

Pages 1–6 of this document contain restricted information, in terms of Schedule 7A of the Local Government (Scotland) Act 1973; these pages are therefore withheld.

REPORT TO: East Lothian Council

MEETING DATE: 6 September 2016

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: East Lothian Proposed Local Development Plan – Associated Documents for Approval (for Representation and Consultation as Appropriate)

2

1 PURPOSE

- 1.1 This report seeks Council approval of the finalised Proposed Local Development Plan (LDP) to submit for representation.
- 1.2 The report also seeks Council approval of the Draft Action Programme and Environmental Report, which accompany the Proposed LDP, for consultation.
- 1.3 This report also asks the Council to note the Draft Habitat Regulations Assessment and the Equalities Impact Assessment which accompany the Proposed LDP.

2 RECOMMENDATIONS

- 2.1 That Council approves the amended Proposed Local Development Plan (LDP) for representation.
- 2.2 That Council approves the Draft Action Programme and Environmental Report for consultation.
- 2.3 That Council notes the accompanying Draft Habitat Regulations Assessment and the Equalities Impact Assessment.
- 2.4 That Council delegates authority to the Head of Development to amend the Proposed LDP and associated documents in respect of non-material editorial amendments, corrections of factual error and presentational changes.
- 2.5 That Council delegates authority to the Head of Development the consideration of representations to the Proposed LDP and associated documents. Responses to representations in the form of 'Schedule 4' documents, including any non-notifiable modifications to the Proposed

LDP, will be brought before the Council prior to the submission of the plan to Scottish Ministers for examination.

3 BACKGROUND

- 3.1 On 17 November 2015 the Council approved the strategy, sites and policies of the draft Proposed Local Development Plan, with amendments and subject to further technical work.
- 3.2 The finalised Proposed LDP reflects the Council's decision to approve the draft Proposed LDP with those amendments and the outcomes of the further technical work.
- 3.3 The draft Proposed LDP itself followed on from the Main Issues Report approved by Members for public consultation in October 2014 and the subsequent report on that 12-week consultation to Members of April 2015, including the responses of statutory consultees.
- 3.4 The Main Issues Report set out the research basis for a Proposed LDP and set out the Preferred Option for a Compact Spatial Strategy and the evidence base for it and implications of it. It also set out the Reasonable Alternative option of Dispersed Growth with its evidence base and implications.
- 3.5 The Proposed LDP is the outcome of this significant body of work with Members, the public and statutory and other consultees. It takes due cognisance of the Scottish Government's National Planning Framework 3, Scottish Planning Policy (SPP) and of the statutory South East Scotland Strategic Development Plan (SDP).
- 3.6 The Proposed LDP is set in the context of legislative requirements for sustainability (Climate Change (Scotland) Act 2009; Sections 3D and 3E Town and Country Planning (Scotland) Act 1997 as amended).
- 3.7 The Proposed LDP also responds to the Council Plan 2012-17, the Single Outcome Agreement 2013-14 and the Council Economic Strategy 2012-22.

Approved Amendments

- 3.8 The amendments to the draft Proposed LDP as approved by Council were for:
 - The removal of the Housing proposal MH9 for 1,000 units, Goshen.
 - The removal of proposal (MH10) Goshen New Secondary School, noting specifically that whilst the second item of business will consider the secondary school option and location, officials are instructed to undertake further work around developer contributions such that those developments that benefit from the new education facility are required to contribute to its cost.

- The removal of proposal MH11 at Drummohr, currently a housing land safeguard.
- Changing the proposal MH13 land from a safeguard to an allocation of land for housing development for 600 units.
- The inclusion of Howmire, a site west of Barbachlaw, as land suitable for housing development for 100 units.
- The allocation of the 55ha of land between the freight loop, the A1 and Millerhill Marshalling Yards (within MH1) as suitable for mixed use development. Officials are instructed to undertake necessary technical work to explore further the housing allocation at Craighall (MH1). This to be in line with a viable secondary education facility developed for the Musselburgh cluster taking account of pupil roll and developer contributions towards infrastructure requirements.
- The inclusion of Dolphingstone North as land suitable for housing development of up to 160 units.
- Remove Prop PS2 Longniddry South Housing Land Safeguard, once corrected.
- In accordance with: 1) Objectives and Outcomes (page 9 [of the draft proposed LDP], particularly the first and fifth bullet points); 2) compliance with Para 2.152 (Mixed use at Mains Farm); 3) giving the wording of 2.170 a clarity equivalent to the five other clusters; and 4) proper implementation of para 3.19, Table EMP1 (page 62) is to be augmented by *adding sites for employment uses taken from the table below to the North Berwick cluster area, the location and details of which will be determined following assessment and technical analysis to be undertaken by the Planning Service:*

New Prop	Site	Opnl Land	Undev	New Alloc	Dev Brief	Comments	Policy
NK12	South Mains Farm	-	-	3.0 HA	-	Subdivision of NK1 but exclusively reserved for Class 2 or 4 use only	RCA1 (formerly ENV1)
NK13	Haddington Road East	-	-	2.0HA	-	Land owned by ELC, now partly split by realigned Haddington Road	RCA1
NK14	West Heugh	-	-	4.0 HA	-	Land at N end of field across Heugh Rd recently removed from Law SSSI	RCA1
NK15	East Imperial	-	-	1.0 HA	-	Eastern section of Imperial car park to have offices built above	RCA1
NK16	Williamston	-	-	5.0 HA	-	Land E of Gas Works Lane between Southgait and Williamston Farm	RCA1
NK17	Old Gasworks	-	-	1.0 HA	-	Doubling extent of existing Class 5 usage on former gasworks site	RCA1
NK18	Gullane Fire School	-	-	1.0 HA	-	Along S edge of site adjacent to proposed SUDS pond	RCA1

