their own private woods and nature refuges, just for enjoyment or perhaps as a source of firewood.
- *Landscape gardening.* The chance to create a large country garden from scratch is very rare, but efforts in the last century and in the thirties are now much appreciated features in many areas. Crofts selected for this purpose should preferably be isolated rather than an odd one in a group, and the boundary planting should be native, with exotics kept well within.

3.45 It is very disappointing if crofts are simply mown as big lawns, or even worse let go wild. Croft developers will be encouraged in selling crofts to satisfy themselves that each purchaser has a good end use in mind, especially if they are buying more than half a hectare or so. This will reassure other purchasers that the whole area will be well looked after, and thus improve its value.

3.46 As a basic safeguard, the legal agreement will require that each croft be given a minimal amount of maintenance if it is not being put to any acceptable use, and will empower the council to do this on a rechargeable basis. It will only be likely to use this power if the neglected land is publicly visible or is causing nuisance to neighbours.

Agricultural buildings

3.47 Farmers and smallholders are generally free to erect agricultural buildings without the need to secure full planning permission. This privilege has however been widely abused in the past and if allowed to go unchecked on a crofted farm could really spoil the whole area. A condition on the planning consent will therefore *withdraw* this *permitted development right* over the crofted area.

3.48 Proposals for agricultural buildings and which require planning permission will be viewed favourably, providing:

- They are sympathetically designed, following the same basic guidelines on materials and siting as for the houses;
- They are not excessively bulky or extensive (not dominating the croft houses);
- They are not placed hard on the boundaries of other crofts;
- They are not used for intensive indoor livestock rearing.

Open storage

3.49 The other common abuse on many farms and smallholdings in West Lothian is the scatter of machinery, old vehicles, and salvaged materials of doubtful usefulness around the steading or even out in the fields. A further aspect of this problem is the casual tipping of farm refuse in hollows and corners.

3.50 Again, a condition on the planning consent will prohibit open storage or dumping of any kind without express approval. Good reason would have to be shown for this to be granted, and of course full screening would be essential.

Running a business from a croft

3.51 Crofters will be encouraged to use the freedom, space, and financial asset of their crofts as the base for their own businesses. Professional or service businesses that simply use a room in the house as an office base should create no problems.

3.52 It will not however be part of the planning agreement to insist that each crofter's use of their land be explicitly approved: they will be relatively free to do as they wish, providing it is not *development* requiring planning permission. The council is however mindful of the need to exclude uses that have the potential to cause serious nuisance and which would disturb a quiet rural area or other croft neighbours. These include the repair of vehicles, working with or dealing in or storing scrap or recycled materials, businesses that are dependent on being serviced by more than one large goods vehicle.

3.53 Uses that also involve buying goods in for re-sale, employ more than two people or depend on signing, advertising or identification larger than a typical house name on the building or beside the road are also excluded. Retailing from crofts will only be acceptable as a minor ancillary - perhaps the produce of the smallholding, manure, craft goods made on the premises, or a specialised service.

3.54 Businesses that might be particularly well suited to crofts include:

- All the mobile, van-based trades (e.g., plumbers, service engineers, landscape contractors);
- Craft workshops;
- Specialised small product manufacturing;
- Tourist facilities such as B and B, farm holidays.

3.55 Businesses such as kennels and catteries may be appropriate but the specific locational circumstances would need to be looked at very carefully, given the noise and amenity implications for neighbours.

3.56 Generally, any non-residential use should be restricted to *Class 4* of the *Use Classes Order*, but subject to an assessment of that use in terms of traffic generation, the impact on the amenity of adjacent households and the overall appearance of the development.

Further residential development

3.57 The pattern and density of residential development approved in the original crofting scheme will be seen as the final picture, not as a starting point for rural proliferation.

No further separately owned houses will be permitted within the crofted area.

3.58 Crofting developments will normally have permitted development rights withdrawn, to ensure originally approved developments and house designs are not eroded in quality in a piecemeal fashion. This doesn't mean planning permission won't be granted for any extensions or outbuildings, merely that they will require to be subject of approval of the council. This is because we have tended to remove permitted development rights on most crofting developments.

3.59 In addition, the council will look sympathetically at proposals for one subsidiary linked accommodation unit on each croft for family or close relatives or dependents. Such accommodation should be:

- Physically linked or grouped very closely to the original croft house;
- Designed in compatible style as a smaller, subsidiary building;
- Capable of being reabsorbed into the main house or put to other good use such as B and B if circumstances change.

3.60 In other words, the appearance of a separate house should be avoided. There should be no suggestion or expectation that the dependent's accommodation might be suitable for resale independently from the original croft.

3.61 No other additional houses will be permitted in the crofted area. To make this fair and clear to original and subsequent croft purchasers, a clause will be inserted into the legal agreement to prohibit the development of more than one separately-owned house on each croft. If one main purpose of the crofting scheme is to create more spacious rural house plots, it would undo that benefit to have them sub-divided again.

3.62 In the event that a croft owner finds that land is surplus to needs, there is no impediment to it being let out, for grazing for example. Neither would the transfer of some land from one crofter to another normally be objected to.

Maintenance of common access roads and services

The problems of unmade, deteriorating roads and lanes are all too well known, and must be avoided by making permanent arrangements at the outset. There are two main options to consider for shared access roads:

- Construct the road to adoptable standard and have it taken over by the council. This will be encouraged, providing the design requirements are reasonably rural, but is of course expensive.
- Construct the road to a lesser standard and include legal responsibilities for its private maintenance in the sale of the crofts. In this case, the road base make-up is advised to be to the adoptable standard, with the saving coming from the omission of the expensive final tarmac coat. This means that the crofters can always decide to upgrade it for adoption later.

3.63 The private road option is perhaps best suited to cases where an existing serviceable farm road is available, or where a very long access only serving 2-3 houses is involved. A bituminous surface is recommended if pothole filling is not to be a regular chore.

3.64 Nevertheless, it is worth noting that dirt roads work very well in wealthy countries as diverse as Sweden and Italy, where it is accepted practice to scrape and roll them every year. Some experiments in low-cost road design, paying attention to good drainage and selection of bladeable materials, could pay dividends.

3.65 When it comes to repairing a shared private road, there will always be a problem of who takes the lead in organising it and in collecting contributions. A refinement here might be to make each length (or the whole road) the responsibility of one crofter, or perhaps of the owners of the original farm if they are the prime user. Alternatively, a predetermined index-linked sum might be payable annually by each crofter to a common fund.

3.66 The other important common service will be any shared private sewerage system. Similar considerations will of course apply.

3.67 A clause in the legal agreement will entitle the council to be satisfied that adequate arrangements have been made for the continuing maintenance of private roads and sewerage systems, if this appears to be a matter of potential public concern.

The benefits of working together

3.68 This part of the handbook has sought to highlight the potential benefits of crofting a farm as well as to explain the safeguards that may be needed. Inevitably, there is a risk that by breaking it up into the components of woodlands, fields, and crofts - and by foreseeing problems in bureaucratic terms! - that the spirit of the crofting vision may have got a little lost by the wayside.

3.69 To conclude, therefore, on a positive note: the greatest benefits of a crofting scheme will flow where the crofters work together. Naturally, in some schemes, the purchasers will seek nothing more than their own personal plot in the countryside, to develop and manage as independently as possible.

3.70 Above this base, there are many levels of possible co-operation:

- Self-build groups, to organise some or all aspects of the initial development;
- Shared maintenance groups - for the access roads, or the paddocks, or the boundary fences;
- Crofter residents associations, for a whole farm or several neighbouring farms;
- Land management groups, to operate field or woodland areas in common, whether for amenity or commercially;
- Croft groups, to develop and promote a crofted farm as a croft or business community;
- Leisure interest groups, to operate some central facility (eg, equestrian care) for some or all of the crofters sharing a common interest.

3.71 It would be a most welcome product of the crofting initiative if cohesive, stable, self-reliant rural communities were to evolve, benefiting not only the new crofters, but also existing village and rural dwellers nearby, and the wider social health and attractions of West Lothian.

