

REPORT TO: East Lothian Council

MEETING DATE: 30 October 2018

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: Adopted East Lothian Local Development Plan 2018 Statutory Supplementary Guidance: Report on Consultation Responses to the Developer Contributions Framework

1 PURPOSE

- 1.1 Following the adoption of the East Lothian Local Development Plan (ELLDP 2018) on 27 September 2018, this report seeks Council approval of the Developer Contributions Framework (DCF) as formal Supplementary Guidance (SG) that the Council intends to adopt.
- 1.2 Council approval is also sought to submit the DCF to the Scottish Ministers for their review, as required by Section 22 (6) of the Town & Country Planning (Scotland) Act 1997 (as amended).
- 1.3 The report further seeks approval that the Council adopt the DCF as statutory SG if the Scottish Ministers give clearance to the Council that it may be adopted. As such, as soon as the Scottish Ministers give clearance to the Council that their review of the DCF is complete, or if no response is received within 28 of submission to Scottish Ministers, then the Council may adopt the DCF without any further modification and it would become constituted as adopted SG. This is intended to provide the Council with an adopted DCF as quickly as possible as part of the up to date development plan.

2 RECOMMENDATIONS

- 2.1 That the Council approves the responses to the representations received during the June and July 2018 consultation on the updated Developer Contributions Framework – Set out in Annex 1.
- 2.2 That Council gives its intention to adopt the Developer Contributions Framework as Statutory Supplementary Guidance (this document has been lodged in the Members' Library, Ref: 147/18, October 2018 Bulletin).

- 2.3 That the Council submit the Developer Contributions Framework to Scottish Ministers for a minimum 28 day review period, as required by Section 22 (6) of the Town & Country Planning (Scotland) Act 1997 (as amended).
- 2.4 That subsequent to no changes being directed by Scottish Ministers, or no response being received from Scottish Ministers at the end of the 28 day period, that the Council adopts the Developer Contributions Framework as Statutory Supplementary Guidance for the assessment of financial contributions as required in the determination of planning applications.
- 2.5 That the Council grant delegated authority to the Head of Development to make non material amendments to the Developer Contributions Framework, Consultation Responses and accompanying Technical Note and delegated authority to approve a summary of the consultation and engagement on the Developer Contributions Framework to be submitted to Scottish Ministers alongside the Developer Contributions Framework.

3 BACKGROUND

Processes for preparing statutory Supplementary Guidance

- 3.1 Now that ELLDP 2018 is adopted, the Council's intention is that it will be supported by statutory Supplementary Guidance setting out on the likely nature and scale of the key planning obligation costs in advance of the application process, as per ELLDP 2018 Policy DEL1: Infrastructure and Facilities Provision. An initial draft of the DCF was consulted on when the proposed LDP was published for representation in 2016. A version of the DCF was consulted upon over June and July 2018 after being updated to take account of modifications set out in the ELLDP Examination Report. Consultation representations received on these earlier versions of those documents have been taken into account in the updated DCF that is currently before the Council (see Annex 1).
- 3.2 The statutory process for the preparation of statutory SG must be followed by the Council. For statutory guidance to be prepared, the ELLDP 2018 contains a policy 'hook' in Policy DEL1 that signposts and enables this. Such guidance must also be limited to providing further information or detail on such policies.
- 3.3 Statutory SG is not subject to Examination in Public, but the Council must consult on a draft version of it with stakeholders. Following two consultation exercises, this 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 SG will become part of the development plan and therefore carry significant weight as a material consideration in planning decisions.

Developer Contributions Framework Supplementary Guidance

- 3.4 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. On 6 September 2016, the Council approved for consultation a draft DCF. This coincided with the representation period for the proposed LDP so both documents could be read together. On 29 May 2018, the Council approved for consultation an updated draft of the DCF which had been modified to take account of the implications of the development sites which had been added and removed from the ELLDP 2018 and modifications to Policy DEL1.
- 3.5 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.
- 3.6 During the 2018 consultation period on the DCF, 12 organisations submitted representations on the DCF. The Council's responses to the 2018 DCF consultation representations and details of where modifications to the DCF are required as a result of the representations are set out in Annex 1 of this Council Report.
- 3.7 Consistent with relevant ELLDP 2018 policies, the DCF seeks developer contributions towards the provision of the following:
- **Transport network capacity**, including for active travel, rail 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; and
 - **Health and social care facilities capacity at Blindwells**, including General Practitioner Services.
- 3.8 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.

- 3.9 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 likely 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.
- 3.10 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.
- 3.11 ELLDP Policy DEL1 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.
- 3.12 The likely levels of 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 ELLDP 2018 development strategy.

- 3.13 The 2018 DCF was updated since the 2016 consultation draft to take account of the implications of the modifications recommended within the LDP Examination Report. It recommended 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 in the adopted 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 development programme from the 2015 base of the previous draft guidance, such that the updated DCF is based information at March 2018, which is the most up to date information available.
- 3.14 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.
- 3.15 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 would be tantamount to operating a development levy or roof tax, which is not currently permitted under Scottish planning law.
- 3.16 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.
- 3.17 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-determined 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.

- 3.18 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.
- 3.19 However, as applications come forward the context for their assessment may change, including scale and phasing, 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 requirement for contributions and their subsequent 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 throughout the DCF.
- 3.20 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 was altered. The costs of the interventions have also changed through more detailed design work.
- 3.21 The 2018 updated DCF, which contained these different transport contribution values was approved for consultation at the 29 May 2018 Council meeting. However, there were applications for seven LDP allocated submitted prior to the Council meeting which had not been determined. Officers, in consultation with Transport Scotland and Network Rail therefore considered not to be appropriate to seek transport contributions at higher 2018 levels for these seven proposals as applicants had not been aware of those contribution levels in advance of submitting the applications. All application submitted after 29 May 2018 will be assessed against the 2018 DCF transportation requirements.
- 3.22 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.

4 POLICY IMPLICATIONS

- 4.1 The DCF SG is an essential component of delivering the strategy of the LDP. It will be used in the determination of planning applications to assess the level of developer contributions required to make a development acceptable. Through its operation the Council will seek to recover approximately £110M of £177M estimated infrastructure costs required to deliver the LDP.

5 INTEGRATED IMPACT ASSESSMENT

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

6 RESOURCE IMPLICATIONS

- 6.1 Financial – The growth resulting from the implementation of the adopted ELLDP 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 DCF SG 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 likely contribution requirements are set out within the LDP Action Programme as well as the DCF SG. 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. Now the LDP is adopted, there is 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 SG.