Proposed LDP

- 3.9 In respect of the first two amendments draft Proposals MH9 and MH10 at Goshen are not included in the finalised Proposed LDP (LDP pp. 17-22).
- 3.10 Draft Proposal MH11 at Drummohr is not included in the finalised Proposed LDP, reflecting the third amendment. (LDP pp. 17-22).
- 3.11 The safeguard of land for housing development at Dolphingstone (draft Proposal MH13) has been modified to allocate this land for 600 houses as required by the fourth amendment (LDP p. 20).
- 3.12 Land at Howmire, Wallyford has been allocated (Proposal MH13) for circa 170 homes and for potential employment uses also, responding to the fifth amendment (LDP p. 21).
- 3.13 The area of land of Proposal MH1 at Craighall and which is between the freight loop, the A1 and the Millerhill Marshalling Yards has been subject to technical work and is allocated as mixed use development for 1500 homes, some 41 hectares of employment land, a new local centre and a new primary school with associated infrastructure and community uses. This reflects the Council's final Musselburgh cluster amendment (LDP p. 17).
- 3.14 Dolphingstone North at Prestonpans is allocated as Proposal PS2 for some 140 homes, responding to the first part of the Prestonpans amendment (LDP pp. 23-25).
- 3.15 Land at Longniddry safeguarded for potential future housing development (draft Proposal PS2 Longniddry South Housing Land Safeguard, corrected) is not included in the finalised Proposed LDP. This reflects the Council's amendment for Prestonpans cluster (LDP pp. 23-25).
- 3.16 One hectare of employment land is allocated as part of Proposal NK1 (Mains Farm) in North Berwick and a further one hectare as part of Proposal NK4 (Tantallon Road) in response to the North Berwick amendment (LDP pp. 51-53).
- 3.17 As a consequence of the amendment to remove the Goshen sites, there is a new proposal (MH11) for a new secondary school establishment for the Musselburgh cluster at Wallyford/Dolphingstone (Proposals MH9 and MH10) (LDP p. 20). This corresponds to the approach of the Education consultation process currently ongoing.
- 3.18 The further technical evidence supporting the Proposed LDP (2a) includes the Draft Action Programme (2b), Draft Environmental Report, Draft Habitats Regulations Assessment, Equalities Impact Assessment, draft Supplementary Guidance and Supplementary Planning Guidance (Item 3 on this agenda) and Technical Notes as listed in the table below.

Main Document	Members Library Doc	ML Ref
2a(i) - LDP written statement	Proposed Local Development Plan Technical Note 1: Planning for Housing, Housing Requirements, Housing Land Requirements and Housing land Supply	130/16
2a(ii) - LDP Proposals map	Proposed Local Development Plan Technical Note 5: Planning for Waste	131/16
	Proposed Local Development Plan Technical Note 6: Planning for Minerals	132/16
	Proposed Local Development Plan Technical Note 12: Planning for Air Quality	133/16
	Proposed Local Development Plan Technical Note 8: Planning for Countryside Around Towns (CATS)	134/16
	Proposed Local Development Plan Technical Note 13: Planning for Cultural Heritage	135/16
	Proposed Local Development Plan Technical Note 3: Planning for Town Centres and Employment	136/16
	Proposed Local Development Plan Technical Note 7: Planning for Coast	137/16
	Proposed Local Development Plan Technical Note 4 : Planning for Wind	138/16
	Proposed Local Development Plan Technical Note 10: Planning for Biodiversity	139/16
	Proposed Local Development Plan Technical Note 11: Planning for Geodiversity	140/16
	Proposed Local Development Plan Technical Note 9: Local Landscape Designation Review	141/16
	Proposed Local Development Plan Technical Note 9: Local Landscape Designation Review Appendix I Landscape Character Area Boundary Review	142/16
	Proposed Local Development Plan Technical Note 9: Local Landscape Designation Review Appendix II Landscape Character Area Evaluation	143/16
	Proposed Local Development Plan Technical Note 9: Local Landscape Designation Review Appendix III Public Consultation	144/16
	Proposed Local Development Plan Technical Note 9: Local Landscape Designation Review Appendix IV Landscape Areas	145/16
	Proposed Local Development Plan Technical Note 9: Local Landscape Designation Review Appendix V Wildness and Soil	146/16
	Proposed Local Development Plan Technical Note 9: Local Landscape Designation Review Appendix VI Local Landscape Character Areas	147/16
	Proposed Local Development Plan Strategic Flood Risk Assessment	148/16
	Proposed Local Development Plan Transport Appraisal	149/16
	Proposed Local Development Plan Draft Environmental Report	150/16
	Proposed Local Development Plan Appendix 5: Musselburgh Area Site and Strategic Environmental Assessments	151/16
	Proposed Local Development Plan Appendix 6: Prestonpans Area Site and Strategic Environmental Assessments	152/16
	Proposed Local Development Plan Appendix 7: Tranent Area Site and Strategic Environmental Assessments	153/16
	Proposed Local Development Plan Appendix 8: Haddington Area Site and Strategic Environmental Assessments	154/16
	Proposed Local Development Plan Appendix 9: Dunbar Area Site and Strategic Environmental Assessments	155/16
	Proposed Local Development Plan Appendix 10: North Berwick Area Site and Strategic Environmental Assessments	156/16
	Proposed Local Development Plan Draft Habitats Regulations (HRA)	157/16
Proposed Local Development Plan Monitoring Statement	158/16	
Proposed Local Development Plan Equalities Impact Assessment (EQIA)	159/16	
3a – Proposed Local Development Plan Draft Developer Contributions Supplementary Guidance	Proposed Local Development Plan Technical Note: Draft Developer Contributions Framework	160/16
3b – Proposed Local Development Plan Affordable Housing Supplementary Planning Guidance	Proposed Local Development Plan for Technical Note: Affordable Housing Quota and Tenure Mix	161/16

