

REPORT TO: East Lothian Council

MEETING DATE: 29 May 2018

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: East Lothian Local Development Plan 2018 - Supplementary Guidance / Supplementary Planning Guidance Consultation

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1 PURPOSE

1.1 This report seeks Council approval for consultation of statutory Supplementary Guidance and non-statutory Supplementary Planning Guidance associated with the proposed East Lothian Local Development Plan as modified following Examination in Public (i.e. the East Lothian Local Development Plan 2018 (ELLDP 2018)), namely:

- An updated draft of the statutory Supplementary Guidance: Developer Contributions Framework;
- An updated draft of the non-statutory Supplementary Planning Guidance: Development Briefs;
- A draft of the non-statutory Supplementary Planning Guidance: Cultural Heritage and the Built Environment; and
- A draft of the non-statutory Supplementary Planning Guidance: Farmsteading Design Guide.

1.2 The items to be considered under this report will only be relevant if the recommendations set out within Item 1 of the meeting of East Lothian Council on 29 May 2018, in respect of the East Lothian Local Development Plan 2018, are approved by the Council.

2 RECOMMENDATIONS

2.1 That, subject to the Council approving the recommendations set out within Item 1 of the meeting of East Lothian Council on 29 May 2018 in respect of the East Lothian Local Development Plan 2018, the Council approves for consultation the following draft consultation documents:

- An updated draft of the statutory Supplementary Guidance: Developer Contributions Framework;
- An updated draft of the non-statutory Supplementary Planning Guidance: Development Briefs;
- A draft of the non-statutory Supplementary Planning Guidance: Cultural Heritage and the Built Environment; and
- A draft of the non-statutory Supplementary Planning Guidance: Farmstead Design Guide.

3 BACKGROUND

Purpose and processes for preparing statutory Supplementary Guidance and non-statutory Supplementary Planning Guidance

- 3.1 The Council is in the process of replacing the East Lothian Local Plan 2008 with a new Local Development Plan, namely the East Lothian Local Development Plan 2018 (ELLDP 2018). If adopted by the Council, the ELLDP 2018 will replace the East Lothian Local Plan 2008 as the up-to-date Local Development Plan (LDP) for East Lothian.
- 3.2 Whilst the ELLDP 2018 is not yet adopted, the Council's intention is that its LDP will be supported by statutory Supplementary Guidance as well as non-statutory Supplementary Planning Guidance. Initial drafts of some of these guidance documents were consulted on when the proposed LDP was published for representation. Comments received on these earlier versions of those documents have been taken into account in the updated consultation versions that are currently before the Council (Members' Library Service References 77/18 and 78/18 – May 2018 bulletin) as has the findings of the [Report of Examination](#) in Public on the proposed LDP. Additionally, the initial consultation drafts of other Supplementary Planning Guidance documents have also been prepared.
- 3.3 The statutory process for the preparation of statutory Supplementary Guidance must be followed by the Council. For statutory guidance to be prepared, the ELLDP 2018 must contain a policy 'hook' that signposts and enables this. Such guidance must also be limited to providing further information or detail on such policies.
- 3.4 Statutory guidance is not subject to Examination in Public, but the Council must consult on a draft version of it with stakeholders. Following this consultation exercise, the version of the guidance that the Council intends to adopt, and the approach to and outcome of the consultation and any consequential modifications to the draft version of the guidance, must be reviewed by the Scottish Ministers. This review must complete and the Scottish Ministers must give their clearance to the Council such that it may adopt the statutory guidance. If adopted, statutory Supplementary Guidance will become part of the development plan and therefore carry significant weight as a material consideration in planning decisions.