7 BACKGROUND PAPERS

- 7.1 Developer Contributions Framework Supplementary Guidance (Members' Library Ref: 147/18, October 2018 Bulletin)

- 7.2 DCF Technical Note 14 (Members' Library Ref: 148/18, October 2018 Bulletin)
- 7.3 DCF Technical Note, including DPMTAG Report and Developer Contributions Framework: Outline Methodology Report (Members' Library Ref: 149/18, October 2018)
- 7.4 LDP Transport Appraisal (Members' Library Ref: 150/18, October 2018 Bulletin)

AUTHOR'S NAME	Graeme Marsden
DESIGNATION	Planning Obligations Officer
CONTACT INFO	GMarsden@eastlothian.gov.uk
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Annex1 - 2018 Developer Contributions Framework: Council Responses to Representations Received

Barratt & David Wilson East Scotland	Q1 – Section 1-3 DCF	Windfall
Key Points from Representation	<p>Infrastructure delivery is a critical issue for developers trying to deliver both private and affordable homes across East Scotland. BDW supports East Lothian Council's early engagement with infrastructure providers, which should assist in ensuring delivery of development and the realisation of the Local Development plan overall.</p> <p>BDW welcomes the ability for developers to engage at an early stage with the Council and for Developer Contributions to be identified and discussed early in the Development Management process. Again this helps with planning the both the financial and practical delivery of developments as efficiently as possible.</p> <p>We also welcome the Council's confirmation that it will assess each proposal on a case by case basis, taking in to account viability constraints where relevant.</p> <p>With regard to Windfall sites, again each should be assessed on a case by case basis taking in to account the current circumstances. It is not appropriate to reserve infrastructure capacity as suggested at 1.21. If infrastructure provision is planned, or has been delivered and a development makes an appropriate contribution then it status as a windfall site should not be a reason for permission not to be supported. Indeed this approach could undermine the timely delivery of both development and infrastructure.</p>	
ELC Response	Each site will be assessed on a case by case basis. However, if catchment capacity is required to provide capacity for LDP allocated sites which are identified as effective, then that capacity will be reserved for those sites. This will be informed by the Housing Land Audit process. If an allocated sites becomes ineffective for a period of time and action is unable to make it effective, then it may not be appropriate to continue to reserve infrastructure capacity.	
Modification	Modify paragraph 1.22 to state that this will be informed by the Housing Land Audit process.	
Geddes Consulting	Q1 – Section 1-3 DCF	Elsick, Contribution Zones and Triviality
Key Points from Representation	The relevance of the Elswick Supreme Court decision for this Developer Contributions Framework is the validity of an approach which is based on contribution zones. This is relevant insofar that the Council needs to address and be satisfied that the matter of triviality has been taken into account in its requirement for contributions to the proposed mitigation.	
ELC Response	De Minimis – See response to question 2.	
Modification	None required	
Geddes Consulting	Q2 – Pages 13-31 of DCF	Transport Contribution Zones
Key Points from Representation	The Council uses contribution zones to calculate the financial contributions to fund planning obligations to take account of transport impacts. As highlighted by the Elswick Supreme Court decision, the Council's approach needs to consider the triviality of any impacts from developments in these contribution zones.	

	<p>The Elswick Supreme Court decision now requires the Council to define what it considers to be a trivial impact. Any trivial impact within a contribution zone should be excluded from making a financial contribution to the required mitigation.</p> <p>A review has been undertaken of the Council’s Transport Appraisal – DPMTAG (Development Planning and Management Transport Appraisal Guidance) Final Report which was produced by Peter Brett Associates LLP. It is noted that this Technical Report has been reviewed six times since its original publication over a period of less than year. This issue of what is a trivial impact has not been addressed. This equally applies the Council’s East Lothian Modelling Framework: Developer Contribution Framework: Outline Methodology: Technical Note also produced by Peter Brett Associates LLP.</p> <p>The definition of what constitutes a trivial impact has not been explained nor taken into account in the Council’s Framework when deriving its financial contributions for the transport mitigations promoted in the Framework. Accordingly, the Council’s approach is not sound with regard to the triviality of impacts arising.</p>
ELC Response	<p>The Council has demonstrated that its approach to setting contributions meets the scale and kind test as they are in line with the proportion of the impact from the development to the intervention. The Council is not seeking any contribution that is out of scale of the relationship between the development and the planned intervention. In the case of the Aberdeen Strategic Transport Fund, the Supreme Court found that it sought contributions at a fixed level per house regardless of the scale of relationship.</p> <p>The Council has already addressed the matter raised in the representation as set out on page 51 of 2018 Technical Note 14 published as part of the consultation. It states:</p> <p>A representation was received on the Proposed Plan that the small size of some of the transport contributions sought indicated that there was an insufficient strength of relationship to warrant a developer contribution under the necessity test. The LDP Examination Reporter in dealing with this unresolved representation set out the following (page 1060) “regarding the scale of contribution varying within zones, such an effect is to be expected if the strength of scale and kind relationship between individual sites and interventions is to be reflected. This does not mean that where this results in small amounts it is necessarily trivial. Therefore, I consider that the reference to contribution zones should remain within Policy DEL1. The threshold for the application of Policy DEL1 which excludes proposals of less than five dwellings and commercial development of less than 100 square metres also suggests a proportionate response in dealing with this matter.”</p> <p>As set out in the updated DCF page 13, the Council will confirm in all cases whether a contribution is required with each being assessed on a case by case basis.</p>
Modification	None required.

Geddes Consulting	Q3 – Pages 32-56 Local Contribution Zones	School Projections and Accommodation Schedules
Key Points from Representation	The Council’s financial contributions have sought to follow an approach which meets all of the tests in Circular 3/2012.	

Geddes Consulting has reviewed the projected impacts from pupils from new housing. It is observed that the projections of future P1 Intakes form a significant input into the requirement for additional accommodation. This tends to be significantly higher than its own modelling would suggest. Accordingly, the Council's education accommodation requirements could be potentially too large.

The Council recognises that calculation of P1 Intakes is a critical factor in the need for additional accommodation. It is therefore important that there is transparency about the calculation of future P1 Intakes. The Council therefore needs to demonstrate its forecasting of the P1 Intake for all its schools in East Lothian is valid; is transparent and accords with the tests in Circular 3/2012.

Based on our experience in undertaking school impact assessments in East Lothian, it is unclear how the Council actually calculates its future P1 Intakes.

From an examination of the Council's school projections beyond the known data sets (the next 5 years), it suggests to us that whatever the formula adopted by the Council is, it significantly increases the overall number of pupils beyond those expected when taking into account the base and established supply forecasts, and the calculation of the Child Per House Ratio (CPHR) to the number of new homes to be built. This is primarily caused by an unknown significant increase in the P1 Intake over the projection period.

Without detailed explanation about the formula in the modelling assumption and the arithmetic of the calculation of P1 Intakes, there appears to be an over-estimation of the education impacts arising from all new developments in East Lothian. Consequently, the scale of mitigation promoted in the Framework could be over-estimated across those primary and secondary schools identified.

This matter requires further clarification to avoid the Council's projection methodology not being accord with the tests in Circular 3/2012. It may be the case that the contributions being sought from LDP sites do not fairly and reasonably relate in scale and kind to the direct and cumulative impacts of the proposed developments.

Another matter which requires to be addressed is the availability of further detailed information required to substantiate the mitigation measures provided in the Framework.

Given that education mitigation measures have been derived in the Framework such as accommodation requirements, accommodation schedules should be readily available when an applicant wishes to understand both the costs of the planning obligation and the calculation of the financial contribution. For example, the presentation of the education planning obligations and financial contributions in the Framework refers to defined accommodation requirements, expressed in floor space terms. It is a reasonable expectation that this mitigation measure should be supported by an accommodation schedule and architectural feasibility study to support the calculation of floor space requirements for school extensions.