Development Planning Considerations

- 3.19 Council approval of the draft Local Development Plan (as amended) provided the settled view of the Council as to the strategy and sites it wants to promote as a sustainable development strategy for the area, to ensure the right development can occur in the right places to meet the Strategic Development Plan (SDP) housing requirements.
- 3.20 Finalisation of the Proposed LDP does not replace the existing adopted East Lothian Local Plan 2008; however, the Proposed LDP will be a significant material consideration for decision-makers in determining planning applications. This consideration was noted by the Council in approving the revised Housing Land Supply: Interim Planning Guidance in February 2016.
- 3.21 Following any examination, the Reporter will consider the merit of the unresolved representations and make recommendations to the Council on whether the plan needs be changed as a result of them. The recommendations will be largely binding on the Council, and may require that changes be made to the plan before it can be adopted as the up-to-date local development plan for the area.

Considerations relating to prematurity and prejudice

- 3.22 Scottish Planning Policy (SPP) states that where a plan is under review decisions should not prejudice an emerging plan by pre-determining the scale, location or phasing of development central to the emerging plan. This is a consideration that is very likely to apply where the development is so substantial, or its cumulative effect (e.g. with other existing and/or emerging proposals) would be so significant, that to grant permission would undermine the plan making process. Such considerations relating to prematurity and prejudice are increasingly relevant closer to plan adoption, including at Proposed LDP stage.
- 3.23 It is important to note that these considerations are equally relevant to larger scale proposals that are supported by the emerging plan as well as those that are not – the outcome of any examination of the emerging plan is not yet known, and to approve planning permission for a large scale proposal (even if supported by the Council at this stage) may prejudice the ability of an examination to recommend that it be replaced by another. Such a premature decision may result in a legal challenge of that decision.
- 3.24 Prematurity and prejudice considerations can also apply in situations where a proposed development, even small scale, is dependent on an infrastructure solution that is necessary to accommodate the cumulative impact of development proposed by the draft plan, but for which a solution has not yet been identified, for example the provision of additional secondary education capacity in the Musselburgh area.

- 3.25 The same considerations would apply if the early approval of sites associated with the emerging strategy were to occur without the requisite contributions towards additional infrastructure capacity that arise as a consequence of the strategy overall being provided – doing so would compromise the funding base for the infrastructure and potentially prejudice the deliverability of the emerging plan.
- 3.26 Importantly, however, there may be situations where cumulative impact issues can be overcome for smaller scale housing proposals of an appropriate scale in suitable locations that would not undermine the emerging plan, and that would contribute towards the maintenance of an effective five-year supply of housing land.
- 3.27 Such proposals may be supported on the proviso that the necessary cumulative impact assessment has been undertaken (based on accommodating all relevant proposals of the Proposed LDP) and if the necessary mitigation can be provided and will be funded by the developer on a proportionate and pro-rata basis as appropriate. Such proposals would need to be assessed on a case by case basis.
- 3.28 To avoid decisions that would be premature to or prejudice the emerging plan, the context of the Proposed LDP and the Housing Land Supply: Interim Planning Guidance should only be used to support housing proposals of an appropriate scale in suitable locations that, if approved, would not undermine significant decisions on where large-scale developments should occur, or that would compromise how additional infrastructure capacity could be funded and delivered on a cumulative basis, including from smaller scale proposals.

Draft Action Programme

- 3.29 The Draft Action Programme sets out how the objectives, strategy and policies of the LDP can be successfully implemented and delivered along with the various actions and partnerships that will be required to support and achieve this. In accordance with Section 21 of the Planning etc. (Scotland) Act 2006 and Regulation 26, the Action Programme sets out:
- A list of actions to deliver each of the plan's policies and proposals
 - The name of the person (organisation) who is to carry out the action
 - The timescale for carrying out each action
- 3.30 The actions included are not just those for the Planning Authority, but also for key stakeholders and agencies. Delivery of LDP policies and proposals is dependent on a wide range of factors, including actions contained in other plans, programmes and strategies, economic conditions and other factors outwith the LDP. The Action Programme gives a broad indication of the expected timescales for development

rather than a precise programme of delivery. It is a live document and is flexible in response to change.

- 3.31 The Programme supports the LDP by outlining how the policies and proposals in the LDP will be delivered by East Lothian Council and other stakeholders. It sets out how the Council proposes to provide a focus on delivery and to co-ordinate development and infrastructure provision. This will in turn contribute to the Council's aim of creating a prosperous, safe and sustainable East Lothian that will allow local people and communities to flourish, as set out in the Council Plan 2012-2017.
- 3.32 This Action Programme reflects the continuous process of delivering development and will prioritise key areas of action required to deliver the vision and objectives of the Plan. There is a close connection between the content of the Action Programme and the further information and guidance in the Developer Contributions Framework Supplementary Guidance, particularly in relation to infrastructure provision and associated costs and timing for delivery.
- 3.33 The Action Programme has been prepared in parallel with the LDP to increase confidence that the plan is deliverable. It is a high level 'project plan' to be monitored and used regularly to instigate actions to implement the LDP. It is important that the Action Programme remains current and up to date and it will be reviewed every two years. This will provide an opportunity to identify progress in delivery of policies and proposals, and to consider additional future actions that may be required. It is also intended to serve as a useful means of keeping stakeholders informed on LDP delivery. The Council will engage with all relevant parties as part of these reviews.
- 3.34 The Action Programme and the Plan do not work in isolation. They align with a number of key corporate policy statements of the Council including the Single Outcome Agreement, Local Housing Strategy and Developer Contributions Framework Supplementary Guidance. The LDP is therefore an important corporate document whose successful implementation will require cross departmental action (AP p. 4).
- 3.35 The Action Programme collates LDP proposals and policies so that an overview of plan and action progress can be monitored to enable the continued momentum of plan delivery.
- 3.36 Each proposal and policy identifies the key agents of action, how they will deliver this through key actions, and when they will do it. Review meetings of the key actions will be reported to Senior Officers via team meetings, and then to Cabinet every two years or more frequently should the Council require. The lead agency noted in the action programme will be responsible for the implementation of the policies and proposals to which they are assigned. They will also have the responsibility for regular reporting and for monitoring and updating of the Action Programme.