USEFUL CONTACTS

Farming & Wildlife Advisory Group
Scottish Head Office
Algo Business Centre
Glenearn Road
Perth PH2 ONJ
e-mail: scotland@fwag.org.uk
Tel: 01738 450500

Scottish Natural Heritage
Laundry House
Dalkeith Country Park
Dalkeith
Midlothian EH22 2NA
e-mail: enquiries@snh.gov.uk
Tel: 0131 654 2477

Forestry Commission Scotland
Silvan House
231 Corstorphine Road
Edinburgh EH12 7AT
email: fcscotland@forestry.gsi.gov.uk
Tel: 0131 334 0303

Central Scotland Forest Trust (CSFT)
Hillhouse ridge
Shottskirk Road
Shotts ML7 4JS
e-mail: enquiries@csft.co.uk
Tel: 01501 822 015

Sustrans Scotland
16a Randolph Crescent
Edinburgh EH3 7TT
e-mail: info@sustrans.org.uk
Tel: 0131 539 8122

SPOKES
St. Martin's Church
232 Dalry Road
Edinburgh EH11 2JG
e-mail: spokes@spokes.org.uk
Tel: 0131 539 8122

The British Horse Society
Stoneleigh Deer Park
Kenilworth
Warwickshire CV8 2XZ
e-mail: enquiry@bhs.org.uk
Tel: 08701 202244

The Scottish Rights of Way & Access Society
(ScotWays)
24 Annandale Street
Edinburgh EH7 4AN
e-mail: info@scotways.com
Tel: 0131 558 1222

Scottish Water
Head Office
Castle House
6 Castle Drive
Carnegie Campus
Dunfermline KY11 8GG
Tel: 0845 601 8855

Scottish Environment Protection Agency (SEPA)
Corporate Office
Erskine SEPA Court
Castle Business
Park Stirling FK9 4TR
Tel: 01786 457700

APPENDICES

- Appendix 1 Local plan policies relative to lowland crofting development and new houses in the countryside
- Appendix 2 Map showing where the lowland crofting policy applies
- Appendix 3 A model planning agreement
- Appendix 4 Example of a design guide
- Appendix 5 Example of a lowland crofting scheme plan
- Appendix 6 Approved lowland crofting schemes / map
- Appendix 7 *The Lothians Landscape Character Assessment*

NB: For reasons of sustainability, this document is **not** physically provided. It can however be viewed and downloaded without charge from the SNH website by using the following link:

<http://www.snh.org.uk/publications/on-line/LCA/lothians.asp>

Appendix 1

Policy extracts from the Adopted West Lothian Local Plan 2009

Policy ENV 31

Proposals for new build development in the countryside will not normally be approved.

Exceptions to this policy are:

- (i) a house for a full-time worker in agriculture or other rural business;
- (ii) a house for a retired farmer who wishes to remain on the farm but vacate the existing farmhouse to accommodate his successor;
- (iii) development of a visually intrusive brownfield site where there is no realistic prospect of it being returned to agriculture or woodland use and the site has no significant natural heritage value in its current condition;
- (iv) replacement of an existing house in the countryside which is of a poor design or in a poor structural condition;
- (v) infill development within the curtilage of an existing building group or infilling of gaps between existing houses of a single plot width;
- (vi) a very small number of proposals for a house which by virtue of its design, location and landscape setting makes an exceptional contribution to the appearance of countryside; and
- (vii) small scale farm diversification projects or other business proposals appropriate to a rural area which would help sustain the rural economy or create significant social benefits.

In the case of the first and second policy exceptions above, approval of any new house must be linked to the business by a section 75 agreement.

Policy ENV 32

There is a particularly strong presumption against proposals for new build development in the countryside areas identified in policies *ENV 2-7*, *ENV 9* and *ENV 19-20*.

Policy ENV 33

Any new development in the countryside acceptable in terms of policies *ENV 31* and *ENV 32* must conform to the design and development management policy guidelines issued by the council and contained in *Planning Advice Notes* issued by the Scottish Government. In particular, new developments should:

- a. demonstrate there is a specific locational need and that there are no available, less sensitive alternative sites;
- b. avoid open fields, skylines and other exposed locations;
- c. avoid sites immediately adjacent to main roads and railway lines, or which constitute ribbon development on the edge of settlements;
- d. avoid disturbance or damage to trees, woodland and wildlife habitats and the site and setting of listed buildings, scheduled monuments and archaeological sites;
- e. respect and complement local vernacular building styles including ridge orientation, roof pitch, chimney, windows, door, and porch details and the use of materials;
- f. avoid the creation of excessive underbuilding;
- g. ensure outbuildings, garages and fuel storage tanks are designed or appropriately located, or screened, so as not to have a significant visual impact on the landscape and not to detract from the overall appearance of the development;
- h. incorporate boundary treatments, with preference given to stone walling, and use of locally characteristic hedging plants (eg hawthorn or beech), and the avoidance of ranch or palisade fencing, concrete block walls and fast-growing conifers;
- i. incorporate significant enhancements to existing landscaping using native woodland species;
- j. be serviced to accepted standards, without excessive resource commitment by the council;
- k. be capable of being served by a safe vehicular access;
- l. avoid disruption of public rights of responsible access or to rights of way or core paths (where appropriate, opportunities should be taken to provide links to these routes);
- m. avoid sites adjoining or particularly visible from rights of way, core paths, the Union Canal, view points and other well frequented public areas; and
- n. in exceptional circumstances, innovative and contemporary designs, compatible with PAN 72, may be considered acceptable.

Policy ENV 34

Proposals for the conversion, sub-division and re-use of existing buildings in the countryside which the council deems to be worthy of retention because of their architectural or historic merit will be considered favourably, providing they are sensitive to the surrounding countryside and satisfy the following criteria:

- a. the fabric of the buildings must be such that the original walls and roof are substantially intact and are capable of retention. Buildings of a ruinous nature will generally not be appropriate for conversion;
- b. buildings should be of local, visual or historical interest and be constructed in traditional materials to justify retention and conversion;

- c. buildings must be shown to be physically capable of undergoing conversion without the requirement for excessive demolition and rebuilding and their original appearance must substantially be retained or reinstated. A structural survey by a qualified engineer must be submitted as part of a planning application to satisfy this criterion;
- d. buildings located within or close to a working farm and proposed for residential development will not usually be considered appropriate for conversion and, in all cases, the conversion must not create disturbance to the agricultural management of adjoining land;
- e. new development ancillary to conversion schemes, including extensions, will only be accepted where this can be demonstrated as necessary to secure the restoration of the existing building(s) without adversely affecting the character of the building(s). New or substantial additional buildings will only be accepted where there is a clear design need.
- f. the means of access to the building and site must be appropriate in scale and design to a rural context. A proposal must also include acceptable water supply and drainage arrangements;
- g. works must be executed in a sensitive manner and retain architecturally important features wherever possible and make use of existing buildings and traditional and complementary building materials, techniques and specifications; and
- h. there must be no disruption of public rights of responsible access or to rights of way or core paths.

Policy ENV 35

The suitability of proposals for very low density rural housing and woodland development, in addition to generally satisfying the requirements of policies ENV 21, ENV 23 and ENV 24, will be assessed against each of the following criteria:

- a. this policy will apply only to those parts of West Lothian identified within the area detailed on the proposals map.
- b. proposals which would create an unacceptable impression of ribbon development or suburbanisation, by themselves or through cumulative impact with other developments, will be refused.
- c. there will be a presumption against proposals in Areas of Great Landscape Value except where there are exceptional improvements to the landscape, biodiversity and access opportunities.
- d. Areas of Special Landscape Control and Countryside Belts have special qualities and functions. Any proposals within these areas must clearly demonstrate that these qualities and functions are not adversely affected but improved by the proposed lowland crofting scheme.
- e. planning applications must be accompanied by an assessment of the impact of development on the site carried out by a qualified landscape architect and ecologist. Proposals must demonstrate a clear, quantifiable benefit in landscape and ecological terms.
- f. the layout and design of buildings must conform to a design brief to be prepared in accordance with the principles detailed in PAN 72, *Housing in the Countryside*, paying particular attention to the location of buildings within the landscape.

- g. any permanent development, including houses, outbuildings, garages, driveways, hardstandings and access roads must be assimilated into the landscape without jeopardising its existing character and appearance. Specifically, built development must avoid skylines, open fields or exposed locations.
- h. new access provision should preferably link with the existing path network and shall be constructed to a standard appropriate to its location and use. Any proposal must include sign posted paths, capable of being used without conflict by walkers, cyclists and horse riders but which are not capable of being abused by, for example, quad bikes and motorcycles.
- i. sites must be capable of being serviced to accepted standards without excessive resource commitment by the council.
- j. sites must be capable of being serviced by a safe vehicular access which is integrated within the landscape.
- k. the proposal shall be for a whole farm or other area large enough for comprehensive treatment, normally not less than 40 hectares.
- l. the density of residential development shall not exceed 10 houses per 50 hectares; it may well be less in attractive or visible areas, and where houses already exist.
- m. any non-residential use shall be restricted to class 4 of the Use Classes Order, but subject to an assessment of that use in terms of traffic generation, the impact on the amenity of adjacent households and the overall appearance of the development.
- n. a minimum of 50% of the gross area shall be devoted to native woodlands, public access and biodiversity conservation and enhancement. Archaeological sites should be protected.
- o. legal agreements will be required to:
 - ensure adherence to design guidance;
 - guarantee the implementation of all woodland planting and other landscaping, public access, and wildlife habitat proposals prior to or concurrently with the development of the houses;
 - ensure the proper long-term maintenance and management of all woodlands, means of public access, biodiversity areas and associated works;
 - control the use of the land attached to each house, any business uses associated with the house or the land and any future sub-division or intensification of development, including the erection of additional houses.