It is noted in Section 4 of Technical Note 14 that further assessment of the proposed education mitigation has been undertaken but not provided as part of this consultation. Outline design proposals and costs have been prepared for the required expansion of

	<p>existing primary schools and where relevant, apportioned proportionally and pro-rata (including between the Council where necessary) on the following basis</p> <p>In practice, this information should be readily available and shared with an applicant if a 'minded to grant' development management decision is reached and a legal agreement is being drafted. Without the sharing of this information during the stage of finalising a Section 75 Agreement for an application, the Council is not in a position to fully explain or justify the scale of the planning obligation and therefore the financial contribution demanded.</p>
ELC Response	<p>Projection calculations and P1 intakes – See Appendix 1 for Council Response. The Council maintains that its projections methodology is in line with the requirements of the circular.</p> <p>The Council is willing to make cost breakdowns of contribution requirements available during the application process.</p>
Modification	<p>Set out in Step 2 of the 14 step process on page 63 of the DCF that:</p> <p>Results of the demand assessments will be provided to applicants, including breakdown of infrastructure costs and how proportions have been calculated.</p>

Geddes Consulting	Q5 – Technical Note	School Projections, Forecasting Guide and Available Evidence
Key Points from Representation	<p>The Council has sought to provide a comprehensive evidence base for the calculation of its planning obligations and the resultant financial contributions set out in its Framework.</p> <p>A review has been carried out of the projection methodology adopted by the Council and explained in its Education Provision Forecasting Guide. The Council rightly highlights that the calculation of its P1 Intake is a key consideration in determining the planning obligations required for delivering education infrastructure.</p> <p>Despite its best endeavours, the Council has not fully detailed its formula and assumptions in arithmetic terms which allows the understanding of, and the implications of its forecasting methodology for the future P1 Intake to be assessed. Paragraph 9.2 ii in the Education Provision Forecasting Guide states as follows:</p> <p>Future P1 intake assumptions are made for each catchment primary school based on three key sets of data: live births data from the NHS tracked for each primary school catchment area; historical net birth to P1 admission migration rates for each catchment area – this data tracks P1 deferrals as well as district/non district intake; and P1 intake rates arising from new residential developments over time. These three key supporting datasets are analysed to assess the potential cumulative impact of future housing on P1 intakes over time. Births and P1 pupils from new housing sites built since 2003/04 are separated out from births and P1 pupils from existing properties within a catchment area to make informed judgements about the projected baseline birth and P1 intake rates for each catchment school and avoid any potential over inflating when the projected new build element is added on.</p> <p>This approach appears to meet the tests in Circular 3/2012. However, none of the trends in these data sets are presented for each school and, the formula and weight to be given to each data set for the arithmetical calculation used is not presented.</p>	

	<p>Accordingly, it is not possible to understand how the integration of these three data sets impacts on the future P1 Intake and consequently, the requirement for the planning obligation.</p> <p>What is known is that the Council’s forecasts of P1 Intakes results in the following:</p> <ul style="list-style-type: none"> • A level of P1 Intakes into all of its schools well above the historic P1 Intake baseline, without any new housebuilding; and • A level of P1 Intakes is significantly above the pupil Intake expected from the new developments by applying the CPHRs to the overall scale of development proposed. <p>The Council may be applying future growth to the historic pattern of births but this is not known. If this is the case, such growth should not be considered a direct or cumulative consequence of LDP developments, as it is the CPHR that measures the impact of new house building over and above current committed development from the established supply and baseline demographics.</p> <p>It is thought that the projected P1 Intake could be at least 25% higher than what would be expected. Accordingly, the Council’s methodology may be overstating the future P1 Intake attributable to the direct or cumulative impact from LDP housing development.</p> <p>If this is the case, then the Council’s methodology is in breach of following tests of Circular 3/2012:</p> <ul style="list-style-type: none"> • necessary to make the proposed development acceptable in planning terms (paragraph 15) • relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19) • Fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23) <p>What the Council requires to do is to provide further details of the calculation of the P1 Intakes in finalising its supplementary guidance technical guidance.</p> <p>Given that the sensitivity of this one key variable to the education projections for primary school capacity and resultant secondary school capacity, Appendix 3 of the Education Provision Forecasting Guide needs to be expanded to give a worked example of the formula and arithmetical calculation of the P1 Intake.</p>
ELC Response	<p>See response to question 3.</p> <p>Firstly, the Council is not consulting on its processes and methodology for calculating school roll projections but it did make available the Education Provision Forecasting Guide during this consultation information for how this is undertaken and the Council robustly defends its school roll forecasting processes.</p> <p>The Council does not rely on solely on a mathematical child per house ratio multiplied by the number of dwellings to forecast the impact of development in school rolls. As set out in the Education Forecasting Guide and the detailed Council response in Annex 1, this does not represent a robust methodology to assessing the total number of children that will arise from a development over a</p>

	period. The Council's bespoke process is required to produced detailed roll projections in one of the fastest growing Local Authority in Scotland.
Modification	None required.

Highland Properties	Q3 – Local Contribution Zones	Elphinstone Education and Sports Facilities
Key Points from Representation	<p>Comments relate to the Tranent Area Contribution Zone and in particular proposal TT11 Elphinstone which is clearly an allocated site within the LDP hence the requirement for Developer Contributions.</p> <p>We, Highland Residential Developments Ltd, are the developer/promoter of this site and have submitted a detailed planning application for 90 residential units (16/00970/PM).</p> <p>The draft Developer Contributions Framework Consultation indicates that the developer of site TT11 will contribute £4,953.00 per home towards Ross High School expansion and £5,875.00 per house towards Elphinstone Primary expansion. In addition the developer is to provide land to facilitate the expansion.</p> <p>In terms of the Primary School expansion, this is based upon an expansion of 2 extra classrooms. We submit that at most the school needs one extra classroom given the likely build out rates and likely start date. We have considered in detail the Council's technical Document 14 and the Council's Education Provision Forecasting Guide. We consider a build out rate of 15-20 units per annum not 30 as more appropriate with a start date of end 2019. We submit that the effect of this would be to reduce the contribution by at least 50%.</p> <p>It was made known to the Developer during local engagement that the role of Elphinstone primary was being supplemented by pupils from outwith the catchment. We submit that the Developer should not be disadvantaged by the Council's own policies in terms of school capacity.</p> <p>The developer is required to provide land for the school extension at no cost to the Council. The School lies on the opposite side of the main road from the application site. It is not part of the application. We submit that whilst land can be made available there should be some form of financial off set to reflect the value of the land. See para 2.7 p8.</p> <p>The developer is also being asked to pay £50,000 towards off-site enhancement to changing facilities. We are of the opinion that this condition/requirement is ultraviries as the tests required by Circular 3/2012 are not met. The proposed development does not, in itself, result in a requirement to enhance the already neglected facilities.</p> <p>We submit that the requirement for the developer of TT11 should not be liable for any contribution towards the changing facilities. The developer is also being asked to provide car parking on site for those very playing fields.</p>	
ELC Response	<p>The 2018 Technical Note cost is based on 1 extra classroom and the value of that has not changed from the 2016 Technical Note. However, 2 classrooms are now technically required because the phasing submitted by Highland Properties in their application 16/00970/PM gives a peak roll of 5 primary classes being required, whereas the school currently only has a capacity for 3 classes.</p>	

	<p>The costs in the Technical Note are based on providing an additional 10 place nursery so that the existing nursery could be converted into a classroom, as this is the most appropriate layout solution for this school. Therefore the costs are based on 1 additional classroom, not 2. The applicant should formally submit revised development phasing through the application process. Once received, the Council is willing to look at the primary roll projections and the subsequent costs of the additional classroom. That level of detail is more appropriate through the application process. As stated in the DCF, it sets out the likely level of contributions. The exact level of contributions for developments will be informed by the scale and phasing of proposals and their cumulative impacts with planned and consented development.</p> <p>In terms of school land requirements, the school campus would not be required to expand if this sole development in the Elphinstone primary catchment did not go ahead. The Council is not required to extend the school, and therefore campus, due to forecast baseline or committed projections. Therefore as this site is the only reason that the Council has to seek additional campus land, it is not reasonable for the Council to pay for this campus land. Campus land contributions are only required in the Developer Contributions Framework where a portion of the requirement for the land is because of existing or non-LDP requirements (e.g. partial Council liability at Windygoul or Musselburgh), or where a development by one landowner (Whitecraig North) leads to a requirement for the Council to purchase campus land from another (Whitecraig South) and therefore some remuneration is required. Neither example applies in this instance.</p> <p>The Council maintains that there will be significantly increased usage of the existing pavilion as a result of the new development. The Council is willing to contribute towards part of the refurbishment to take account of the existing detriment. This matter, including the value of the contribution, is best resolved in discussion between the applicant and the Council. Paragraph 2.98 of the Adopted LDP sets out that “Provision should also be made within the site for turning and parking areas for the existing playing field to the west of the site in line with PROP CF1.” As with the upgrade of the pavilion, this responsibility of the provision for this can be agreed between the developer and the Council during the application process.</p> <p>The Council’s approach towards Placing Requests is set out in Appendix 2. Please note that regardless of placing requests, this development could not be accommodated within the three class capacity school.</p>
Modification	None Required