- 3.37 The delivery of development is not always straightforward and a number of factors can contribute to delay or slippage from both internal and external factors. The Action Programme needs to be flexible in response to change, proposing alternative solutions when needed (so long as there are consistent with the Development Plan) and assessing the impact of any change on remaining proposals as many are interlinked.
- 3.38 The Action Programme will be formally reviewed and published on a biennially basis or sooner should the Council require. On publication, it will be available online, at the Council office in Haddington and copies will be sent to Scottish Ministers.
- 3.39 The Action Programme will look at the strategic policies and proposals and the identified actions needed to implement the proposals. To assist with the delivery of development on the ground, the Council has prepared Supplementary Guidance on Developer Contributions. Contributions will be utilised to implement the broad strategy of the Plan and specific proposals. The actions based on the LDP are structured as follows:

1) Priority Actions - Key Strategic Projects

These are actions that must be implemented in the short term to assist with the timely delivery of the LDP. It is broken into 3 Priority Actions;

- Adoption of Local Development Plan Supplementary Guidance and Supplementary Planning Guidance;
- Delivery of Specific Proposals relating to Major Infrastructure; and
- Delivery of Specific Proposals relating to Education.

All information for Priority Actions 1 and 2 are broken down in detail by Cluster in Appendix 1.

2) LDP Guidance – Proposals & Policies

This section sets out the policies and proposals of the plan and stipulates any actions associated with them.

- LDP non Statutory Guidance
- LDP Policies and Proposals

3) Monitoring and Assessment for LDP Review

Environmental Report, Draft Habitat Regulations Assessment and the Equalities Impact Assessment

- 3.40 The Environmental Assessment (Scotland) Act 2005 has the effect of making Strategic Environmental Assessment (SEA) mandatory when preparing a Local Development Plan (LDP) under the Town & Country

Planning (Scotland) Act 1997 (as amended). The SEA process is to be aligned with the key stages of preparing the Development Plan, with the SEA findings reported at each stage. This is done with the advice of the 'Consultation Authorities' (CA), namely Historic Scotland (HS), Scottish Environmental Protection Agency (SEPA) and Scottish Natural Heritage (SNH). The Draft Environmental Report (DER) (available in the Members' Library, Ref: 152/16, August 16 Bulletin) reports interim SEA findings and has been prepared with the advice of the CAs.

- 3.41 In October 2014 the Council published for consultation its Main Issues Report for its Local Development Plan together with the associated Interim Environmental Report. This consultation period ended in February 2015. Although the CAs were satisfied with the scope and content of the IER, they made some minor suggestions for how the IER might be improved while noting that these would not change the outcome of the SEA overall. These suggested changes from the CAs are indicated throughout the Draft Environmental Report as follows: Brown: Historic Environment Scotland suggestions; Green: Scottish Natural Heritage suggestions; Blue: Scottish Environmental Protection Agency suggestions.
- 3.42 As such, the Environmental Report is evolving with the plan making and consultation processes. An ER is to identify, describe, predict and evaluate the likely significant effects on the environment of implementing a plan, policy or strategy (PPS), and its reasonable alternatives. It is to describe any measures envisaged to prevent, reduce and as far as possible offset any significant adverse effects (mitigation). It is also to clarify who will be responsible for delivering any mitigation and describe the monitoring arrangements.
- 3.43 The Finalised Environmental Report will be published with the adopted LDP, as the Draft Environmental Report may be amended to take in to account any changes arising should any Examination of the Proposed LDP trigger this. A SEA Post Adoption Statement will also be published to explain the effect that the SEA process has had on the LDP.
- 3.44 The draft Habitats Regulations Appraisal and Appropriate Assessment of the Proposed LDP is a working document, which will be updated to reflect changes in the emerging LDP.
- 3.45 The requirement for Appropriate Assessment is set out in The Conservation (Natural Habitats, etc.) Regulations 1994 as amended¹, which implement Articles 6(3) and 6(4) of the Habitats Directive. Before giving consent to a project or plan that is not directly connected to the management of a European designated site, and which is considered to have a likely significant effect upon that site, a competent authority must consider the implications for the site in view of that site's conservation objectives. This is known as "Appropriate Assessment". The "test" is that

¹ Part IVA (regulations 48 & 49)

permission for the project or plan should only be given where it has been determined that it will not have, either alone or in combination with other projects and plans, an adverse effect upon the integrity of the European site. Permission can only be granted for plans that have an adverse effect upon integrity if there are no alternative solutions, but there are imperative reasons of overriding public interest that mean the plan should proceed. Before making any decision, the competent authority should consult with Scottish Natural Heritage (SNH), the statutory nature conservation adviser.