Appendix 3

A MODEL PLANNING AGREEMENT

MINUTE OF AGREEMENT IN TERMS OF SECTION 75 OF THE TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

between

WEST LOTHIAN COUNCIL constituted under the Local Government Etc. (Scotland) Act 1994 and having their principal offices at West Lothian House, Almondvale Boulevard, Livingston, West Lothian, EH54 6QG (who and whose statutory successors as the Planning Authority for the Local Government area of West Lothian are hereinafter referred to as "the Council")

and

(who and in substitution whose successors in ownership of the application site affected by the planning permission are hereinafter referred to as "the Owners")

with consent of

(First) having their Head Office at (who and in substitution whose successors and assignees as the developers of the Application Site are hereinafter referred to as "the Developers")

with consent of

(Second) having their Head Office at (who and in substitution whose successors and assignees as heritable creditors of the owner are hereinafter referred to as "the Consentors")

whereas

- (a) The Council is the Planning Authority for the Local Government Area of West Lothian under the 1997 Act.
- (b) The Owners are or are about to become the heritable proprietors of the area of land described in Schedule 1A hereof (hereinafter called "the Application Site").
- (c) A planning application has been made to the Council under reference number for planning permission to develop the Application site for with associated works.
- (d) The Council are minded to grant planning permission under reference subject to the parties hereto entering into this Agreement.
- (e) The Owners have been requested by the Developers to enter into this agreement in relation to the Application Site and the Developers by their execution hereof hereby (First) consent to the Owners entering into this Agreement and (Second) agree as by their execution hereof, to be bound by the whole terms and conditions of this agreement.

- (f) The Owners have granted in favour of the Consentors a Standard Security over the Application Site and the Consentors by their execution hereof hereby consent to the Owner entering into this Agreement.
- (g) CONSIDERING that under the terms of Section 75 of the 1997 Act a Planning Authority may enter into an agreement with any person with an interest in land in its area (insofar as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land either permanently or during such period as may be prescribed by the agreement and that any such agreement may contain such incidental or consequential provisions (including provisions of a financial character) as appear to the Planning Authority to be necessary or expedient for the purposes of the agreement.
- (h) AND WHEREAS the parties have agreed to enter into an agreement with the Council in terms of the Section 75 of the 1997 Act.

THEREFORE the parties DO HEREBY AGREE as follows:-

1 DEFINITIONS

1.1 In this Agreement the following words have the meanings ascribed to them as follows:

- **“affordable housing contribution”** means where no affordable housing land is to be transferred in terms of this agreement, the sum of £xxx,xxx- indexed to be paid to the Council as a commuted sum in place of the transfer of the affordable housing land;
- **“application site”** means the area of land which is within the boundaries of the planning application and which is described in Schedule 1A hereof;
- **“commencement of the development”** means the initiation of the planning permission by the carrying out of a Material Operation;
- **“completion of the development”** means the date of practical completion of the last of the works carried out in implementation of the planning permission other than any works of an ongoing nature required in terms thereof;
- **“construction price index”** means the Tender Price Index as published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors on a Quarterly basis, or if that index ceases to be published or the basis upon which such index is calculated is substantially changed or rebased, such substitute or alternative index most likely to achieve an equivalent result as the parties may agree or, in the absence of agreement, as shall be determined pursuant to Clause 9 of this Agreement;
- **“croft holding”** means a planning unit being an area of land within the area shown hatched red on plan 1 on which not more than one residential unit together with, if required, one subsidiary linked residential accommodation unit may be permitted in terms of a planning permission.
- **“date of commencement”** means the date on which there is Commencement of the Development;

- **“Developer”** means the party who carries out the development on the application site;
- **“the denominational secondary school education contribution”** means the payment to the Council of the developer contribution for the provision of a denominational secondary school in West Lothian by payment of the aggregate of £x,xxx indexed multiplied by the number of houses other than flatted dwellinghouses authorised by the planning permission for construction on the application site, plus £x,xxx indexed multiplied by the number of flatted dwellinghouses authorised by the planning permission for construction on the application site. All monies paid to the Council for the denominational secondary school in terms of this agreement will be used or allocated by the Council within a period of twenty five years from the date of the last payment to the Council of the monies or any part thereof. If the monies or any part thereof is not disbursed or allocated by the Council within twenty five years of either (1) the date of final completion of the development or (2) the date of receipt by the Council of the monies, whichever is the later, the Council shall, subject to the terms of this condition, return the monies or any part thereof either not disbursed or allocated, without interest, to the Payer and the Payer will have no further liability hereunder. Where the Council has allocated all or part of the monies for the construction or maintenance of a new or existing facility no time limit shall apply to the Council in respect of the actual spend of those monies so allocated. This developer contribution is required in terms of Supplementary Planning Guidance issued from time to time by the Council;
- **“design guide”** means written guidance prepared by the developer or the owner and approved by the Council, that sets out, for the whole development, the design principles, materials and maximum floor area limits of each individual croft holding.
- **“indexed”** means in respect of any sum of money due to be paid to the Council in terms of this Agreement the relevant sum increased in accordance with the following formula: $\frac{b \times c}{a}$

where:

- a** equals the Construction Price Index published as at March 2005,
- b** equals the Construction Price Index for the latest quarter at the date of expiry of the relevant period for which the Construction Price Index has been published immediately prior to the respective dates of that payment,
- c** equals the relevant sum to be Indexed;

“material operation” has the meaning ascribed thereto in section 27 of the 1997 Act;

“payer” means any party who makes a payment to the Council under the terms of this Agreement;

“planning permission” means in relation to the application site either (1) detailed permission for the approval of all matters relating to the development granted subject to the planning conditions to be applied by the Council, and/or (2) outline planning permission for the development granted subject to the planning conditions to be applied by the Council, and/or (3) the approval of all matters reserved for subsequent approval by a detailed or outline permission, granted subject to the planning conditions to be applied by the Council;

“planning unit” means no more than one residential unit together with, if required, one subsidiary linked residential accommodation unit to be constructed on any Croft Holding in accordance with the planning permission.

“plan 1” means the Plan marked “Plan 1” annexed and executed as relative hereto;

“plan 2” means the Plan marked “Plan 2” annexed and executed as relative hereto;

“plan 3” means the Plan marked “Plan 3” annexed and executed as relative hereto;

“project architect” means a suitably qualified person or body appointed by the developer and named to and approved by the Council’s authorised officer.

“Use Classes Order” means the Town and Country Planning (Use Classes) (Scotland) Order 1997 or any subsequent order amending or re enacting that order;

“VAT” means Value Added Tax and any substituted or similar tax;

“1997 Act” means the Town and Country Planning (Scotland) Act 1997 and shall include any amendment thereto or re-enactment thereof for the time being in force and shall also include all subordinate legislation made thereunder.

1.2 In this Agreement (unless the context otherwise requires):

- 1.2.1 The words “including” and “include” and words of similar effect shall not be deemed to limit the general effect of the words which precede them;
- 1.2.2 Reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated;
- 1.2.3 Obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally;
- 1.2.4 Words importing persons shall include firms, companies and bodies corporate and *vice versa*;
- 1.2.5 Words importing the singular shall be construed as importing the plural and *vice versa*;
- 1.2.6 Words importing one gender shall be construed as importing any other gender;
- 1.2.7 Words denoting an obligation on a party to do any act, manner or thing includes an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause or permit or suffer any infringement of that restriction;
- 1.2.8 Construction of this Agreement shall ignore any headings and front sheet (each of which is for reference only);

- 1.2.9 Reference to a numbered clause, schedule or paragraph are references to the clause, schedule or paragraph of or to this Agreement so numbered;
- 1.2.10 Any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision;
- 1.2.11 Any reference in this Agreement to a party or parties, shall, unless the context is otherwise, mean all of the parties to this Agreement; and
- 1.2.12 Reference to any party shall include the successors in title of that party.

2 PURPOSE OF THIS AGREEMENT

- 2.1 The purpose of this agreement is to secure the regulation of development by the permanent restriction or regulation of the land affected by this agreement. The undertakings, restrictions and conditions contained in this Agreement and in Schedule 2 attached hereto shall form real and heritable preferable burdens upon and affecting the land affected by this agreement.
- 2.2 The obligations in this Agreement shall be binding on the parties, their agents and servants and their successors (including their assignees) provided that no person shall be liable for any breach of any obligation contained in this Agreement after it has disposed of its interest in the land affected by this agreement save in relation to any antecedent breach prior to disposing of such interest.
- 2.3 Nothing in this Agreement shall fetter, prejudice or affect the Council's powers to enforce any specific obligation or term or condition in this Agreement nor shall anything contained in this Agreement fetter, prejudice or affect any provisions, rights, powers, duties and/or obligations of the Council in the exercise of its functions as planning authority for the purposes of the 1997 Act or otherwise as a local authority.
- 2.4 Nothing in this Agreement shall confer regulatory approval for any matter in particular to carry out any building, engineering or other operations in, on, over or under the Application Site.
- 2.5 No waiver (whether express or implied) by the Council of any breach or default of any other party to this Agreement or their agents, servants or successors (including their assignees) in performing or observing any of the provisions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any such provision or from acting on any subsequent breach thereof.
- 2.6 If any provision in this Agreement shall in whole or in part be held to be invalid or unenforceable under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
- 2.7 Save as otherwise provided, this Agreement shall take effect on the last date of signing of this Agreement and the obligations contained in this Agreement are conditional on the grant of the planning permission.