Highland Properties	Q4 – Protocol	Phased Payments
Key Points from Representation	<p>It is essential that phased payment procedures are put in place for any agreed contributions especially where build out rates of residential may be lower than in other parts of the Local Authority area.</p> <p>We welcome the Council's commitment to early discussion with Infrastructure and services providers.</p>	
ELC Response	<p>East Lothian Council considers contribution payment triggers on a case by case basis as applications are assessed and as legal agreements drawn up.</p>	
Modification	None Required	

Highland Properties	Q5 – Technical Note	Elphinstone Roll Projection
Key Points from Representation	Page 27 Assessment of Elphinstone primary School. Number of peak classes should be no more than 1 with roll being breached beyond 2021.	
ELC Response	<p>The 2018 Technical Note costs is based on 1 extra classroom and the value of that has not changed from the 2016 Technical Note. 2 classrooms are technically required because the phasing submitted by Highland Properties gives a peak roll of 5 primary classes being required, whereas the school currently only has a capacity for 3 classes.</p> <p>The costs in the Technical Note are based on provided an additional 10 place nursery so that the existing nursery could be converted into a classroom. Therefore the costs are based on 1 additional classroom, not 2. The applicant should formally submit revised development phasing through the application process. Once received, the Council is willing to recalculate at the primary roll projections and the subsequent costs of the additional classroom.</p>	
Modification	None Required	

Holder Planning on behalf of Persimmon Homes	N/A	Application of 2018 DCF Values, Active Travel, Rail
Key Points from Representation	<p>Persimmon accept the need for new development to be brought forward in association with supporting infrastructure and facilities, and the requirement for necessary developer contributions that are justified and meet the policy tests of Circular 3/2012. Persimmon Homes have two live planning applications for land at Craighall;</p> <ul style="list-style-type: none"> • “Planning permission in principle for proposed Mixed Use Development comprising residential development, education, business, industry, storage and distribution, innovation hub (including class 2,3,4,5 and 6), employment uses, community facilities, residential neighbourhood centre (including class 1,2,3 and 10), playing fields, changing facilities, public park(s) and associated works” – Application Reference 18/00485/PPP, which was validated on 17th May 2018. • “Erection of 370 houses, 103 flats and associated works”. Application Reference 15/00337/PM, which was validated on 15th June 2015. <p>In our view, the current applications should be assessed based on the Developer Contributions Guidance that was in place at the time these applications were lodged.</p> <p>In respect to the updated Proposed Developer Contributions Framework, we note a significant increase of over £1.9 million in contributions, the most notable include the following;</p> <p>Education</p> <p>We note the capacity of Craighall Primary School has increased from 21 to 22 classrooms and the requested contributions have also therefore increased. We are not clear on the reasons for the increase in the school size and would therefore be grateful if this information could be provided to us. We reserve the right to make comment on this, once it has been received.</p>	

	<p>With regards to pre-school capacity, we are unclear why the required capacity is as high as it is. As above, we would therefore be grateful if the background information and justification could be provided to us.</p> <p>Segregated Active Travel Corridor (SATC) Persimmon Homes are delivering part of the SATC within the Craighall site. We therefore, assume that Persimmon will not be required to make a separate financial contribution. Moreover, given that East Lothian Council has indicated that only 23% of the cost of the SATC will be met by developers, logic dictates that if Persimmon are delivering that part of the SATC within the Craighall site, 77% of so doing should be provided by the Council.</p> <p>Rail Improvements Persimmon in response to the Draft Developer Contributions Framework in 2016 questioned the validity of the developer paying for rail improvements. We maintain that concern and question compliance with Circular 3/2012.</p> <p>We note that the Council intend to keep the cost of developer contributions continually under review, in accordance with the Elsieck decision. We support this approach.</p>
<p>ELC Response</p>	<p>The Council acknowledges that Transportation contributions associated with the Craighall site changed in value between the 2016 DCF and the 2018 DCF, despite the scale of the proposal remaining the same. These changes are result of</p> <ol style="list-style-type: none"> 1. additional modelling undertaken between 2016 and 2018 2. Removal of 3 sites from the LDP and the addition of 1 3. Changes in the costs of the interventions <p>As a result of these changes the proportion split between the number of trips and the interventions has changes and therefore as has the value of contributions. Therefore for LDP allocated sites for which applications were submitted prior to the publication of the 2018 DCF on 29 May, then the Council will use the lower of 2016 or 2018 DCF contributions values for each of the Transport Interventions. For applications submitted after 29 May, the contributions set out in the 2018 DCF will be sought, if appropriate to the scale and kind of proposals submitted.</p> <p>This does not apply to the Education Contributions, as they have changed in value due to the development phasing which has changed since the 2015 Housing Land Audit, which the 2016 DCF was informed by. The reasoning for this has been provided to the applicant in detail through the application process.</p> <p>As has been discussed with the applicant, the Council is willing to deduct the value of in-kind provision of a section of the SATC through the Craighall site from the financial value of the SATC Contribution. The Council does not understand the rationale of the other point made. The Council is seeking 16.5% of the cost of the SATC from LDP allocated sites regardless of the length that runs through the Craighall site.</p> <p>The Council commented on the ability to seek rail contributions in its responses to the representations to the 2016 DCF. These responses were made available on the Consultation Hub as part of this consultation. The Council maintains the same response as follows: The matter of rail developer contributions is resolved under LDP Examination Report Issue 18a Transport General and 18c</p>

	Public Transport. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards rail platform extensions (PROP T10) and enlarging station car parks (PROP T9) as the proposals are required as a result of capacity issues created by planned development and subsequently proportionate contributions are required. Network rail has a duty to maintain, renew and develop the rail network but its role is not effectively to subsidise the transport impacts of new development in the plan. For full detail refer to issues 18a and 18c in the LDP Examination Report.
Modification	None required.

