

REPORT TO: Audit and Governance Committee

MEETING DATE: 13 September 2016

BY: Depute Chief Executive – Resources & People Services

SUBJECT: Internal Audit Report – Section 75 Payments

1 PURPOSE

- 1.1 To inform the Audit and Governance Committee of the recently issued audit report on Section 75 Payments.

2 RECOMMENDATION

- 2.1 That the Audit and Governance Committee note the contents of the Executive Summary and Action Plan.

3 BACKGROUND

- 3.1 At the request of management a review was undertaken of the arrangements in place for the administration, management and monitoring of Section 75 Payments.
- 3.2 We are informed that a working group comprising of relevant officers from a number of service areas was established to review the existing arrangements in place for administering Section 75 developer contributions and that progress has been made in identifying a number of areas with scope for improvement. The areas identified by the working group together with the implementation of internal audit's recommendations will assist in the development of robust systems and processes for the administration, management and monitoring of Section 75 Payments.
- 3.3 The main objective of the audit was to ensure that the internal controls in place were operating effectively.
- 3.4 The main findings from our audit work are outlined in the attached report.

4 POLICY IMPLICATIONS

4.1 None

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial – None

6.2 Personnel – None

6.3 Other – None

7 BACKGROUND PAPERS

7.1 None

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EAST LOTHIAN COUNCIL – INTERNAL AUDIT SECTION 75 PAYMENTS

1. EXECUTIVE SUMMARY

1.1 Introduction

At the request of management a review was undertaken by Internal Audit of the arrangements in place for the administration, management and monitoring of Section 75 Payments. A summary of our main findings is outlined below.

1.2 Areas where Expected Controls were Met

- For the sample of cases examined, a signed Section 75 Agreement was in place.
- A detailed methodology is used in the school roll forecasting process for projecting pupil numbers – the forecasts form the basis for assessing the impact of proposed developments on Education infrastructure and facilities.

1.3 Areas with Scope for Improvement

- The processes in place for the administration, management and monitoring of Section 75 developer contributions require review. *Risk – failure to adopt a consistent approach.*
- A comprehensive record is not currently maintained of all key information in respect of Section 75 developer contributions – details held by service areas were found to be incomplete and out of date. *Risk – errors and anomalies may arise and remain undetected.*
- At present, responsibility for leading and coordinating the Section 75 process has not been assigned to a specific officer within the Council. *Risk – failure to adopt a coordinated approach.*
- In some cases, errors and anomalies were found in the use of pupil projections, contributions already committed/received and capital costs. *Risk – failure to ensure accuracy and completeness.*
- In some cases, there had been a failure to ensure that Section 75 contributions received from developers had been correctly calculated and indexation properly applied. *Risk – errors and irregularities may occur and remain undetected.*
- There was a lack of adequate procedures in place to ensure that developer contributions were being utilised within the timescales specified in the Section 75 Agreement. *Risk – unutilised contributions may have to be refunded.*
- There was a failure to ensure that a summary of the terms of Section 75 planning obligations had been recorded in the Register of Applications maintained by the Council. *Risk – failure to comply with Regulations.*

1.4 Summary

Our review of Section 75 Payments identified a number of areas with scope for improvement. Detailed findings and recommendations are contained in our main audit report.

Mala Garden
Internal Audit Manager

September 2016

**EAST LOTHIAN COUNCIL – INTERNAL AUDIT
SECTION 75 PAYMENTS**

ACTION PLAN

PARA REF	RECOMMENDATION	GRADE	RESPONSIBLE OFFICER	AGREED ACTION	RISK ACCEPTED/ MANAGED	AGREED DATE OF COMPLETION
3.1.1	Management should ensure that the draft supplementary guidance is finalised and approved.	Medium	Head of Development	Agreed – policy development work is ongoing and will be submitted to Council along with the Proposed LDP for approval.		September 2016 subject to engagement with others and acceptance, including Scottish Government.
3.2.1	Management should ensure that a summary of the terms of any Section 75 planning obligation is recorded in the Register of Applications maintained by the Council.	Medium	Management System and Admin Officer	Agreed		In Place
3.3.1	Management should ensure that detailed procedures are in place for the administration, management and monitoring of Section 75 developer contributions.	Medium	Head of Development / Head of Council Resources	S75 Co-ordinator post identified currently going through Service Review. Procedures, management arrangements and systems to be put in place for current and future policy obligations. Policy transition arrangements also to be agreed and confirmed.		September 2016