- 3.5 Whilst there is no statutory provisions setting out the scope or process for preparing non-statutory Supplementary Planning Guidance, if it is to carry enhanced weight as a material consideration in planning decisions it must be consulted on and adopted by the Council. For this type of guidance, there is no requirement for the Scottish Ministers to review it before the Council may adopt it.
- 3.6 The intention is that matters to be addressed within non-statutory Supplementary Planning Guidance are those that would be too detailed for inclusion within the main plan, but nonetheless merit more detailed policy guidance to assist with the operation of policies or proposals and the delivery of the plan. There is no pre-requisite for a policy 'hook' in the main plan in order to enable the preparation of non-statutory guidance. The preparation and adoption processes for non-statutory guidance can provide for more rapid policy responses to changes in operational practice than statutory Supplementary Guidance can, albeit non-statutory guidance carries less weight than statutory guidance in planning decisions.
- 3.7 The reason for re-consulting on some of the guidance documents is to ensure statutory compliance and to ensure that stakeholders have the opportunity to comment on the updated versions of the documents that take account of the findings of the Report of Examination on the proposed LDP, thus the ELLDP 2018.
- 3.8 These draft guidance documents take into account the recommendations of the Report of Examination on the proposed LDP insofar as relevant to them, thus they are consistent with the ELLDP 2018. The updated versions of the guidance documents also take into account comments received during previous public consultation exercises carried out in respect of previous versions of them, as relevant and appropriate. These guidance documents provide more detailed guidance on the interpretation and implementation of the relevant policies of the ELLDP 2018 than would be appropriate within the main plan itself. If adopted, they will help users of the ELLDP 2018 understand more clearly how the Council wants its policies and proposals to be applied and delivered on a consistent basis.
- 3.9 Once approved for consultation, statutory and non-statutory guidance documents may be taken into account as material considerations in planning decisions as appropriate, but cannot carry as much weight in the determination of planning applications as if they are adopted by the Council.
- 3.10 Approval for public consultation of these draft documents at this stage is intended to help ensure that their preparation is progressed without delay and in parallel with the adoption processes for the ELLDP 2018. The overall intention is that these draft consultation documents, once finalised following their period of public consultation and any other procedures as relevant, may be adopted by the Council as soon as possible following adoption of the ELLDP 2018.

Statutory Supplementary Guidance: Developer Contributions Framework

- 3.11 On 6 September 2016, the Council approved for consultation draft statutory Supplementary Guidance: Developer Contributions Framework (DCF). This coincided with the representation period for the proposed LDP so both documents could be read together. The DCF provides clear, evidence based guidance on the likely nature and scale of the key planning obligation costs in advance of the application process.
- 3.12 This guidance should therefore provide a better context for assessing land costs and for assessing the viability of development sites and projects, thereby reducing the chances of non-effective sites. It was also prepared to assist the Council in understanding its role in delivering the interventions required to deliver the ELLDP 2018. The main purpose of the statutory guidance is to provide the Council, developers and communities alike early sight of the need to mitigate the impact of new development within the area, and how this is to be provided for through the planning process.
- 3.13 During the consultation period on the DCF, ten organisations submitted responses on the draft. Nine of these responses were from developer interests who made similar representations on the proposed LDP that were considered by the Reporter at the proposed LDP Examination. The Council's responses to the DCF consultation responses (Members' Library Service Reference 77/18 – May 2018 bulletin) therefore refer, where relevant, to the conclusions in the proposed LDP Report of Examination that in all instances support the Council's position on these matters.
- 3.14 Consistent with relevant ELLDP 2018 policies, the DCF seeks developer contributions towards 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**, to type and tenure of which is to be determined on a case by case basis in accordance with ELLDP 2018 policy;
 - **Sport Facilities Capacity**, including formal indoor and outdoor recreation and changing facilities; and
 - **Health and social care facilities capacity at Blindwells**, including General Practitioner Services.
- 3.15 The DCF approach reflects that the planning system allows mitigation (financial or in kind) to be sought from applicants towards delivering additional infrastructure capacity that is required to mitigate the impact of their development on an individual and / or cumulative basis as appropriate, consistent with Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Planning policies can also require that provision is made for other interventions, such as provision for affordable

housing as part of market housing development. Together, these interventions are normally called 'developer contributions'. The DCF is also clear that developer contributions are to be used for the purpose originally intended and not for any unconnected purpose, for example, to remedy any existing deficiencies in provision.