Holder Planning on behalf of Stewart Milne Homes	N/A	Active Travel, Rail
Key Points from Representation	<p>Stewart Milne submitted a response to the Draft Developer Contributions Framework consultation in 2016. However, a number of the concerns raised in this response are not reflected in the Proposed Development Framework and we remain particularly concerned about the required contributions towards the Segregated Active Transport Corridor and Rail related infrastructure, which we consider should be deleted.</p> <p>Segregated Active Travel Corridor The SATC is proposed to extend from Dunbar to Edinburgh, mainly utilising existing roads. As indicated on page 50 of LDP Technical Note 14, the total cost of this is estimated to be £23,400,000, of which the developers will be expected to contribute £3,856,501. There does not appear to be any detailed explanation of how the total amount has been calculated, or any explanation of the basis of the proportion expected to be funded by developers.</p> <p>Firstly, we cannot agree that the need for the SATC arises directly as a result of new development and requiring developer contributions would therefore be contrary to the test in Circular 3/2012. Rather, the proposal seems to be a Council aspiration to serve the East Lothian community. We seriously question whether the actual form of provision will provide value for money and is therefore unreasonable. Furthermore, even if it were reasonable to require developer contributions, we doubt that the financial contribution expected from developers is proportionate.</p> <p>Rail Improvements In response to the Draft Developer Contributions Framework 2016, we questioned the validity of the developer paying for rail improvements, which include platform lengthening and increasing station car park sizes. We maintain that concern and question compliance with Circular 3/2012.</p> <p>In our view, these facilities should be provided directly by Network Rail and not by developers. Network Rail is funded by central government through Transport Scotland, and it is therefore not for the local authority to be burdened with improvements to Network Rail infrastructure either itself, or certainly not through seeking developer contributions towards improvement costs. Network Rail has an operator, who pays to operate the franchise as a commercial organisation, charging customers for use of the service. The increase in passengers over time as the population of East Lothian increases will, in turn, increase the revenue to the</p>	

	<p>franchisee and it is for Network Rail to seek any necessary remuneration from the operator to account for this and to increase the reinvestment back into the network to cover any necessary improvements. It is therefore unacceptable and unreasonable to expect developers to fund improvements to the rail network.</p> <p>We note that the Council intend to keep the cost of developer contributions continually under review and assessed on a case by case basis, in accordance with the Elsie decision. We support this approach.</p> <p>We trust that the above comments will be taken into account in the finalisation of the Developer Contributions Framework.</p>
ELC Response	<p>The representee made the same representation to the 2016 DCF and the Proposed Plan. The matter of active travel developer contributions is resolved under LDP Examination Report Issue 18b Active Travel. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards part of the cost of delivery the Segregated Active Travel Corridor (PROP T3) and that the tests of circular 3/2012 are met. For full details refer to issue 18b in the LDP Examination Report. The 2018 Technical Note also makes clear that the methodology for how the Segregated Active Travel Corridor contributions are calculated are set out in the Developer Contribution Framework: Outline Methodology Technical Note. This has also been set out again in Appendix 3 to demonstrate compatibility with tests set out in Circular 3/2012.</p> <p>The Council commented on the ability to seek rail contributions in its responses to the representations to the 2016 DCF. These responses were made available on the Consultation Hub as part of this consultation. The Council maintains the same response as follows: The matter of rail developer contributions is resolved under LDP Examination Report Issue 18a Transport General and 18c Public Transport. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards rail platform extensions (PROP T10) and enlarging station car parks (PROP T9) as the proposals are required are required as a result of capacity issues created by planned development and subsequently proportionate contributions are required. Network rail has a duty to maintain, renew and develop the rail network but its role is not effectively to subsidise the transport impacts of new development in the plan. For full detail refer to issues 18a and 18c in the LDP Examination Report.</p>
Modification	None Required

Network Rail	N/A	Rail
Key Points from Representation	<p>Our comments are limited as a result of discussions with East Lothian Council since publication of the previous draft Developer Contributions Framework in 2016.</p> <p>Notwithstanding these helpful discussions we would ask that cognisance is taken of the continued need to involve Network Rail, as the railway infrastructure provider, in various aspects of the process covered by the Guidance. While it is recognised at 4.21 that Network Rail will have a role we would specifically request that;</p> <ol style="list-style-type: none"> 1. Network Rail should continue to be consulted on all applications for LDP, and windfall sites, for which Rail Package contributions are required; 2. Network Rail should be consulted on all Section 75 agreements for Rail Package contributions; and 3. Further discussion is held at an early stage with East Lothian Council to agree recording and reporting requirements referred to in relation to the Developer Contributions Protocol in Section 4. 	

	<p>We would also request clarification, and if required alteration, to Technical Note 14 in respect of:</p> <p>4. the intended scope of the Statement of Conformity on Transportation which does not make a clear reference to the Rail Package in the subheading which reads ‘PROVISION OF TRANSPORT NETWORK CAPACITY The following table and Appendix 1 explains why Road Services Network Improvements and Mitigation can be justified against the 5 tests of Circular 3/2012: Planning Obligations and Good Neighbour Agreements and thus why it should feature in East Lothian’s Planning Obligations Framework’ although there are references to rail within the section; and</p> <p>5. In particular in relation to page 51 of that section clarification of the exact scope of works included in the Rail Package; given the reference only to the mechanism for gathering and transferring monies to fund platform improvements as identified in PROP T9.</p> <p>Network Rail would be happy to discuss any of the issues raised above.</p>
ELC Response	<p>The Council acknowledges Network Rail’s request that it wishes to be consulted on all applications for which rail contributions should be sought and consulted on the terms of the associated S75 agreements. The Council agrees that further liaison is required and will arrange this separately.</p> <p>Rail is mentioned as with the Transportation Statement of Conformity. The specific reference to Roads Services refers to the name of the Council department who undertook the transport appraisal process which identified the interventions required to mitigate and accommodate the transportation impacts of the LDP, including the rail package. The scope of the Rail Package is platform lengthening and car park extensions as set out in Proposals T9 and T10 of the LDP. Page 50 of the Technical Note referred to details of each of the interventions being set out in the DPMTAG Final Report and DCF Outline Methodology Technical Note. Table 2.1 of the latter sets out that the Rail package is based on platform lengthening at Musselburgh, Wallyford, Prestonpans, Longniddry and Dram stations as well as car park extensions at Longniddry and Drem. The Council will add descriptions of all the interventions alongside Table 1 in the Technical Note. The Council confirmed that as part of the LDP Examination Process through Further Information Request 13, upon which Network Rail was allowed to comment.</p>
Modification	Add descriptions of the Transport Interventions from Table 2.1 of Outline Methodology Technical Note to page 50 of the DCF Technical Note.

Homes for Scotland	Q1 – Section 1-3 DCF	Implementation, Windfall, Viability, Table 1, Health
Key Points from Representation	<p>Implementation of the Guidance</p> <p>Homes for Scotland notes that financial appraisals and viability assessments will already have been prepared for sites that are already going through the planning application process (either with a PAN submitted and in the process of undertaking consultation, or with the application actually submitted) or for sites that are yet to enter the planning system in East Lothian. These appraisals / assessments will have been based on certain assumptions on the levels of planning gain expected. If changes are then made overnight by introducing this policy and increasing planning gain costs, viability will be affected, which will have an adverse effect on allocated sites and thus the Council’s development strategy. There must be a transition from approval to operation of the guidance</p>	

so that developers have sufficient time to include updated costs in financial appraisals. It cannot simply be applied half way through the consideration of a planning application, for example.

We suggest that perhaps the guidance should only become effective after the approval of Scottish ministers, only in respect of sites not already within the planning system (i.e. if a PAN or planning application have been submitted before or at that point then the updated costs do not apply).

Reserving Capacity for Allocated Sites

Homes for Scotland is concerned at the proposal in Paragraph 1.22 (page 5) to reserve infrastructure capacity for allocated sites which may end up in an undesirable situation whereby development is stalled in waiting for infrastructure solutions to be found and agreed (as experienced recently in Winchburgh, West Lothian). We welcome the potential to front fund infrastructure which is referenced. However, there are likely to be cases where sites will stall or not come forward at all. This will be more of an issue the further into the LDP period we go. If there is no reasonable prospect of the allocated site coming forward within the LDP period, then capacity should not be reserved for it. This is particularly relevant in circumstances where the Council is not maintaining a 5-year effective housing land supply.

Viability

Homes for Scotland welcomes the clarity provided in paragraph 1.24 on development viability given that land values vary significantly across East Lothian and not all locations can sustain significant planning obligation costs. It is important that development viability is respected and the contribution of development of an allocated site to the Council's wider development strategy is properly recognised when weighing up viability cases.