3 ISSUE OF PLANNING PERMISSION

The planning permission shall be granted by the Council within 7 days of the registration of these presents in the Land Register of Scotland or their recording in the General Register of Sasines.

4 DISPOSAL ONLY SUBJECT TO THIS AGREEMENT AND NO DISPOSAL PRIOR TO REGISTRATION

The parties agree that none of them either individually or together shall sell, assign, dispose, lease or in any other way alter their interest in the land affected by this agreement or any part thereof either (1) otherwise than subject to this Agreement and/or (2) prior to the registration of these presents in the Land Register of Scotland or their recording in the General Register of Sasines.

5 EFFECT OF DISPOSAL

In the event of any of the parties having disposed of, sold, assigned, disposed, leased or in some other way they have altered their interest in the land affected by this agreement, then either that party or parties shall be obliged within Seven days of the occurrence of any such disposal, sale, lease, assignation or other alteration of their interest in the land affected by this agreement, to provide in writing to the Development Management Manager, County Buildings, High Street, Linlithgow, EH49 7EZ, the following information: NAMELY the name and address of each and every party to any such disposal, sale, lease or other alteration of interest of the land affected by this agreement. The occurrence of any such disposal, sale, lease, assignation or other alteration of the interest in and to the land affected by this agreement or any part thereof shall include the conclusion of any contract, missive or other agreement for the disposal, sale, lease, assignation or other alteration or disposal of the Owners' interest in and to the land affected by this agreement or any part thereof whether or not the party who is acquiring the interest of the owner has completed title.

6 RESTRICTIONS AND CONDITIONS

The parties all agree that the restrictions and conditions contained in this agreement and in particular in Schedule 2 hereof are reasonable restrictions and conditions and agree that the restrictions and conditions shall apply to the land affected by this agreement.

7 DISCHARGE

- 7.1 At any time and from time to time when the provisions of any part of this Agreement have been satisfied, then if so requested by any party with an interest in the land affected by this agreement or any part thereof, the Council shall grant, execute and deliver to that party, a discharge of the relevant provision (or the part so discharged) within 28 days of such request, which discharge shall be in a form capable of being registered in either the Land Register or the Register of Sasines.
- 7.2 Provided that any party with an interest in the land affected by this agreement or any part thereof have meet their obligations in terms of this agreement, then on settlement of the sale at market value of any residential unit on the land affected by this agreement to a proprietor or proprietors for occupation thereof as a dwellinghouse then subject as aforesaid, this Agreement shall be deemed to be discharged in respect of that residential unit or dwellinghouse.

7.3 Subject to satisfaction in full of the matters referred to in this Agreement, if so requested by any party with an interest in the land affected by this agreement or any part thereof, the Council agrees and undertakes to grant a discharge of this Agreement. Further in the event of any planning permission granted pursuant to this Agreement being revoked or in any way falling, these presents shall fall and be deemed *pro non scripto* and the Council shall grant, execute and deliver a discharge of this Agreement.

7.4 Any party who requests a discharge in terms of this Clause 7, shall pay the Council's reasonable legal expenses and costs reasonably and properly incurred in connection with the negotiation and drafting of any such discharge.

8 VARIATION OF AGREEMENT/CERTIFICATE OF COMPLIANCE

8.1 Without prejudice to Clause 7 hereof, and subject to the Council being satisfied that the terms of this agreement are (1) otherwise satisfied, and (2) that it would be appropriate in all the circumstances to vary the terms of this Agreement, then, in the event of any party with an interest in the land affected by this agreement or any part thereof requesting that the Council agree to a variation of the terms hereof, the Council shall, subject to the foregoing, grant a variation of this agreement and the parties shall enter into a fresh agreement in terms identical to the terms of this agreement, subject only to any variations as may be agreed between the parties hereto. The party requesting the variation shall pay the Council's reasonable legal expenses and costs incurred in connection with the negotiation and drafting of any such variation.

8.2 Certificate of Compliance

The Council shall be obliged to grant a certificate confirming compliance with any of the obligations contained herein on being requested to do so by any party with an interest in the land affected by this agreement or any part thereof, provided such obligation has been implemented in accordance with and to the standard required by the relevant provisions of this Agreement and that the party making such request meets the Council's whole reasonable legal fees and expenses in connection therewith.

9 DISPUTE RESOLUTION - EXPERT DETERMINATION

Any dispute or difference arising between the parties or any of them concerning the construction or implementation of this Agreement shall, failing agreement, be referred to and determined by an expert appointed by the parties, which expert shall be a suitably experienced member of the Royal Institute of Chartered Surveyors of at least ten years standing who will, failing agreement between the parties, be appointed by the Chairman for the time being of the Scottish Branch of the RICS on the application of any party to the dispute or difference, and who will act as an expert and not as an arbiter. The expert will be requested to reach his decision within two calendar months of his appointment and to take into account representations submitted by any party to the dispute or difference within twenty one days of his appointment, to enable the expert to provide a reasoned determination, which determination shall include a statement of the reasons therefor. The decision of the expert, including that as to costs, will be final and binding on the parties to the dispute or difference, and for the avoidance of doubt, the provisions of Section 3(1) of the Administration of Justice (Scotland) Act 1972 which would otherwise permit an application to the Court of Session on any question of law there shall be specifically excluded.

10 NOTICES

Any notice or other communication to be given under, or in connection with the matters contemplated by, this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post or by facsimile to the address and for the attention of the relevant Party as set out above (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; and
- (c) in the case of facsimile, at the time of transmission.

For the avoidance of doubt notice given under this Agreement shall not be validly served if sent only by e-mail.

11 JURISDICTION

This Agreement shall be governed and construed in accordance with the Laws of Scotland.

12 AGREEMENT ENFORCEABLE BY THE COUNCIL

This Agreement shall be enforceable at the instance of the Council or their successors against any party or parties with an interest in all or any part of the agreement area. This Agreement shall be validly referred to in all future transmissions of all or any part of the agreement area.

13 DETERMINATION OF WHETHER PLANNING PERMISSION IS BEING COMPLIED WITH

The Council shall be entitled to establish by any reasonable means whether or not the terms of this Agreement and the planning permission are being complied with. The parties agree that they shall be bound and obliged, the Council being kept free of any expense to provide any information required by the Council in connection with this Agreement.

14 CONSEQUENCES OF BREACH OF THIS AGREEMENT OR PLANNING PERMISSION

14.1 The parties agree that in the event of a breach or continued breach of the planning permission and/or the terms of this Agreement, the Council, in addition to any remedies available to them at common law or under any Statute, shall be entitled to order the parties (excluding the Council) to take such steps as are considered by the Council as appropriate in the circumstances to remedy the breach and such parties will be bound, and hereby bind themselves, to comply with such order.

14.2 In the event of any such party or parties failing to comply with any order made by the Council in terms of this clause, the Council shall be entitled to (a) revoke the planning permission in terms of Section 65 of the 1997 Act or, (b) discontinue the planning permission in terms of Section 71 of the 1997 Act or (c) to take such steps in relation to enforcement as are provided in Part VI, or any other part of the 1997 Act, as the Council shall deem appropriate in all the circumstances.

14.3 The parties hereby consent (a) to any order revoking the consent in terms of Section 65 of the 1997 Act, (b) to any order to discontinue the consent in terms of Section 71 of the 1997 Act and (c) to any action taken by the Council in terms of Part VI or any other part of the 1997 Act.

15 VARIATION OF PLANNING PERMISSION UNDER SECTION 64

Any variation of the planning permission permitted by the Council in terms of Section 64 of the 1997 Act shall not affect the terms and provisions of this Agreement which shall continue in full force and effect subject to any such variation as aforesaid.

16 RIGHT TO DEVELOP

Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Application Site in accordance with any planning permission issued by the Council or by the Scottish Ministers after the date of this Agreement subject always to the terms and conditions of the planning permission.

17 USE OF DEVELOPER CONTRIBUTION

Unless otherwise provided in this agreement, all monies paid to the Council in terms of this agreement will be used or allocated by the Council within a period of ten years from the date of the last payment to the Council of the monies or any part thereof. If the monies or any part thereof is not disbursed or allocation by the Council within ten years of either (1) the date of final completion of the development or (2) the date of receipt by the Council of the monies, whichever is the later, the Council shall, subject to the terms of this condition, return the monies or any part thereof either not disbursed or allocated, without interest, to the Payer and the Payer will have no further liability hereunder. Where the Council has allocated all or part of the monies for the construction or maintenance of a new or existing facility no time limit shall apply to the Council in respect of the actual spend of those monies so allocated.