- 3.46 The term “Habitats Regulations Appraisal” (HRA) (available in the Members’ Library, Ref: 159/16, August 16 Bulletin) is used to describe the whole process of considering whether a project or plan will give rise to likely significant effects upon a European Site, deciding which European sites should be considered, which aspects of the plan or proposals may give rise to likely significant effects (known as “screening”), and the subsequent Appropriate Assessment (AA) of the implications of these effects upon the integrity of the European Site.
- 3.47 The Equalities Impact Assessment accompanying the Proposed LDP (available in the Members’ Library, Ref: 160/16, August 16 Bulletin) sets out the consultation and community engagement process followed in producing the Main Issues Report, the draft Proposed LDP and the Proposed LDP. In addition to providing a commentary on that process it gives an assessment of the levels of participation and an analysis of those who participated and completed questionnaires in relation to equalities criteria.
- 3.48 It assesses the strategy of the proposed plan and the implications of the plan outcomes and policies for different socio-economic, ethnic and gender groups, including consideration of potential positive and negative effects.

Plan Procedures and Timescales

- 3.49 The Proposed LDP then needs to be published for representation so interested parties have the opportunity to seek modifications to the plan. If there are unresolved representations, the plan will be examined by a reporter appointed by Scottish Ministers.
- 3.50 The representation and consultation periods for the Proposed LDP and associated documents will be for six weeks following approval, finalisation and printing will be 19 September 2016 to 31 October 2016
- 3.51 Following this period the work to assess and consider the representations and the drafting of the Schedule 4 documents will be carried out. These will subsequently be brought back before the Council for approval prior to forming part of the Proposed LDP package submitted to Ministers for examination.

- 3.52 Should any notifiable modifications be required the Council would have to prepare and publish a revised Proposed LDP for further representation.
- 3.53 Members will be advised of the timescales for examination and reporting set by the Directorate for Planning and Environmental Appeals (DPEA) in due course.

4 POLICY IMPLICATIONS

- 4.1 The strategy, sites and policies of the Local Development Plan will have a significant bearing over the coming 10 years on where development in East Lothian is located and how it is managed.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report has been through the Integrated Impact Assessment process and no significant negative impacts have been identified.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - The growth resulting from the implementation of the adopted Local Development Plan will have significant implications for the Council and its wider Community Planning partners in respect of financial and other strategic plans. These implications will largely be over and above anything currently reflected within the approved 3-year revenue budget and capital programmes. The Proposed LDP and the Developer Contributions Framework Supplementary Guidance identify where the provision of additional capacity or new facilities/infrastructure is required so as to ensure that developers contribute towards these where appropriate. The cumulative impacts, mitigation interventions and high level costs and contribution requirements are set out across the Proposed LDP and Action Programme as well as the separately reported Developer Contributions Framework Supplementary Guidance. This will allow the Council to maximise recovery of required developer contributions, government grants and other contributions to help accommodate its own commitments within both capital and revenue forward planning. The Financial Strategy approved by the Council in February 2016 signalled the potential future significance of the LDP although it was accepted that the vast majority of this would lie outwith the existing 3-year strategy period. Upon approval and ultimate adoption of the LDP, there will be a clear imperative that the Council refreshes and extends the financial planning horizon, particularly in respect of the Council's Capital Programme but also in anticipation of the associated revenue implications that will flow from any such investment. The Planning Service budget includes for potential examination costs.

- 6.2 Personnel - Staff time for all services may be required to inform responses to representations, examination requests for further information and for hearing/inquiry sessions at examination.
- 6.3 Other -

7 BACKGROUND PAPERS

- 7.1 National Planning Framework 3 [NPF3](#)
- 7.2 Scottish Planning Policy: June 2014 [SPP](#)
- 7.3 SESplan Strategic Development Plan, June 2013 [SDP](#)
- 7.4 SESplan Supplementary Guidance on Housing Land October 2014
- 7.5 East Lothian Local Development Plan Main Issues Report October 2014 [MIR](#)
- 7.6 Interim Environmental Report October 2014 (with appendices – Site Assessments) October 2014 [IER](#)
- 7.7 Monitoring Statement October 2014 [MR](#)
- 7.8 Transport Appraisal October 2014 [TA](#)
- 7.9 Consultation Feedback – summaries and key messages April 2015 [CF](#)
- 7.10 Housing Land Supply: Interim Planning Guidance
- 7.11 Draft Proposed Local Development Plan [draft LDP](#)

AUTHOR'S NAME	Iain McFarlane
DESIGNATION	Service Manager, Planning
CONTACT INFO	imcfarlane@eastlothian.gov.uk x7292
DATE	26 August 2016

REPORT TO: East Lothian Council

MEETING DATE: 6 September 2016

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: East Lothian Proposed Local Development Plan – Consultation Draft Supplementary Guidance and Consultation Draft Supplementary Planning Guidance for Approval

3

1 PURPOSE

- 1.1 This report seeks Council approval, for consultation, of draft Supplementary Guidance and Supplementary Planning Guidance associated with the finalised Proposed Local Development Plan (LDP):
- draft Developer Contributions Framework;
 - draft Affordable Housing Quota and Tenure Mix; and
 - draft Development Briefs for proposed development allocations.
- 1.2 These associated documents will, after consultation and finalisation, provide for the interpretation and implementation of the relevant policies of the Proposed LDP.

2 RECOMMENDATIONS

- 2.1 That Council approves for consultation the draft Developer Contributions Framework Supplementary Guidance (supporting documentation provided in the Members' Library, Ref: 160/16, August 16 Bulletin);
- 2.2 That Council approves for consultation the draft Affordable Housing Quota and Tenure Mix Supplementary Guidance (supporting documentation provided in the Members' Library, Ref: 161/16, August 16 Bulletin); and
- 2.3 That Council approves for consultation the draft Development Briefs Supplementary Planning Guidance.