Table 1

This table implies that all development of 5 or more homes will automatically be required to make contributions. We consider this to be the wrong starting point for the guidance. In line with the tests in paragraph 14 of Circular 3/2012 Planning Obligations and Good Neighbour Agreements, the starting point should always be the consideration of whether there is capacity within the existing infrastructure to accommodate the proposed development, not the assumption that all development will be required to contribute. If mitigation is not necessary to accommodate the development, then no contributions towards that nature of intervention should be sought. We suggest that the table and supporting text are amended to be clear on this, and to ensure contributions are sought in line with the tests of the circular.

Health & Social Care

Homes for Scotland was under the impression, from meeting with East Lothian Council officers, that health and social care contributions would only be sought at the new community at Blindwells. This should be more explicitly set out in the relevant bullet point in paragraph 1.25 on page 6.

Table 1 states that contribution towards health and social care facilities are applicable for residential development of 5 and more homes. This implies that all development of 5 or more homes will be required to contribute towards health and social care

	<p>interventions. The table does not make it clear that these contributions will only apply within the new settlement at Blindwells, and of course, only when they are necessary (in line with the tests of the circular).</p> <p>Irrespective of the restriction on health and social care contributions to Blindwells, we reiterate that we do not agree with the principle of charging the home building industry for the provision of healthcare facilities.</p> <p>The NHS as an organisation is funded through central government and the burden should not be placed on the development industry to cover any funding shortfall that may hinder the provision of primary healthcare facilities. Primary healthcare provision should not be for the council to provide for, and it certainly should not be fore developer contributions to meet the cost of any necessary facilities.</p> <p>Most GP surgeries act as businesses, and developers should not be expected to supplement other businesses. The positive effect on health and wellbeing that the delivery of more homes brings should be recognised, and supported.</p>
ELC Response	<p><u>Implementation of the Guidance</u></p> <p>The Council acknowledges that transportation contributions associated with the LDP allocated sites have changed in value between the 2016 DCF and the 2018 DCF, despite the scale of the proposals remaining the same. These changes are result of</p> <ol style="list-style-type: none"> 1. Additional modelling undertaken between 2016 and 2018 2. Removal of 3 sites from the LDP and the addition of 1 3. Changes in the costs of the interventions <p>As a result of these changes the proportion split between the number of trips and the interventions has changes and therefore as has the value of contributions. Therefore for LDP allocated sites for which applications were submitted prior to the publication of the 2018 DCF on 29 May, then the Council will use the lower of 2016 or 2018 DCF contributions values for each of the Transport Interventions. For applications submitted after 29 May, the contributions set out in the 2018 DCF will be sought, if appropriate to the scale and kind of proposals submitted.</p> <p>This does not apply to the Education Contributions, as they have changed in value due to the development phasing which has changed since the 2015 Housing Land Audit, which the 2016 DCF was informed by, or because of windfall consents, or due to removal and additional of sites from the adopted LDP compared to the Proposed Plan. Policy DEL1 clearly sets out that ‘the exact nature and scale of developer contributions required in association with all relevant new development proposals, including windfall proposals, will be assessed on a case by case basis’.</p> <p><u>Reserving Capacity for Allocated Sites</u></p> <p>Each site will be assessed on a case by case basis. If however, catchment capacity is required to provide capacity for LDP allocated sites which are identified as effective, then that capacity will be reserved for those sites. This will be informed by the Housing Land Audit process. If an allocated sites becomes ineffective for a period of time and action is unable to make it effective, then it may not be appropriate to continue to reserve infrastructure capacity.</p> <p><u>Development Viability</u></p>

	<p>Homes for Scotland comments on viability are noted.</p> <p><u>Table 1</u> It is not the intention of Table 1 to set out that all types of contribution will apply in all instances but that they may apply. Housing sites of 5 or more units are the starting point for requiring contributions but the actual contributions required will be dependent on a demand assessment undertaken for the proposal, the contributions arising from which will have to comply with the 5 tests set out in Circular 3/2012. In order to make this clear, the Council will insert the word 'likely' before 'nature of contributions' in first sentence of paragraph 3.3 of the DCF. The Council has already demonstrated through the LDP examination that the principles of gathering contributions for the infrastructure proposals set out in the DCF meets the 5 tests.</p> <p><u>Health & Social Care</u> The Council acknowledges that based on an assessment of LDP sites, only Blindwells is required to make a Health & Social Care contribution. Table 1 will be modified to make this clear for LDP sites.</p> <p>However, the Council disagrees with Homes for Scotland's representation that Blindwells should not make a financial contribution towards the delivery of primary care facilities as the need for these premises directly arises as a result of the new housing at Blindwells. As set out the Reporter's Findings on page 687 of the LDP Examination Report, the Reporter notes 'the objection to the principle of securing developer contributions towards primary healthcare services, given the circumstances described in relation to Blindwells, I consider it reasonable that the plan seeks to do so. The need for such facilities is in this situation directly attributable to new development'.</p>
Modifications	<p>Modify 1.22 to state that this will be informed by the Housing Land Audit process</p> <p>Modify 2nd sentence of paragraph 3.3 as follows: Having identified the <u>likely</u> nature of contributions from Table 1, applicants must then refer to the Developer Contributions Framework to establish the scale if the contributions that they <u>are likely to</u> must.</p> <p>Modifying table 1 to indicate that based on assessment of LDP sites, health and social care contributions are likely only to be required from the Blindwells Proposal out of all LDP Sites</p>

Homes for Scotland	Q2 – Transport Contribution Zones	Rail Zones, Old Craighall, Strategic Active Travel Corridor
Key Points from Representation	<p>Homes for Scotland requests that detail is added within the guidance to explicitly state what interventions are necessary, and why these are necessary. The draft guidance currently moves straight into maps and costs without any explanation. We acknowledge that some of this is provided within the Technical Note, however the key points should be outlined in the guidance itself for clarity. Circular 6/2013 Development Planning (paragraph 139) states that supplementary guidance should contain exact levels of contributions or methodologies for their calculation. The draft guidance itself has indicative costs however does not provide a full explanation. This is left to the Technical Note. We suggest that further detail is added to the guidance to be more transparent.</p> <p>Strategic Road and Rail Contributions</p>	

Homes for Scotland maintains its objection to the principle of the inclusion of contributions towards rail improvements within the guidance. Network Rail is funded by central government through Transport Scotland and it is therefore not for the local authority to be burdened with improvements to Network Rail infrastructure either itself, or through seeking developer contributions towards these costs. The increase in passengers over time as a result of increased home building in East Lothian will increase the revenue to the franchisee, and it is for Network Rail to seek any necessary remuneration from the operator to account for this and to increase the investment back into the network to cover any necessary improvements.

We query the Rail Network Contribution Zones map on page 16 and seek further clarity on the background to these – how are they formed? Is it based on distance from a station? This is not immediately clear, with some areas covered in the map which are not in close proximity to a station at all.

The guidance does not explain how contributions for strategic road and rail interventions will be handled or processed. This is referenced in the Technical Note but not in the actual guidance. We suggest this is explicitly detailed within the guidance.

We note that the Scottish Government’s letter to City of Edinburgh Council of 2nd March 2018 regarding Planning Obligations stated:

“Transport Scotland cannot support the wording in relation to the delivery of infrastructure on page 8 and 13; “The Council will transfer any monies collected towards actions on the trunk road network to Transport Scotland once the relevant project is confirmed”. This statement was included in response to previous comments which noted that it was inaccurate to state that funding for some schemes would ‘come from the Cross-Boundary Study’. The detailed design for grade separation of Sheriffhall is on-going, meaning a cost profile is not currently available. It is therefore not possible to determine a delivery and funding mechanism, or timetable, for this project, meaning the above statement is premature and should be removed.”