LASTLY EXPENSES OF AND CONSENT TO REGISTRATION

The Owners shall bear the Council's legal expenses and costs properly and reasonably incurred in connection with the negotiation and drafting of this Agreement and the cost of recording and/or registration of this Agreement; and the parties hereto consent to the registration hereof for execution: IN WITNESS WHEREOF

WHEREOF these presents consisting of this and the preceding pages together with the schedules and plans attached are executed by the parties hereto as follows:

..... Signature: **West Lothian Council**
..... Full Name
..... Designation
..... Date and place of signing

..... Signature: **Owner**
..... Full Name
..... Designation
..... Date and place of signing

..... **Witness** Signature
..... Full Name
..... Designation
..... Date

..... Signature: **Developer**
..... Full Name
..... Designation
..... Date and place of signing

..... **Witness** Signature
..... Full Name
..... Designation
..... Date

..... Signature: **Consentor**
..... Full Name
..... Designation
..... Date and place of signing

..... **Witness** Signature
..... Full Name
..... Designation
..... Date

Schedule 1A referred to in the foregoing Agreement

APPLICATION SITE

The area of land that comprises the application site being the subjects:

ALL and WHOLE ALL and WHOLE that area of ground situated at and known as ----- Farm, -----, West Lothian, EH----- as shown hatched black on the plan annexed and signed as relative hereto and whose title thereto comprises a Disposition by ----- ----- and Others there in mentioned in favour of ----- ----- and another dated ----- ----- and recorded in the Division of the General Register of Sasines for the County of Midlothian on Nineteenth December all in the year Nineteen Hundred and Ninety Five.

..... Signature: **West Lothian Council**
..... Full Name
..... Signature: **Owner**
..... Signature: **Developer**
..... Signature: **Consentor**

Schedule 2 referred to in the foregoing Agreement

1. The Owners undertake that the Application Site will be developed in accordance with the planning permission.
2. **AFFORDABLE AND SPECIAL NEEDS HOUSING**
 - 2.1 No residential unit on the land affected by this agreement constructed in implement of the planning permission shall be occupied before the Council has issued a receipt for the affordable housing contribution.
3. **EDUCATION**

Denominational secondary school

 - 3.1 No residential unit on the land affected by this agreement, constructed in implement of the planning permission shall be occupied before the Council has issued a receipt for the education contribution for the denominational secondary school.
 - 3.2 Unless provided otherwise, all monies paid or to be paid to the Council in terms of this agreement shall be indexed.
4. **CONTRIBUTION FOR OFF SITE ENVIRONMENTAL WORKS**

On the conclusion of missives for the first sale of each croft holding there shall be paid to the Council by the Owners the sum of £xx,xxx to be used for off site environmental works as approved from time to time by the Council's authorised officer.

Schedule 3 referred to in the foregoing Agreement

CROFTING PROVISIONS

- 1.(a) **“The Crofting Land”** refers to the whole of the land to be the subject of the Lowland Crofting Scheme which land is shown on the Lowland Crofting Scheme plan being Plan 2 attached.
- (b) **“The Lowland Crofting Scheme Plan”** is Plan 2 attached and shows and illustrates the way the Lowland Crofting Scheme is to be implemented on the Crofting Land.
- (d) **“Subsidiary Linked Accommodation Unit”** means an accommodation unit constructed or intended to be constructed in terms of this Agreement as additional residential accommodation which is linked to a house on a Croft Holding and which additional residential accommodation is available for use for residential purposes by relatives of or visitors to the owner or owners for the time being of that Croft Holding or by people involved in an approved business being carried on, on that Croft Holding.
- (e) **“Retained Agricultural Land”** refers to that part of the Crofting Land, which is to remain primarily in use as agricultural land which land is shown coloured blue on Plan 2.
- (f) **“Woodland Area”** refers to that part of the Crofting Land which is to be managed primarily for Woodlands and is shown coloured dark green on Plan 2.

OBLIGATIONS TO BE MET PRIOR TO SALE OF CROFT HOLDINGS

SALE PARTICULARS

- 2(i) The particulars of sale to be prepared and used in connection with every sale of a Croft Holding, whether by the original owner or a subsequent owner will be subject to the prior written approval of the appropriate officer of the Council authorised to deal with planning and related matters, hereinafter referred to in this Agreement as the “Council’s Authorised Officer” and shall contain the following:-
 - (a) An explanation that the Croft Holding is part of a Lowland Crofting Scheme in respect of which a Lowland Crofting Scheme Plan has been agreed with the Council’s Authorised Officer.
 - (b) A copy of the Lowland Crofting Scheme Plan.
 - (c) A copy of the conditions of title to which the sale will be subject dealing with the provision and subsequent maintenance of such facilities as boundary walls, fences and other means of enclosure, private access roads, sewage treatment and amenity areas which are to be shared with other Croft Holdings which conditions of title are referred to elsewhere in this agreement.
 - (d) A copy of this Agreement.
 - (e) A copy of the design guide.
 - (f) Details of the project architect.

PROJECT ARCHITECT

2(ii) Prior to the sale of any croft holding or the submission of a planning application for any development on any croft holding a project architect shall be appointed by the parties. The liability to meet the professional fees of the project architect shall rest with the owners or shall be as agreed between the owners and the developers of a croft holding. Until the development of the Lowland Crofting scheme has been completed the parties shall ensure that the project architect has approved all aspects of the design of each croft holding prior to the conclusion of any sale of a croft holding. The project architect shall ensure that the design guide for the development has been complied with.

2(iii) **SALE: CONDITIONS TO BE COMPLIED WITH**

Prior to the sale of any croft holding or the submission of a planning application for any development on any croft holding the parties shall prepare and have approved by the Chief Solicitor of the Council West Lothian House Almondvale Boulevard Livingston West Lothian, or her successor such title conditions as may be necessary to secure the provision and subsequent maintenance of any facilities to be shared with other Croft Holdings.

2(iv) Prior to the sale of any croft holding or the submission of a planning application for any development on any croft holding the design guide shall be approved by the Council's authorised officer.

3 **WORKS TO BE CARRIED OUT PRIOR TO ANY CONSTRUCTION**

Construction on any croft holding on any part of the application site shall not commence until the parties have made the following provisions to the reasonable satisfaction of the Council's Authorised Officer:

- (a) The Woodland Area shall (1) be fenced off with stockproof fencing of a specification to be approved by the Council's Authorised Officer, and (2) be planted in accordance with the plan and specification to be prepared in accordance with the planning permission.
- (b) The amenity tree and hedgerow maintenance and planting and incidental woodland planting and paths work defined on plan 3 which require to be submitted for approval in terms of the planning permission shall be made the subject of a binding contract for implementation not later than Thirtieth September in the year following the commencement of any development within the application site.
- (c) The multiuse paths shown coloured red on Plan 2 shall be signposted and defined on the ground and shall comply with the terms of the Land Reform (Scotland) Act 2003

CONSTRUCTION OF RESIDENTIAL UNITS

- 4 (a) Construction of any residential unit on any part of the application site shall not commence until the parties have constructed the relevant access point or points off the public highway to the reasonable satisfaction of West Lothian Council and their statutory successors as Roads Authority and have completed the whole of the relevant access roads leading to the Crofting Land and that to the standard approved in terms of the planning permission, and to the reasonable satisfaction of the Council's Authorised Officer.
- (b) The croft holding shall not be occupied until the parties have made adequate arrangements for the disposal and treatment of sewage from them by connection to the public sewer or by installation of a private sewage treatment plant and for the maintenance thereof, to the reasonable satisfaction of West Lothian Council or their successors as Building Control Authority and the Scottish Environmental Protection Agency.

RESTRICTION ON DEVELOPMENT: RETAINED AGRICULTURAL LAND

- 5 (a) Notwithstanding any grant of planning permission under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or in response to a planning application to the Council no development within the meaning of Section 26 of the Town and Country Planning (Scotland) Act 1997 is to take place on the land shown on the Lowland Crofting Scheme Plan as a Woodland area or as Retained Agricultural Land without the prior written approval of the Council's authorised officer.

RESTRICTION ON DEVELOPMENT: MAXIMUM NUMBER OF CROFT HOLDINGS

- 5(b) Notwithstanding any grant of planning permission in response to a planning application to the Council, no more than X Croft Holdings shall be created within the Crofting Land, without the prior written approval of the Council's Authorised Officer under this Agreement.

RESTRICTION ON DEVELOPMENT: DEVELOPMENT ON A CROFT HOLDING

- 5(c) Notwithstanding any grant of planning permission under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or in response to a planning application to the Council no more than one residential unit together with, if required, one subsidiary linked residential accommodation unit will be permitted on any Croft Holding with the prior written approval of the Council's Authorised Officer under this Agreement.

RESTRICTION ON DEVELOPMENT: NO SUBDIVISION OR AMALGAMATION OF CROFT HOLDING

- 5(d) The sub-division of the whole or part of any Croft Holding (as the boundaries of same are agreed between the Council's Authorised Officer and the proprietor pursuant to the terms of this agreement or the amalgamation of the whole or part of any Croft Holding with another Croft Holding or with land outside the Crofting Holding will not be permitted without the prior written approval of the Council's Authorised Officer.

RESTRICTION ON DEVELOPMENT: COMPLIANCE WITH PLANNING PERMISSION

- 5(e) Prior to commencement of development on a croft holding the developer shall obtain written confirmation from the council's authorised officer that, in so far as they are applicable, the relevant planning conditions for that croft holding have been complied with.