3 BACKGROUND

- 3.1 On 17 November 2015 the Council approved the strategy, sites and policies of the draft Proposed Local Development Plan, with amendments and subject to further technical work.
- 3.2 The finalised Proposed LDP reflects the Council's decision to approve the draft Proposed LDP with those amendments and the outcomes of the further technical work.
- 3.3 The draft Proposed LDP itself followed on from the Main Issues Report approved by Members for public consultation in October 2014 and the subsequent report on that 12-week consultation to Members of April 2015, including the responses of statutory consultees.
- 3.4 The Main Issues Report set out the research basis for a Proposed LDP and set out the Preferred Option for a Compact Spatial Strategy and the evidence base for it and implications of it. It also set out the Reasonable Alternative option of Dispersed Growth with its evidence base and implications.
- 3.5 The Proposed LDP is the outcome of this significant body of work with Members, the public and statutory and other consultees. It takes due cognisance of the Scottish Government's National Planning Framework 3, Scottish Planning Policy (SPP) and of the statutory South East Scotland Strategic Development Plan (SDP).
- 3.6 The Proposed LDP is also set in the context of legislative requirements for sustainability (Climate Change (Scotland) Act 2009; Sections 3D and 3E Town and Country Planning (Scotland) Act 1997 as amended).
- 3.7 The Proposed LDP also responds to the Council Plan 2012-17, the Single Outcome Agreement 2013-14 and the Council Economic Strategy 2012-22.
- 3.8 In addition to the amendments to the draft Proposed LDP, officers were required to carry out further technical work. That work included draft Supplementary Guidance and draft Supplementary Planning Guidance.

Draft Developer Contributions Framework

- 3.9 The draft Developer Contributions Framework Supplementary Guidance reflects that the planning system allows mitigation to be sought from applicants or developers towards delivering infrastructure capacity solutions where the need for this arises as a result of their development. Planning policies can also require that provision is made for other interventions, such as provision for affordable housing as part of market housing development. These interventions are normally called 'developer contributions'. The guidance is prepared for consultation with stakeholders.
- 3.10 To deliver the Proposed LDP further investment is required from developers to provide for the transport, education, community, health

care and affordable housing requirements, or other infrastructure or environmental constraints that will arise as a result of their developments, on an individual and on a cumulative basis. The Council has worked with service and infrastructure providers to identify opportunities, constraints and costed mitigation solutions for planned growth.

- 3.11 The Strategic Development Plan for Edinburgh and South East Scotland (SDP) expects East Lothian's Local Development Plan (LDP) to set out the items and circumstances in which developer contributions will be sought; Supplementary Guidance is to be prepared to assist applicants, landowners and developers in this regard. Accordingly, the draft statutory Supplementary Guidance Developer Contributions Framework provides further information and detail on how SDP Policies and the LDP Policy DEL1: Infrastructure and Facilities Provision will be applied. The draft guidance sets out the contributions, where known at this stage, that applicants or developers must provide for as part of their proposals for different types and scales of development within different parts East Lothian.
- 3.12 A need for additional capacity in infrastructure can be generated by an individual development, or by the cumulative impact of a number of developments in an area. One development can impact on a number of different types of infrastructure or facilities. This means a development may need to mitigate its impact on infrastructure or facilities with other developments on a cumulative basis as well as be the sole provider of mitigation where the need for it arises only because of that development.
- 3.13 Scottish Government Circular 3/2012: Planning Obligations and Good Neighbour Agreements is clear developer contributions can only be sought where they are necessary to make a proposal acceptable in planning terms (overcome a barrier to the approval of planning permission); serve a planning purpose (provide or contribute towards mitigation that is normally identified in the development plan); be related to the proposed development either as a direct consequence of it or arising from the cumulative impact of development in an area (there must be a clear direct link between development and the infrastructure to be provided), fairly and reasonably relate in scale and kind to the development (provide or contribute to the provision of infrastructure that would not be necessary were it not for the development, on a proportionate pro-rata basis as appropriate, but not to resolve existing deficiencies); and be reasonable in all other respects.
- 3.14 The Scottish Government acknowledges that infrastructure capacity is a significant issue to enabling further sustainable economic growth in East Lothian. Best use is to be made of existing capacity and facilities as appropriate, but in some cases additional capacity and new facilities will be required. Innovation and joint working is expected to identify funding solutions and delivery mechanisms. Developer contributions will have a role to play in this and they can be provided for in the following ways:

- **Accumulated Contributions** are placed in an infrastructure fund that relates to a specific infrastructure project that is required to mitigate the cumulative impact of new development in an area. Such funds are used so the cumulative impact of more than one development can be mitigated by combining separate contributions that are in keeping in scale and kind with the proportional impact of each development, so when the individual contributions are taken together they can deliver an intervention that is needed to mitigate the cumulative impact of development;
- **In-kind Contributions** such as where a developer builds (e.g. homes) or provides (e.g. serviced land) the necessary intervention to an agreed standard and transfers it to the service or infrastructure provider, or agrees with them another appropriate delivery mechanism;
- **Financial Contributions** such as one-off upfront payments, or phased payments for more substantial or complex contribution requirements; and
- **Commuted sums**, such as for the on-going maintenance of open space or in lieu of on-site provision for affordable housing.

This draft Supplementary Guidance identifies the key contributions that will be required from applicants or developers in association with their proposals for different types and scales of development for sites planned for by the Local Development Plan in different developer contribution zones within East Lothian. It also identifies the preferred manner in which such developer contributions should be provided for by applicants or developers.

- 3.15 Commitment from applicants or developers to provide for their contributions will be necessary before planning permission will be approved. This may require use of legal agreements. For the avoidance of doubt, applicants or developers will also need to comply with any conditions of their planning permission.
- 3.16 Consistent with relevant LDP policies and proposals and Circular 3/2012: Planning Obligations and Good Neighbour Agreements, this guidance seeks developer contributions for the provision of the following:
- **Transport network capacity**, including for active travel, public transport and the strategic and local road networks;
 - **Education facilities capacity**, including for pre-school, primary school and secondary school levels;
 - **Affordable housing**, which may include provision of housing and support services to meet the needs of older people as well as those with long term health needs including learning disability, mental health needs or physical disability or younger people with health and social care needs;

- **Sport Facilities Capacity**, including formal indoor and outdoor recreation and changing facilities;
- **Environmental mitigation**, including to address development related impacts on any identified Air Quality Management Area (which in the case of Musselburgh town centre will be addressed by transport interventions);
- **Health and social care facilities capacity**, including General Practitioner Services and community health services to meet the needs of the growth in population, particularly the projected increase in number of elderly people; and
- **Employment land servicing** as identified on site by site basis.