The supporting East Lothian Technical Note 14 (p51) states:

“Since 2016 publication of DCF, the Council has had further meetings with Network Rail and Transport Scotland regarding gathering contributions towards Old Craighall and the Rail Package. For the Rail Package, developer contributions will be gathered through Section 75 agreements and transferred to Network Rail when a project to deliver to platform improvements is confirmed. With Old Craighall, contributions will also be gathered through Section 75 Agreements and will then be transferred to the party who undertakes the works, when that is confirmed.”

Paragraph 2.7 on page 5 of Technical Note 14 is similar in respect of strategic transport. Given that detailed design work for Old Craighall and rail improvements have not yet been done, then there is no cost profile, and no delivery or funding mechanism or timetable for these projects. We therefore suggest these statements are also premature and query the legitimacy of seeking contributions towards these rail project. None of them are committed by Network Rail, there is no detailed design work, no timetable for delivery and no identified deliverer. We question how East Lothian Council will enforce that a third party spends the money as intended? This is further evidence to support the removal of these contributions.

Segregated Active Travel Corridors

	<p>Homes for Scotland considers that a mechanism should be included within the guidance to allow offsetting contributions against works undertaken on site. Where a developer provides the land and/or completes the required works on site, there should be a credit element to account for the significant savings that the authority will make in this circumstance. The authority will not have to procure the land, carry out building works or seek consents etc. Without this offsetting, developers are paying twice – once through providing the land and carrying out the works, and again through payment of a developer obligation towards segregated active travel corridors. This will be an issue on a number of sites in East Lothian.</p>
<p>ELC Response</p>	<p>The Technical Note will always be made available alongside the DCF to set out the methodology behind the contributions and therefore all the evidence within it setting out the methodologies does not need to be within the DCF Supplementary Guidance itself. However, the Council is willing to make explicit reference to the Technical Note in the DCF. This will be set out in a new paragraph 3.6. Details of what non transport interventions are necessary are set out in the Outline Delivery Strategy sections for each cluster.</p> <p><u>Strategic Road and Rail Contributions</u></p> <p>The Council commented on the ability to seek rail contributions in its responses to the representations to the 2016 DCF. These responses were made available on the Consultation Hub as part of this consultation. The Council maintains the same response as follows: The matter of rail developer contributions is resolved under LDP Examination Report Issue 18a Transport General and 18c Public Transport. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards rail platform extensions (PROP T10) and enlarging station car parks (PROP T9) as the proposals are required are required as a result of capacity issues created by planned development and subsequently proportionate contributions are required. Network rail has a duty to maintain, renew and develop the rail network but its role is not effectively to subsidise the transport impacts of new development in the plan. For full detail refer to issues 18a and 18c in the LDP Examination Report.</p> <p>The rail contribution zones are repeated in the DCF but they have taken from the Appendix 1 of the Adopted LDP. The contribution zones represents zones of the regional transportation model. Zones that are identified as requiring a contribution contain LDP development sites where the modelling has determined that there is a link between LDP development in that zone and the need for additional rail capacity (i.e. additional rail trips arise as a result of development) as to be provided by Proposals T9 and T10 set out in the LDP. Whilst distance to stations on the North Berwick Branch Line is strongly correlated with the zones, larger developments further away from stations may still trigger additional rail journeys and therefore a contribution may be justified. A detailed explanation of the methodology is set out in in section 3.2 and 3.5 of the Developer Contribution Framework: Outline Methodology Technical Note. The scale of the contributions levels is set out in tables 2 to 5 of the DCF.</p> <p>Regarding securing road and rail contributions, these will be secured through legal agreements alongside the other contributions. The DCF SG sets out that contributions will be secured through legal agreements.</p> <p>The letter to City of Edinburgh is not relevant in this instance. East Lothian Council have received no similar letters or representation from Scottish Government or Transport Scotland. Transport Scotland's representation to this consultation considers that the DCFSG is thorough. The contribution values in the DCF and the costs of the interventions set out on Table of page 50 of the Technical Note is based on detailed costs appraisal of the interventions set out in the DPMTAG Report and the Developer Contribution Framework:</p>

	<p>Outline Methodology Technical Note. Both the Old Craighall and Rail Package interventions are based on high level costs available at this stage, with a proportion of the costs being recovered through developer contributions based on the what proportion of the need for additional capacity provided by the intervention is driven by LDP development.</p> <p>Regarding Network Rail commitment to platform extensions, it is correct to state that this has not yet been committed. However, this was made clear through the LDP examination process Further Information Request 13. Yet the Reporter did not modify the plan and allowed the Council to gather contributions towards the rail proposals T9 and T10 as the reporter agreed with ‘the council’s conclusion that longer trains are the optimal method to increase capacity to meet travel demand from new development, and, that this requires longer platforms and additional car parking at some stations’ (Examination Report page 771). It is not Network Rail’s responsibility to subsidise the transport impacts of new development in the plan. As per other transport contributions, if platform lengthening is not delivered with a time period of the full rail contribution being received then it will return the contribution to the party that paid it.</p> <p>East Lothian Council will enforce the expenditure of rail contributions on the rail proposals by retaining the contributions until the rail proposals become committed projects. If they do not, then the contributions will be returned at the end of the appropriate period. Definitions in developer contributions legal agreement will set out what contributions are required to be used towards and this will regulate their use, including by delivery bodies other than the Council.</p> <p><u>Segregated Active Travel Corridor</u> On the limited occasions where the Segregated Active Travel Corridor will be delivered in kind through a developer’s site, the Council will credit this against the financial contribution calculated for the site. This will be negotiated with the relevant applicant’s on a case by case basis and does not need to be set out in the DCFSG.</p>
Modifications	Insert new paragraph 3.6 setting out that Technical Note should be read alongside the DCF and that it sets out the methodology and calculations behind the likely values set out in the DCFSG.

Homes for Scotland	Q3 – Local Contribution Zones	Education Issues
Key Points from Representation	<p>Homes for Scotland considers that this section should include more up-front clarity on the fact that actual contributions will be based on up to date capacity assessments.</p> <p>Schools contributions are not well explained in this document as all of the detail is in the Technical Note – it would be useful to have more clarity within the actual guidance.</p> <p>We note that the information contained within the Technical Note on school rolls is useful, but it is limited. We require more detail, for example – it does not state what the 2018 school rolls were which would be useful in terms of providing a baseline.</p> <p>Another issue is the scale of additional capacity that the Council is expecting a contribution for. As an example, in Dunbar, at John Muir School, the established peak is 509 pupils. The LDP peak roll is 527 pupils, which is a difference of 18 pupils – but the guidance seeks almost £1M from new development as a share of the 450sqm of new space required. We consider this to be excessive for</p>	