REMOVAL OF PERMITTED DEVELOPMENT RIGHTS

- 6 Notwithstanding the terms of Article 3 and Schedule 1, Part 6 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 no agricultural buildings or operations constituting development within the meaning of Section 26 of the Town and Country Planning (Scotland) Act 1997 shall be constructed or carried out on any part of the application site without the prior written approval of the Council under this Agreement.

MAXIMUM SIZE OF BUILDINGS

- 7 Notwithstanding any grant of planning permission under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 the building or buildings to be erected on any part of the application site shall be constructed in accordance with the design guide.

NO BUSINESS USE

- 8.(a) No business activities (excepting those authorised by any planning consents existing at the date of this Agreement) shall be carried out on any part of the application site which causes or would be likely to cause what the Council's Authorised Officer or his successors regards as a nuisance or an unreasonable disturbance to the occupants of nearby property.
- 8.(b) The following activities are not permitted on any part of the application site without the prior written approval of the Council's Authorised Officer (which approval will not be unreasonably withheld or delayed) being activities or uses which:
- (i) involve the employment of more than two people or the equivalent of two people working full time, whether working on or from any Croft Holding.
 - (ii) are served by one or more large goods vehicles as defined in Section 2 of Schedule 3 of the Road Traffic (Driver Licensing and Information Systems) Act 1980.
 - (iii) display an advertisement or advertisements within the meaning of Article 2 of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 so as to attract customers,
 - (iv) buy in goods for re-sale.
 - (v) involve the repair of vehicles except vehicles used in any permitted business; or
 - (vi) involve working with, dealing in or storing of scrap or recycled materials.

WOODLAND AREAS

- 9(a) The parts of the Woodland Area which attract a grant from the Forestry Authority on completion of planting shall be maintained by the Developers thereafter to a standard which will attract final grant payment from the Authority after a period of Five years from the date of completion of planting and the Developers will notify the Council's Authorised Officer whether, and if so, when an application to the Authority and final grant is made and approved.
- (b) Where any part of the Woodland Area is not the subject of a grant from the Forestry Authority, either on completion of planting or after five years, it shall be maintained jointly by the Developers and the Owners during that period of five years following the completion of planting to the reasonable satisfaction of the Council's Authorised Officer.
- (c) In the event of a failure by the Developers and or the Owners satisfactorily to maintain any part of the Woodland Area in accordance with this Agreement, the Council's Authorised Officer or his successor shall give notice to the proprietor of the affected area specifying such steps as the Council's Authorised Officer shall deem necessary for the purposes of such maintenance and that with Twenty Eight days and if at the end of that period all those steps have not been taken, persons, duly authorised in writing by the Council, may enter the Crofting Land for the purpose of taking those steps and the properly incurred and reasonable cost of doing so shall be reimbursed to the Council by the Developers and/or the Owners.
- (d) The Woodland Area once planted and established in accordance with this Agreement shall thereafter continue in such uses and the Developers and the Owners shall prepare and submit to the Council's Authorised Officer or his successors for approval not later than ten years from completion of planting a Woodland Management Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 dealing with matters relating to the arrangements for the continued management of the area as may be specified by the Council's Authorised Officer and shall thereafter implement such plan.
- (e) The obligations imposed in this Agreement shall not prevent the disposal by sale or lease of the Woodland Area but any such disposal by sale or lease during the period of seven years from the completion of the planting or the first disposal of such an area by sale or lease after that period shall be subject to the prior approval of the Council's Authorised Officer which approval shall be concerned solely with the adequacy of the arrangements for the future management of such an area and may include a requirement for a Woodland Management Agreement to be entered into with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997.

The provisions of this Clause shall only be enforceable by the Council against the Developer and not against Mr Smith.

RETAINED AGRICULTURAL LAND

- 10(a) All fields shown in the Lowland Crofting Scheme Plan as Retained Agricultural Land shall be managed for agriculture to the reasonable satisfaction of the Council's Authorised Officer.

- (b) Should the Council's Authorised Officer acting reasonably consider that any such fields are causing unacceptable visual or functional nuisance he shall give written notice to the owner of the land so affected specifying such steps to be taken to remedy the position, which steps may include rough cutting, ditching, fencing and hedge cutting, and giving reasonable time for compliance and, if all such steps are not taken within the time for compliance, persons, duly authorised in writing by the Council, may enter on the land and take such steps and the properly incurred and reasonable cost thereof shall be reimbursed by the owner those land is affected to the Council.
- (c) The first disposal by sale or Long Lease of such fields after the date of execution of this Agreement by the Owner shall be notified to the Council within Seven days of the conclusion of any agreement. "Long Lease" shall have the meaning ascribed to it by Section 28 of the Land Registration (Scotland) Act 1979.

MULTI USE PATHS

- 11(a) Once the multiuse paths shown on the Lowland Crofting Scheme Plan have been defined on the ground in accordance with the terms of this Agreement, they shall be made accessible in terms of the Land Reform (Scotland) Act 2003 and be available to the public at all times in terms of the Land Reform (Scotland) Act. The parties, for their respective interests shall ensure that the paths remain free from obstruction or safe for use and that the paths are in reasonable condition for passage by the public as aforesaid to the reasonable satisfaction of the Council's Authorised Officer and shall each carry out such works for maintaining and repairing the paths as may be necessary from time to time to comply with these requirements.
- (b) The Developers and the Owners shall do nothing on the land adjoining the paths which is incompatible with their safe use for passage by the public.
- (c) Persons, duly authorised in writing by the Council shall be entitled to enter the Crofting Land at all reasonable times for the purpose of carrying out works for the erecting and thereafter maintaining and repairing of signposts, gates, stiles and bridges and for the purpose of taking steps to improve the amenity of any path and shall be entitled to take such vehicles and equipment on to the Crofting Land as may be required for such purposes.
- (d) No closure or diversion of any path, temporary or permanent shall be permitted without the prior approval in writing of the Council.

ROUGH CUT

- 12 If any land on the application site is not in use as formal garden ground the owner of that land shall cause it to (i) be given a rough cut in each year and (ii) be maintained to the satisfaction of the council's authorised officer.

NOTICE AS TO INJURY TO AMENITY

- 13 If any land on a Croft Holding is, in the reasonable opinion of the Council's Authorised Officer, causing injury to visual amenity because of its neglected appearance or is otherwise being managed in such a way as to cause nuisance or serious disturbance to neighbours he shall give Twenty-eight days notice in writing to the owners of the land specifying such steps as the Council's Authorised Officers shall deem necessary to be taken to remedy the position and if at the end of that period all of those steps have not been taken, persons duly authorised in writing by the Council, shall be entitled to enter the Croft Holding for the purpose of taking those steps and the properly incurred and reasonable cost of doing so shall be reimbursed to the Council by the owners.

MAINTENANCE OF ROADS & SEWAGE

- 14 Where there is a failure to maintain any private road, private sewage treatment works or other such private facility shared by two or more of the Croft Holdings which in the reasonable opinion of the Council's Authorised Officer or his successor is prejudicial to health or safety or causes nuisance to the public he shall give Twenty-eight days notice in writing to the owners concerned specifying such steps as the Council's Authorised Officer shall deem necessary to be taken to remedy the position and if at the end of that period all of these steps have not been taken, then persons, duly authorised in writing by the Council shall be entitled to enter any part of the application site for the purpose of carrying out such maintenance of the roads and sewage systems as is considered necessary and the properly incurred and reasonable cost of doing so shall be reimbursed to the Council by the Owner.

BOND

- 15(a) Immediately prior to the commencement of any development in accordance with the Lowland Crofting Scheme Plan the Developers and or the Owners shall deposit with the Council a Bond issued by a recognised UK Bank (the Bank) as approved by the Council for an initial value of ----- POUNDS (£xx,xxx) STERLING.
- (b) The Bond may be called up by the Council in the event of any one or more of the occurrences listed in this agreement happening but only after the Council shall have given to each of the Developers and the Owners and the Bank notice in writing of their intention to call up the Bond and such Notice shall specify the occurrence or occurrences in question and the steps necessary to remedy the position and shall have given the Developers and the Owners, as appropriate not less than Twenty-eight days from the date of service of such Notice to take all of the steps specified in such Notice. But the Bond may only be called up by the Council on each occurrence to the extent required to reimburse the Council's properly incurred and reasonable costs of carrying out the steps specified in accordance with this Agreement.
- (c) The occurrences referred to in this Agreement are:
- (i) Failure in the reasonable opinion of the Council's Authorised Officer satisfactorily to secure the planting, maintenance and management of the said Woodland Area.
 - (iii) Failure in the reasonable opinion of the Council's Authorised Officer satisfactorily to comply with a Notice served under this agreement or any provision of the 1997 Act.

- (d) The Bond shall endure for a period of Seven years from the date that it is deposited with the Council. The value of the Bond may be reduced to ----- POUNDS (£xx,xxx) STERLING if and when the Five year woodland grant payment referred to in this agreement is made.

RIGHTS OF ENTRY/INSPECTION

- 16 Officers of the Council duly authorised in writing shall be entitled to enter the Crofting Land at all reasonable times and giving Forty-eight hours notice to the relevant owners for the purposes of inspection to establish whether the terms of the Agreement are being complied with subject to causing the minimum practical inconvenience and making good any damage caused.