3.17 The guidance sets out by each relevant zone and cluster where developer contributions will be sought and includes in table form the level of contributions to be sought. This gives clear, evidenced guidance for developers up-front of the application process to allow them to factor in required planning obligation costs when negotiating land options. By informing this process the guidance should provide a better context for assessing cost of land and determining the financial viability of sites, reducing the chances of a site being ineffective.

Draft Affordable Housing Quota and Tenure Mix

3.19 The draft Affordable Housing Quota and Tenure Mix Supplementary Planning Guidance (SPG) on Affordable Housing supplements *Policy HOU3: Affordable Housing Quota* and *Policy HOU4: Affordable Housing Tenure Mix* of the Proposed LDP in relation to the delivery of affordable housing. It sets out how the planning system can assist with facilitating the delivery of affordable housing. It has been prepared under Section 22 of the Planning etc. Scotland Act 2006, in accordance with SPP (2014) and forms part of the East Lothian Proposed Local Development Plan (LDP).

3.18 The guidance is intended to provide further information and detail on how the above policies of the East Lothian LDP should be interpreted and applied. As such it provides a framework for the implementation of East Lothian Council's Affordable Housing Policy (as it relates to LDP policy i.e. quota, tenure mix, specialist provision, etc.) and outlines the mechanisms by which affordable housing can be delivered within a broader economic context. It aims to set out detailed guidance alongside the Strategic Development Plan (SDP) and LDP policies on affordable housing.

3.19 This Supplementary Planning Guidance has been prepared for consultation to:

- Set out information and advice to individuals and organisations with an interest in affordable housing
- Provide clarity in relation to the affordable housing requirement and contributions to be sought

- Promote transparency and consistency with regard to the negotiation of developer contributions.
- 3.20 In accordance with SPP, this draft SPG sets out how the affordable housing requirement is expected to be delivered. A 25% affordable housing contribution will be sought from developers of new housing developments consisting of five or more units. That means all developments which propose to develop housing defined under use class 9 whether a conversion, amenity, sheltered or retirement will still fall under the affordable housing policy and the 25% affordable housing quota. The Council will seek to secure this 25% in the same manner as any other affordable housing where this can be justified by the HNDA whilst consistent with and complimenting the LHS and LDP. To allow for the transition between plans, affordable housing quotas for previously allocated sites will remain as set by the previous local plan. As such the affordable housing quota of the previous plan was 25%, other than at Blindwells (existing allocation) and at Letham Mains, Haddington where 30% and 17% quotas were set respectively.
- 3.21 Planning Advice Note (PAN) 2/2010: Affordable Housing and Housing Land Audits (August 2010) revoked PAN74 Affordable Housing (March 2005). PAN 2/2010 sets out information and advice with regard to technical planning matters and provides a statement of advice on developing planning policy in relation to affordable housing and housing land audits. It describes a range of tenure types that can contribute to affordable housing and alternative means of delivering affordable housing which are considered in full at Section 4 of this draft SPG.
- 3.22 PAN 2/2010 is anticipated to be replaced in due course. Once this is finalised, this draft SPG will be reviewed in accordance with the new PAN and in accordance with this and with relevant legislation.
- 3.23 Consistent with Scottish Government Local Housing Strategy (LHS) Guidance, the LHS must consider the scale and distribution of the affordable housing requirement for a specified area. Where a shortage of affordable housing is identified, it should clearly set out the role that affordable housing policies are anticipated to play in addressing this. In accordance with LHS Guidance, the East Lothian LHS 2012-17 provides the strategic direction to tackle housing need and demand and inform future investment in housing across the county. The LHS sets out five strategic outcomes including *'Outcome 1: Increase housing supply and improve access to appropriate housing including affordable housing'*. The preparation of draft SPG contributes towards meeting this outcome. A revised East Lothian LHS will be prepared to cover the period 2017-22 and will link as appropriate to this SPG.
- 3.24 The Scottish Government's Housing Need and Demand Assessment (HNDA) Guidance (2014) provides a step-by-step approach to assessing need and demand across all tenures. Local authorities are encouraged to undertake this analysis at a housing market area level and provide a clear understanding of the operation of the housing system as a whole.

The HNDA should provide evidence to inform policies in relation to the level of affordable housing required.