- 3.16 In order to deliver the ELLDP 2018, in addition to the Council's own on-going investment in its infrastructure and facilities, additional investment will be required from developers to provide for the transport, education, community, healthcare and affordable housing requirements, or other infrastructure or environmental mitigation, the need for which will arise as a result of their new development on an individual and on a cumulative basis as appropriate. In the preparation of the DCF, the Council has worked with service and infrastructure providers to identify opportunities, constraints and costed mitigation solutions for planned development. The need for such mitigation can be generated by an individual development, or by the cumulative impact of a number of developments in an area.
- 3.17 Scottish Government Circular 3/2012 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.
- 3.18 ELLDP 2018 Policy DEL1: Infrastructure and Facilities Provision sets out that developer contributions will be required from proposals of 5 or more dwellings or employment, retail, leisure and tourism proposals of 100m² gross floorspace or larger. The DCF identifies the contributions that are likely to be required from developers in association with their proposals in different developer contribution zones within East Lothian. Appendix 1 of the ELLDP 2018 sets out the zones within which contributions from applicants towards the interventions required to accommodate planned development can be sought. These developer contribution zones relate to school catchments, distance standards from sports facilities to be provided and transportation model zones based on where planned development is located and its relationship with required transport interventions.
- 3.19 The contributions set out in the DCF are based on a combined infrastructure assessment undertaken at the time of proposed LDP preparation. This assessment has been updated in light of the proposed LDP Report of Examination and the ELLDP 2018 development strategy.

Updated DCF and Implications on it from the LDP Examination Report

- 3.20 The DCF has been updated since the 2016 consultation draft to take account of the implications of the modifications recommended within the LDP Examination Report (See Annex 1 of this Report). It recommends that three sites within the proposed LDP for housing (one with some employment land) be removed from the proposed LDP, and that one housing site be added. These recommendations are reflected within the ELLDP 2018 and the DCF has been updated in that context. The update also takes account of infrastructure demand assessment changes since 2016. This includes an updated from the 2015 base date of the previous draft guidance, such that the updated DCF is based information at 2017, which is the most up to date information available.
- 3.21 Whilst the DCF was not subject to the proposed LDP Examination, the policy framework for seeking developer contributions within the ELLDP 2018 was – e.g. Policy DEL1 and associated root policies. As such, the justification of the need for interventions / items, and for seeking developer contributions towards them, and the zones within which contributions towards each intervention / item can be sought from ELLDP 2018 development were subject to Examination. The overall methodology and principles for demand, mitigation and developer contribution assessment has been accepted by the Report of Examination and is therefore now embedded within the policies and proposals of ELLDP 2018.
- 3.22 The Report of Examination recommended modifications to Policy DEL1 (Issue 31), which arose from the Council's own suggested modifications during the examination process. These suggestions were made to take account of a Supreme Court Judgement on such matters issued as the Examination was on-going.
- 3.23 In October 2017, the Supreme Court determined that statutory Supplementary Guidance on the Aberdeen City and Shire Strategic Transport Fund (STF) should be quashed because it did not comply with relevant policy and law relating to the justification for developer contributions. In effect, the STF required developers to pay a fixed rate of contributions per dwelling towards a package of transport interventions, regardless of the link between individual proposed developments and the individual transport interventions. However, the need for developer contributions must be determined on a case by case basis during the assessment of planning applications, and fixed rates cannot be prescribed and pre-determined in advance. To do the latter is not currently permitted under Scottish planning law.
- 3.24 Subsequent to this, the Reporter issued Further Information Request 16 (FIR16) which sought the Council's view on the implications of this Supreme Court decision on its intention to operate its proposed LDP developer contributions policies, including the draft DCF. The Council's response to FIR16 set out clear differences between the STF and the Council's approach and why the Council's methodological approach

complied with developer contributions policy and law. The Council's approach was accepted within the proposed LDP Report of Examination.