..... Signature: **West Lothian Council**
 Full Name
 Signature: **Owner**
 Signature: **Developer**
 Signature: **Consentor**

Schedule 4 Planning conditions

Draft CONDITIONS TO BE ATTACHED TO PLANNING PERMISSION

These conditions are in draft only and may not be the same as the final conditions that are to be attached to the planning consent ---/-- when it is issued.

West Lothian Council shall not be bound by the terms of the following draft conditions and the Owners and Consentors, by their signatures hereto, agree and acknowledge that the following conditions are in draft only and are not binding on the Council.

..... Signature: **West Lothian Council**
 Full Name
 Signature: **Owner**
 Signature: **Developer**
 Signature: **Consentor**

Schedule 5 Housing Design Brief for ----- Lowland Crofting Scheme

..... Signature: **West Lothian Council**
 Full Name
 Signature: **Owner**
 Signature: **Developer**
 Signature: **Consentor**

**MINUTE OF AGREEMENT IN TERMS OF SECTION 75 OF THE TOWN & COUNTRY
PLANNING (SCOTLAND) ACT 1997**

between **WEST LoTHIAN COUNCIL**

and **Owners**

and **Developers**

and **Consentors**

2007

Date:

Subjects:

REF: LS/TD/
Chief Solicitor
West Lothian Council
West Lothian House
Almondvale Boulevard
LIVINGSTON
West Lothian
EH54 6QG
FAS 1254

Appendix 4

EXAMPLE OF A DESIGN GUIDE

Introduction

----- Farm is an exceptionally attractive area within the Area of Great Landscape Value. A dominant landscape feature within the site area is ----- and its associated ridge that gives the landscape its characteristic east/west alignment and related valley feature. In addition to these topographical features, the farmscape still exhibits a significant element of the historic enclosure pattern with the use of stone walling and outgrown beech hedging. The site adjoins the policy woodlands of -----.

Outline planning permission has been granted for a lowland crofting scheme at ----- . This will result in the development of nine new dwellings and the conservation of the steading will provide another two units. The scheme will also incorporate areas of new woodland and a managed grazing regime on the herb rich grassland will, together, ensure the long term maintenance of the wildlife value of the site.

This design has been produced to facilitate the development of the scheme in a manner befitting the high quality of the landscape. The contents of the brief require to be read in conjunction with the outline planning permission and any application for the application for the approval of reserved matter will require to comply with this brief.

The whole farm

Landscape setting

The scheme will yield the following:

- new woodland planting (broadleaf and some native conifers),
- new structural woodland planting around the plots,
- new hedgerow planting,
- areas of retained agriculture,
- area of nature conservation value.

The proposed landscape improvements require to be the subject of a separate *reserved matters* planning application which must set out the details of these matters. In addition to the elements indicated above, all buildings will require to be set within structural planting that will reflect both the existing landscape framework and the new woodland planting.

Footpaths and bridleways

The residential development at ----- will help to increase public access to this area by providing additional links through the site. It is intended that this instance these will be multi-use paths to provide for both people and horses.

Residential buildings

General design principles

The high quality and open, sweeping character of the landscape at ----- gives rise to only a very limited capacity to absorb new development and there is a consequent need for very careful design of both the housing, associated buildings, access roads and the layout of the development.

The ability to achieve a good development is dependant on the size, height and massing of the built form and additionally on the siting on the plot and the relationship on the plot to another. To ensure that the integrity of the landscape is maintained it is essential that all dwellinghouses are located in a coherent grouping along the access road (plots 1-4 and 6-11). This is indicated on the approved plans.

All the buildings, including outbuildings, must be located within the dedicated building zone only. This is indicated on the approved plans.

Location and orientation

The predominant topographical form is the east west spur and valley extending from ----- . This provides a strong landform and the east dwellinghouses will need to follow this alignment.

On each plot a building zone will be defined which will depend on the individual characteristics of the site but will be specified to ensure that a coherent grouping of the built elements is achieved. The house and all other buildings must be located within that zone. All houses shall be positioned and designed so that the front of each house faces southwards with rear gardens to the north.

Scale

It is necessary that the built elements of the development can be comfortably absorbed into the capacity of the landscape. Consequently full two storey buildings could not be accommodation without causing serious detriment to the wider landscape. The ridge heights specified are hence absolute maximums. It will therefore be necessary to limit the accomodation and in particular the amount of any floorspace contained within the roofspace to ensure a comfortable fit within these parameters.

Plot 1-5 and 8-11: these shall be either single storey or single storey with traditionally designed dormer accomodation. The maximum ridge height allowed will be 7.5m. The general scale of the houses should be akin to the three attached sketch house designs (plan nos: ----'B/sk01, ----/C/sk01pl, ----/C/sk01el, ----/D/sk01pl and ----/D/sk01el).

Plots 6 and 7: these plots are to be formed from the existing steading. Whilst this building is not actually statutory listed it is of considerable historic importance, thus prior to any conversion proposals being considered a thorough survey and assessment of the building will be required by a suitably qualified professional. However, any proposals for conversion must work within the parameters of the existing fabric, ie ridge height, window openings and design forms. Designs solutions that include enlargement rebuilding or new additions will not be acceptable.

All houses must be low, long and narrow in their proportions withtthe main axis of the building following the east west grain of the landscape. Anything other than small returns to the main axis will not be acceptable. Detailing designs for the new buildings which do not reflect Planning Advice notes 44 *Fitting New Housing Development into the Countryside* (PAN 44) and PAN 36 *Sitting and Design of New Housing in the Countryside* will not be acceptable.

The gross maximum footprint of each house allowed is 200sqm. There is no seperate allowance for a granny annex or a conservatory. It is therefore suggested that those developing plots have reguarded these limits when thinking bout their future needs. chaning personal circumstances will not be viewed as a reason to breach this maximum footprint, as the overall quality of the landscape setting is of prime importance. Extensions within the

maximum footprint will be considered on their own merits taking into account the guidance contained within this design brief and good planning practice.

Traditional rural buildings are usually well proportioned. To ensure that the new build houses are well proportioned the maximum roof span allowable is 6.5m and the roof pitch should be within the range 40 - 45°.

Materials and colours

Roofing materials should be natural slate only.

The exterior walls should be properly coursed and tooled natural stone using traditional lime mortar or wet dash render. Artificial stone and facing brick will be strictly unacceptable. The developer should develop a coherent palate of materials that are consistent with Scottish rural vernacular and with each other. All materials will require to be approved by the Development Manager prior to development.

Detailing

All windows should have a strong vertical emphasis and be regularly spaced with deep reveals, dressed sand stone or render bands. They should be constructed in timber and be stained or painted to an approved colour. UPVC windows will not be acceptable under any circumstances. Bay windows, turrets and those of an urban/suburban form will not be acceptable.

Doors should be simple in design, vertically boarded timber designs will be preferred.

No fascia boards will be allowed.

Rainwater goods should preferably be cast iron goods but UPVC will be permitted. All such goods should have a black finish.

Conservatories will not be permitted on any south facing elevation and should be set out in the planning application for each property at the outset. They should be simple in design and of timber construction. UPVC is not permitted. All conservatories will be considered as forming part of the allowable footprint and thus will be subject to the 200sqm maximum.

The houses and outbuildings should be designed to require minimal underbuilding and where constructed on a sloping area that they will be built into rather than out from the slope.

Outbuildings

All outbuildings must relate well to the position of the house and result in a coherent overall group, based on traditional rural forms such as courtyards. They must be sited within the defined building zone. All outbuildings must be single storey with a maximum footprint of 75sqm.

Garages

Garages should be detached from the main house and will be considered as outbuildings. A maximum footprint limit of 50sqm will apply. Garages should follow the general design criteria and thus should be long, low and narrow in proportion. Double garages will need to be particularly sensitively designed to reduce the bulk and square appearance and will be assessed on their individual merits. Garages will be finished with the same materials as the associated dwellinghouse.

Hard and soft landscaping

Each plot will have a structural landscape framework around the perimeter of the plot within which the built elements are to be sited in the defined building zone. The structural planting will be predominantly native broadleaf planting with some native evergreen planting to give cover over the winter months. There will be a requirement to provide a landscape plan as part of the plot submission and developers must have regard to the design and use of the whole of the plot rather than just the proposed buildings. The choice of materials and species for hard and soft landscape elements can help integrate a scheme successfully into its surroundings.

Fencing around the edges of the plot should be agricultural in design ie. post and wire fencing.

Where walls are proposed they should be constructed in natural stone or rendered to match the house. Brick and artificial stone walls will not be permitted.

Timber decking is a recent trend that does not usually fit with Scottish rural vernacular designs. It is unacceptable here.

The choice of paving and hard surfaces can make a perceptible difference to the quality of the overall design. Surfaces such as block paving and artificial stone pavements will not be acceptable whilst the use of aggregate chips to tone with the palette of minerals will be preferred. Samples of proposed materials will be required.