- 3.25 The SDP1 HNDA was signed off as robust and credible by the Scottish Government in June 2011. It covers housing need and demand across the South East Scotland area including East Lothian and provides part of the evidence base to set Housing Supply Targets in the LHS. The Housing Supply Target is used to determine the housing land requirement for the LDP and ensure suitable land is allocated to meet this requirement.
- 3.26 The HNDA provides an estimate of total housing need by calculating current housing need and estimating future housing demand. It shows that between 2009 and 2032, 33% of the total housing supply in East Lothian should be for affordable housing. In the short term up to 2019, it demonstrates that affordable housing need will be more acute with a 41% annual requirement. SPP requires that the quota of affordable homes that can be expected from a market housing site should be no more than 25% of units. The primary requirement in relation to affordable housing is for social rented housing; however, it is recognised that other affordable housing models are required to meet need and demand.
- 3.27 Provision also needs to be made for specialist housing and other specific housing needs. It will be a requirement of all developments which propose to develop housing defined under use class 9 whether a conversion, amenity, sheltered or retirement will still fall under the affordable housing policy and the 25% affordable housing quota.
- 3.28 The LDP, LHS and Strategic Plan for Health and Social Care Integration (2016) support the principle of specialist housing provision and provision for specific housing needs. There is also a commitment to achieving National Health and Wellbeing Outcomes, in particular Outcome 2 *'People, including those with disabilities or long term conditions, or who are frail, are able to live, as far as reasonably practicable, independently and at home or in a homely setting in their community.'*
- 3.29 The LDP requires that in developments of five or more units as a minimum, the provision of serviced land should be transferred to deliver an affordable housing contribution amounting to 25% of the total number of units proposed. This will include all developments which propose to develop housing defined under use class 9 whether a conversion, amenity, sheltered or retirement.
- 3.30 The Council's priority will always be to secure on site delivery, however, it also recognises that this can be expensive and resource intensive on smaller sites and not always practical due to the following:
- Difficult to transfer land e.g. units above shops or block of flats
 - Numbers may be inefficient from a management perspective
 - Integration with large expensive properties

- Designing within an existing footprint does not always provide the best layout for affordable housing.

On such developments, the Council's preference would be to consider the delivery of alternative tenures such as mid market rent or discounted sale which are outlined in section 6 of this guidance. The Council may also consider an off-site contribution if a developer can provide an alternative allocated housing area in its ownership which can deliver housing in an area of high need. Only when both the above are impracticable will the Council look to secure a financial contribution in the form of a commuted sum which will help contribute towards the delivery of affordable housing elsewhere.

- 3.31 The delivery of affordable housing provision will be secured by agreements under Section 75 of the Town and Country Planning (Scotland) Act 1997 (Section 75).

Development Briefs

- 3.32 The draft Development Briefs Supplementary Planning Guidance is for consultation. The Development Briefs set out in draft the principles of development which applicants should understand and respond to in pre-application proposals and in planning applications for those sites.
- 3.33 The principles of development are based on the site assessments which were part of the process by which sites were selected as preferred, reasonable alternatives or other alternatives for the Main Issues Report and for the draft Proposed LDP.
- 3.34 The site assessments were subject to consultation with stakeholders and the Development Briefs were subsequently composed taking into account technical assessments and stakeholder input.
- 3.35 They provide a framework for development on each of the relevant sites, taking account of physical and technical constraints such as access, flooding and capacity as well as assessments of factors such as natural and cultural heritage interests.

Plan Procedures and Timescales

- 3.36 The representation and consultation periods for the Proposed LDP and associated documents, including the draft Supplementary Guidance and Supplementary Planning Guidance will be for six weeks following approval, finalisation and printing will be 19 September 2016 to 31 October 2016.
- 3.37 Following this period the work to assess and consider the consultation responses will be carried out. The Supplementary Guidance and Supplementary Planning Guidance will subsequently be brought back before the Council for approval prior to forming part of the Proposed LDP package submitted to Ministers for examination.

4 POLICY IMPLICATIONS

- 4.1 The strategy, sites and policies of the Local Development Plan will have a significant bearing over the coming 10 years on where development in East Lothian is located and how it is managed.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report has been through the Integrated Impact Assessment process and no significant negative impacts have been identified.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - The growth resulting from the implementation of the adopted Local Development Plan will have significant implications for the Council and its wider Community Planning partners in respect of financial and other strategic plans. These implications will largely be over and above anything currently reflected within the approved 3-year revenue budget and capital programmes. The Proposed LDP and the Developer Contributions Framework Supplementary Guidance identify where the provision of additional capacity or new facilities/infrastructure is required so as to ensure that developers contribute towards these where appropriate. The cumulative impacts, mitigation interventions and high level costs and contribution requirements are set out across the Proposed LDP and Action Programme as well as the separately reported Developer Contributions Framework Supplementary Guidance. This will allow the Council to maximise recovery of required developer contributions, government grants and other contributions to help accommodate its own commitments within both capital and revenue forward planning. The Financial Strategy approved by the Council in February 2016 signalled the potential future significance of the LDP although it was accepted that the vast majority of this would lie outwith the existing 3-year strategy period. Upon approval and ultimate adoption of the LDP, there will be a clear imperative that the Council refreshes and extends the financial planning horizon, particularly in respect of the Council's Capital Programme but also in anticipation of the associated revenue implications that will flow from any such investment. The Planning Service budget includes for potential examination costs.
- 6.2 Personnel - Staff time from a range of services may be required to inform responses to the Supplementary Guidance and Supplementary Planning Guidance and provide assessment of any proposed changes to them.
- 6.3 Other -

7 BACKGROUND PAPERS

- 7.1 National Planning Framework 3 [NPF3](#)
- 7.2 Scottish Planning Policy: June 2014 [SPP](#)
- 7.3 SESplan Strategic Development Plan, June 2013 [SDP](#)
- 7.4 SESplan Supplementary Guidance on Housing Land October 2014
- 7.5 East Lothian Local Development Plan Main Issues Report October 2014 [MIR](#)
- 7.6 Interim Environmental Report October 2014 (with appendices – Site Assessments) October 2014 [IER](#)
- 7.7 Monitoring Statement October 2014 [MR](#)
- 7.8 Transport Appraisal October 2014 [TA](#)
- 7.9 Consultation Feedback – summaries and key messages April 2015 [CF](#)
- 7.10 Housing Land Supply: Interim Planning Guidance
- 7.11 Draft Proposed Local Development Plan [draft LDP](#)

AUTHOR'S NAME	Iain McFarlane
DESIGNATION	Service Manager, Planning
CONTACT INFO	imcfarlane@eastlothian.gov.uk x7292
DATE	26 August 2016