PARA REF	RECOMMENDATION	GRADE	RESPONSIBLE OFFICER	AGREED ACTION	RISK ACCEPTED/ MANAGED	AGREED DATE OF COMPLETION
3.4.1	Management should ensure that regular training is provided to relevant staff within service areas on the provisions set out in the Scottish Government Circular 3/2012 and on the circumstances where it may be appropriate to seek planning obligations.	Medium	Head of Development	Agreed – training will be provided to staff and will be in accordance with the developer contributions framework that will be agreed by council and as part of the planning application process.		September 2016
3.5.2	Management should ensure that Section 75 Agreements accurately reflect the Planning Committee decision. Appropriate procedures should be put in place for dealing with exceptional circumstances that may arise following a planning decision being made, which may impact on the Section 75 Agreement.	High	Head of Development / Head of Council Resources	Check and sign off to be put in place at Head of Service level.		June 2016
3.6.2	Periodic reviews should be carried out of the New Build Child Per House Ratios used in the school roll forecasting process.	Medium	Head of Education	The Education MIS Team will undertake a review of the average New Build Child Per House Ratios for primary and secondary during Summer 2016.		September 2016

PARA REF	RECOMMENDATION	GRADE	RESPONSIBLE OFFICER	AGREED ACTION	RISK ACCEPTED/ MANAGED	AGREED DATE OF COMPLETION
3.6.2 (cont)				An annual review of the new build child per house ratios will be conducted thereafter in October following validation of the Pupil Census Rolls. This will inform roll projection calculations in accordance with the agreed policy approach to Developer Obligations moving forwards.		From October 2017
3.6.3	Management should ensure that a consistent approach is applied when assessing Education contributions.	High	Head of Development	Agreed		September 2016
3.7.1	Management should review the adequacy and effectiveness of the processes in place for the assessment of developer contributions.	High	Head of Development	Review is ongoing (see 3.1.1 above). Supplementary Guidance under development will set out the framework under which obligations will be gathered.		Interim – September 2016. Full – following adoption of the LDP and Supplementary Guidance.

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3.7.1 (cont)	Management should ensure that a clear audit trail is available to support all developer contributions sought – appropriate supporting documentation should be maintained.			Detailed process controls will be established to ensure compliance under this framework. Transitional arrangements will be required to improve process and internal control in the interim until the Supplementary Guidance is adopted.		
3.7.2	The calculation of developer contributions should be checked by a person independent of the preparer to ensure accuracy and completeness.	Medium	Head of Development	Agreed – as 3.7.1 above.		September 2016
3.8.1	Management should ensure that a comprehensive record is maintained of all Section 75 developer contributions to assist in the monitoring and delivery of planning obligations.	Medium	Head of Development	The established working group that was formed to undertake policy and process review work has identified a suitable database for this specific purpose. Detailed process controls will be established on acquisition and deployment of the database.		September 2016

PARA REF	RECOMMENDATION	GRADE	RESPONSIBLE OFFICER	AGREED ACTION	RISK ACCEPTED/ MANAGED	AGREED DATE OF COMPLETION
3.8.2	<p>Effective arrangements should be put in place to ensure that all Section 75 contributions due from developers are monitored and that payments are received timeously.</p> <p>Management should ensure that appropriate arrangements are in place for the identification and recording of Section 75 payments received – a unique reference number should be assigned to each development.</p> <p>Management should ensure that Section 75 contributions received from developers have been correctly calculated and indexation properly applied.</p> <p>To assist in the effective monitoring of contributions received and utilised, consideration should be given to operating a separate bank account for all developer contributions.</p>	High	Head of Council Resources	<p>Agreed – appropriate arrangements will be developed and implemented.</p> <p>A separate bank account is not considered necessary and this can be managed effectively through the financial ledger.</p>	Yes	July 2016

PARA REF	RECOMMENDATION	GRADE	RESPONSIBLE OFFICER	AGREED ACTION	RISK ACCEPTED/ MANAGED	AGREED DATE OF COMPLETION
3.8.3	Management should ensure that details of all Section 75 payments received are provided to relevant Council officers with responsibility for utilising the contributions within the specified timescales.	High	Head of Council Resources	Agreed – appropriate arrangements will be developed and implemented.		July 2016
3.8.4	Appropriate arrangements should be put in place to ensure that developer contributions received are utilised within the timescales specified in the Section 75 Agreement.	High	Head of Development / Head of Council Resources	Agreed – will be reflected within the role and responsibilities of the proposed new planning obligations officer.		September 2016
3.8.5	A responsible officer should be appointed to lead and coordinate the Section 75 process and ensure that the infrastructure and facilities to be provided under planning obligations are delivered within the appropriate timescales.	High	Head of Development / Head of Council Resources	Agreed – see recommendation 3.3.1 above.		September 2016

Grading of Recommendations

In order to assist Management in using our reports, we categorise our recommendations according to their level of priority as follows:

Level	Definition
High	Recommendations which are fundamental to the system and upon which Management should take immediate action.
Medium	Recommendations which will improve the efficiency and effectiveness of the existing controls.
Low	Recommendations concerning minor issues that are not critical, but which may prevent attainment of best practice and/or operational efficiency.