- 3.25 However, to ensure full compliance with the Supreme Court Decision the Council suggested potential modifications to Policy DEL1 so that the DCF now sets out the '*likely nature and scale*' of contributions in advance of applications rather than prescribing and pre-determining these. The suggested modifications and the reasoning behind them were accepted by the Reporter who incorporated them into the suggested modifications for Issue 31: Delivery. These changes are reflected in Policy DEL1 of the ELLDP 2018 and in the updated DCF.
- 3.26 Accordingly, the updated DCF sets out the detailed methodology and assessment principles for how developer contributions towards education, transport, sports facilities and health infrastructure will be determined at the time applications are made. It also sets out the '*likely nature and scale*' of contributions that will be expected from applicants based on a cumulative assessment of the ELLDP 2018.
- 3.27 However, as applications come forward the context for their assessment may change and so the scale of infrastructure required or proportion of need related to a development proposal may change over time, thus so too the level of contributions required to mitigate its impact. Consequently, the developer contribution levels expressed in the DCF are not to be taken as mandatory, since the actual levels will be confirmed on a case by case basis in the assessment of each planning application, taking all committed and planned development into account. This is reflected in the Developer Contribution Protocol section of the updated DCF.
- 3.28 As a result of the removal of sites from the proposed LDP at Howe Mire, Humbie and East Saltoun, as well as the addition of a site at Newtonlees South, combined with the up to date overall development strategy of the ELLDP 2018 and information from Housing Land Audit 2017, a revised demand assessment for education, transport and sports facilities infrastructure has been completed. Based on this, some of the likely contribution values have changed since the 2016 draft DCF as the scale and timing of infrastructure provision has changed and these are set out in the updated Technical Note 14 (Members' Library Service Reference 74/18 – May 2018 bulletin). The Council cannot lawfully insist on the retrospective gathering of higher contributions where the level of contributions for minded to grant or consented developments is now greater than previously forecast.
- 3.29 With regards to transportation contributions, an updated Transport Appraisal was required by Transport Scotland, even though the Council considered that what had been published with the proposed LDP was sufficient. This work was completed in October 2017 and the outputs provided a different breakdown of trips between originating developments and the transport interventions considered necessary to support LDP delivery. As a result of this, and the recommended addition and removal of sites from the LDP by the Reporter, the distribution of transport

infrastructure costs to individual developments has altered. The costs of the interventions have also changed through more detailed design work. However, where a development proposal has already been given minded to grant status, the Council cannot lawfully insist on any retrospective increase in contributions as a result of the updated transport demand assessment.

- 3.30 The other updates to the draft DCF reflect operational and administrative changes, including greater clarity on how windfall proposals will be assessed and a detailed 14 step administrative process.
- 3.31 The draft DCF has therefore been updated to identify the likely nature and scale of developer contributions towards the mitigation items that are identified within the ELLP 2018. The updated technical work set out within an update of Technical Note 14 (Members' Library Service Reference 74/18 – May 2018 bulletin) carried out in support of this DCF is based on:
- the detailed methodology for the calculation of developer contributions accepted within the Report of Examination,
 - an updated programme for development (resulting in an updated demand and mitigation cost assessment over time)
 - an assessment of the developer contributions received / committed; and
 - the anticipated number of contributing sites that must also make contributions and among which the residual costs for the infrastructure items must be shared, as appropriate, on a pro-rata basis.
- 3.32 Officers will continue to monitor demand and the likely nature and scale of the interventions required, thus the likely nature and scale of developer contributions required, as well as when required interventions should be delivered. It is the current intention that the outcome of this review will be regularly reported to the Council as part of the Council's budget setting and financial strategy processes.
- 3.33 As a result of these changes, a further consultation exercise must now be carried out on the updated DCF. Any consultation responses received will then be reported to Council. Whilst dependent on the outcome of this consultation and the Scottish Ministers review of the ELLDP 2018, the next step will be to seek a decision of the Council on whether it intends to adopt the updated version of the DCF as statutory Supplementary Guidance.
- 3.34 The Council must submit any statutory Supplementary Guidance it intends to adopt to the Scottish Ministers for their review. This review normally takes no less than 28 days. Only once the Scottish Ministers give clearance to the Council that it may adopt the DCF can it be adopted by the Council as a part of the LDP.