Individual plot design submission

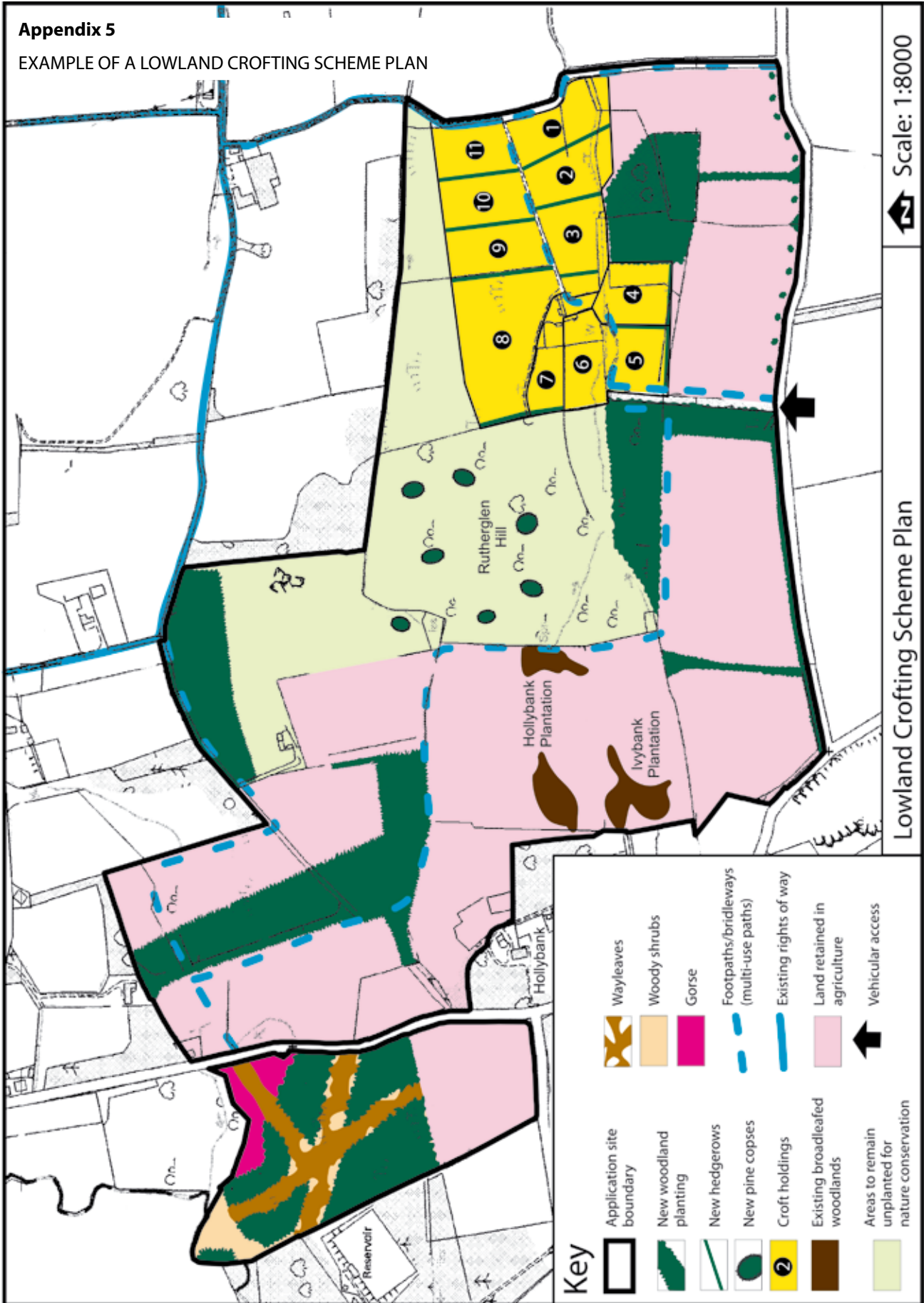
The developer must provide a plan of whole plot not just the house and garage. the application must include:

- Layout of whole plot with levels and contours at 1m intervals,
- Cross sections through site to show changes in levels,
- Landscaping plan,
- Design of all buildings.

It is suggested that prospective developers submit plans and sketches to Development Manager for consultation prior to the formal submission of an application.

Appendix 5

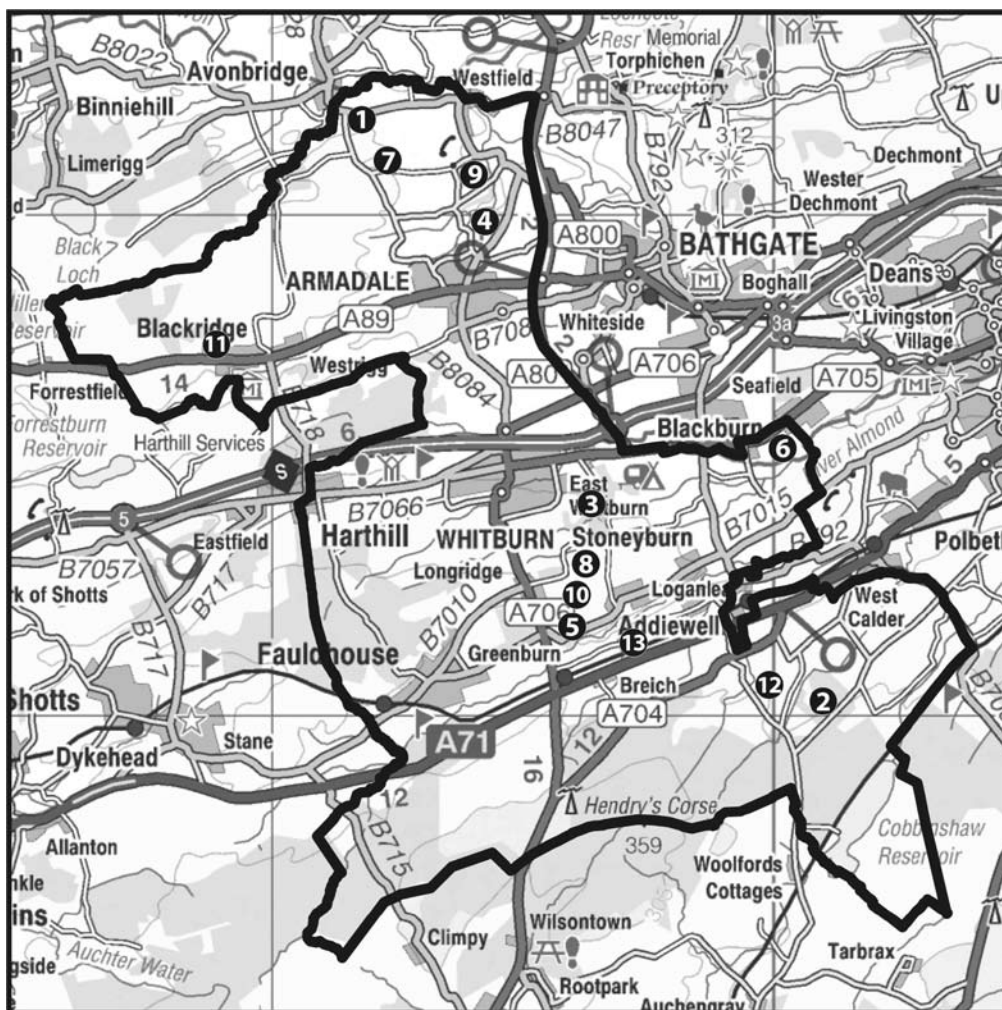
EXAMPLE OF A LOWLAND CROFTING SCHEME PLAN



Appendix 6

APPROVED LOWLAND CROFTING SCHEMES / MAP

| | Location | Planning Application Ref | No Houses |
|----|----------------------|--------------------------|-----------|
| 1 | Blackfaulds Farm | 1083/P/1990 | 5 |
| 2 | West Harwood Farm | 0451/P/1991 | 13 |
| 3 | East Whitburn Mains | 0905/P/1991 | 12 |
| 4 | Woodbank | 0167/P/1993 | 15 |
| 5 | Stoneheap | 0363/P/1993 | 10 |
| 6 | Blackburn House Farm | 0102/P/1996 | 9 |
| 7 | Craigengall Farm | 0477/P/1998 | 11 |
| 8 | Easter Longridge | 0156/P/1999 | 10 |
| 9 | South Couston Farm | 0838/P/1999 | 6 |
| 10 | South East Longridge | 1042/P/00 | 6 |
| 11 | Blackridge Farm | 1287/P/02 | 8 |
| 12 | West Mains Farm | 1424/P/04 | 19 |
| 13 | Nether Longford Farm | 0188/P/05 | 15 |



For further information or advice relative to lowland crofting please contact

For enquiries related to making a planning application

Development Management

West Lothian Council

County Buildings

Linlithgow EH49 7EZ

Telephone: 01506 775365

Email: dbc@westlothian.gov.uk

For enquiries related to policy

Development Planning

West Lothian Council

County Buildings

Linlithgow EH49 7EZ

Telephone: 01506 775231

Email: localplan@westlothian.gov.uk



West Lothian
Council