Non-statutory Supplementary Planning Guidance

- 3.35 The consultation drafts of the non-statutory Supplementary Planning Guidance (see Annex 2 of this Report), for which this Council Report also seeks approval for consultation on, aim to do the following:

Development Briefs

- 3.36 Development Briefs have been prepared for sites proposed for development within the ELLDP 2018. These were consulted upon as part of the proposed LDP and a number of comments were received (Members' Library Service Reference 78/18 – May 2018 bulletin). The development briefs have now been updated following analysis of all comments received during the consultation stage and also from further technical comments received from service teams within the Council. For some ELLDP 2018 proposal sites the need for a development brief has been superseded by the grant of detailed planning permission. All other proposals have a development brief contained within this supplementary planning guidance.

Cultural Heritage and the Built Environment

- 3.37 The purpose of this supplementary planning guidance is to provide additional explanation and guidance to the ELLDP 2018 policies contained within the Cultural Heritage section. The supplementary planning guidance covers the submission of planning applications in principle within designated conservation areas along with external wall treatment, external painting, shop fronts, advertisements, external security, replacement windows and trees in conservation areas. It applies to proposed development affecting listed buildings, within conservation areas and elsewhere within the built environment as appropriate. It also includes the Conservation Area Character Statements for each designated conservation area. Much of this had previously been included within policies in the current adopted East Lothian Local Plan 2008 and has been updated as necessary. The more comprehensive Conservation Area Character Statement for Inveresk, prepared in 2011, has been updated to include references to the ELLDP 2018 and is also included within the supplementary planning guidance.

Farmsteading Design Guidance

- 3.38 The purpose of the farm steading design supplementary planning guidance is to provide guidance on the conversion and reuse of vernacular farm steading buildings within East Lothian. While many farm steadings that were no longer required for their original purpose have been successfully converted to new uses there are many others that could be converted. This guidance is required to advise potential developers of the

design criteria that will be considered as part of any planning application for the conversion of a farm steading.

4 POLICY IMPLICATIONS

- 4.1 The draft DCF and the draft non-statutory planning guidance described within this report would become an essential component of delivering the strategy and policies of the LDP. It would be used in the determination of planning applications and to assess the level of developer contributions required to make a development acceptable.

5 INTEGRATED IMPACT ASSESSMENT

The subjects of this report has been through the Integrated Impact Assessment process through the ELLDP 2018 and no 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 continue to be a significant input to the budget setting process. The ELLDP 2018 and the draft Supplementary Guidance: Developer Contributions Framework provide for the development of additional capacity or new facilities/infrastructure so as to ensure that developers contribute towards these where appropriate. The cumulative impacts, mitigation interventions and high level costs and contribution requirements would be set out within the LDP Action Programme as well as the Supplementary Guidance: Developer Contributions Framework if these documents are adopted. Once adopted, they will help 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 2018 signalled the 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 adoption of the LDP, there will be a clear imperative that the Council continues to refresh and extend 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.
- 6.2 Personnel – service providers will be required to provide responses to proposals in line with the demand assessment process set out in the DCF.

7 BACKGROUND PAPERS

- 7.1 Developer Contributions Framework: Responses to Developer Contributions Framework Consultation (Members' Library Service Reference 77/18 – May 2018 bulletin)
- 7.2 East Lothian Council's Responses to Original Consultation Responses on Development Briefs (Members' Library Service Reference 78/18 – May 2018 bulletin)
- 7.3 East Lothian Local Development Plan 2018, Updated Technical Note 14: Developer Contributions Framework, including Education, Transportation, Community Services and NHS Demand Assessments. (Members' Library Service Reference 74/18 – May 2018 bulletin)
- 7.4 Report to Council dated 6 September 2016 – item 03a titled: East Lothian Developer Contributions Framework – Draft Supplementary Guidance
- 7.5 Proposed Local Development Plan Technical Note 14: Draft Developer Contribution Framework (Members' Library Service Reference 160/16 – May 2018 bulletin)

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