	<p>what is a small impact. Also, if the school will have 20 classes to accommodate 527 pupils and the capacity would be circa 570 pupils – it is clear that the Council is benefitting from the spare 43 places. We therefore query who should pay for that because it is not related directly to development impact? We do not consider this should be the responsibility of the development industry.</p> <p>We note that the guidance explicitly states in paragraph 4.11 that capacity increase must be provided in appropriate units (i.e. the provision of single classroom). However, if the capacity is only exceeded by say 5 spaces, and a classroom has minimum 25 spaces, then an entire classroom does not reasonably relate in scale and kind to the impact of the proposal (a required test of Circular 3/2012).</p> <p>The guidance also states that the infrastructure must be provided in a permanent form to satisfy the peak demand. Therefore, if there is a temporary breach of school capacity (say 8 pupils) for a two-year period, but then the roll falls below capacity, it seems that a permanent single class extension will still be required, even though it may well be sitting empty after the peak has passed. We consider that the contribution and resultant intervention must be proportionate to the impact of new development on that infrastructure.</p> <p>Homes for Scotland understands that if site programming changes, this will result in changes to peak years and may result in tipping over into the requirement for an intervention, or a more significant intervention. However, the detail of these changes is not clear in the guidance at all. We request further clarity here and the provision of an explanation.</p> <p>We request further information on the Council’s calculation of the Primary 1 intakes within its methodology, and we suggest that the calculations of education accommodation requirements may be too high as a result of these if they are set too high. The forecasting of P1 intakes are critical to the education infrastructure methodology, and as such should be transparent and in line with the tests of Circular 3/2012. It is not possible to accurately calculate the forecasting based on the existing methodology provided, therefore further clarification is required to ensure it meets the Circular tests and contributions being sought fairly relate in scale and kind to the proposed development.</p>
ELC Response	<p>Point 2 of the 14 step administrative process for developer contributions on page 61, paragraph 4.16 and 4.17, the DCFSG sets out that proposals will be assessed to identify any updated level of contributions based on updated assessments. As stated throughout the DCFSG, it only sets out the likely level of contributions that are identified.</p> <p>The Council disagrees with Homes for Scotland regarding the clarity behind education contributions. The DCFSG sets out the likely contribution values and the Outline Delivery Strategy sections set out what sites will be required to contribution towards school extensions. Calculations for the level of contributions are set out in 21 and 42 of the Technical Note. The Council is willing to sign post these assessments in the DCFSG.</p> <p>The Council also disagrees that the information within the Technical Note is limited. Pages 22-27 set out the relevant information for baseline, committed and uncommitted projections for each primary school. Baseline rolls for primary school are largely</p>

irrelevant as school extensions are required where the projected number of classes exceeds the number of classrooms. This is not based on a roll divided by a number of pupils in a class average but by a detail class organisation undertaken for each school. The council is happy to make these available during the application assessment process, alongside baseline rolls if requested.

The representation makes reference to the Dunbar Primary John Muir requirement for £973,591 from the LDP development sites totalling 415 additional units. Whilst the committed projection peak roll is now 509 pupils, the committed projection now includes the impact Newtonlees Farm site which was minded to grant by the Council in late 2017. The Uncommitted Projection adds the combined impact of the Hallhill North and Brodie Road proposals. The established supply peak roll projection in the 2016 DCF Technical Note, when Newtonlees South was not included was 463 pupils or 17 classes. The capacity of the school is 18 classes but the uncommitted projection shows a 20 class peak. What is required to accommodate LDP development, including the now consented Newtonlees Farm, is 2 additional classes and 1 additional GP space. 50 additional Early Learning and Childcare spaces are also required but the Council is required to fund 30 of these spaces due to the committed nursery projection. The total cost of this is estimated at £1,470,000 based a school specific schedule of accommodation costing. The Council is willing to make these available during the application process. Factoring in committed contributions (£316,409) and Council and committed development liabilities (20 nursery spaces from committed Newtonlees North and the Council contributing a further 10 spaces (cost £180,000)), the amount the three post 2016 DCF sites are required to contribution is £973,591 spread across the 415 contributing units from Newtonlees Farm (115), Brodie Road (50) and Hallhill North (250). The Council is not benefiting from a spare 43 places. The 20 class requirement only arise because of the planned development and therefore it is the development that should bear the costs of this, not the Council.

Units of capacity must be increased in permanent, whole classrooms up to the peak capacity as the Council will not accept class overcrowding or temporary units. The Council cannot build half a classroom. If a further class arises solely because of new development then that additional class must be provided (if it can be physically accommodated) by the development, therefore meeting the scale and kind test. Regarding permanent provision, this is set out in Adopted LDP Proposals PROP ED2 to ED7 for each of Education Clusters. Part B of each sets out 'The Council will provide additional phased **permanent** extension to pre-school and primary schools as required to meet the need arising as a direct result of new housing development. Developer contributions will be sought from the developers of housing land to fund the costs of this **permanent** provision, which will be the subject of legal agreements'.

The likely contribution levels in the DCFSG are based on a singular assessment of all the LDP proposals informed by the LDP or minded to grant site capacities and the site phasing set out in the Housing Land Audit. However, as the DCFSG only sets out likely contribution levels and contributions will be determine by the assessment of proposals as per Policy DEL1, then the scale of the infrastructure requirements can changing of the scale of phasing of development changes. For example, more contracted site phasing can often lead to higher peak school rolls as more pupils will arise out of a site at the same time if it is build out over a shorter period. Roll projections will be updated for each application as it is assessed.

	The Council is not consulting on its processes and methodology for calculating school roll projections but it did make available the Education Provision Forecasting Guide during this consultation information for how this is undertaken and the Council robustly defends its school roll forecasting processes. Matters regarding the methodology behind primary 1 intakes are set out in Appendix 1.
Modifications	None required.

Homes for Scotland	Q4 – Protocol	Structure, Policy and Clawback Periods
Key Points from Representation	<p>Homes for Scotland considers that this section would be better placed earlier in the Guidance document, before the inclusion of some of the maps and costings. We suggest this could be moved to page 13 with the contribution zones following on from this section. This would add clarity as it currently appears to be wedged in between sections of contribution zones.</p> <p>We suggest that Paragraph 4.1 is clarified and wording added to ensure that it is in line with Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The current wording suggests that a policy requirement is sufficient justification to require a developer contribution. The wording should reflect that the obligation must meet the tests set out in Paragraph 14 of the Circular – that the obligation is necessary, that it serves a planning purpose, that it relates to the proposed development, that it fairly and reasonably relates in scale and kind to the proposed development, and that it is reasonable in all other respects. There must be a need for the obligation which depends on whether there is capacity in relation to that piece of infrastructure (school, road etc) to accommodate the proposed development, and this is on a case by case basis.</p> <p>We support the inclusion of text relating to the repayment of unused contributions to the developer and suggest that the timescales for this are proportionate. We suggest that this timescale could be ten years from first payment, rather than the last payment as currently suggested in the proposed guidance.</p>	
ELC Response	<p>The Council considers that the document structure is logical in that it begins with policy and legal requirements, the likely level of contributions followed by how assessment protocol and administrative processes.</p> <p>It is not considered that paragraph 4.1 needs to be modified. Circular 3/2012 is explicitly referenced in the section 2 of the DCF and the Council would not seek to secure obligations through the assessment process that fail the tests of the circular. Through the LDP examination process that the principle of the Council’s ability to seek the relevant contributions has met the five tests.</p> <p>Setting clawback period from the first payment is not appropriate. This is because it often is that the Council cannot start to begin projects until all the contributions are gathered. The need to mitigate development impacts often arises after development is completed or until the cumulative impacts of multiple developments arises. This is particular the case with secondary education and transportation and therefore a time period from the last payment is most appropriate. This has been recent practice in East Lothian and there is no need to change that.</p>	
Modification	None required.	

Homes for Scotland	Q5 – Technical Note	Technical Note
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<p>Key Points from Representation</p>	<p>Homes for Scotland supports the publication of Technical Note 14: Developer Contributions Framework in support of the draft guidance.</p> <p>However, we consider that it is not particularly clear or explicit as to the exact methodology of how contributions are actually calculated. Whilst we welcome the supporting Technical Note 14, this does not provide sufficient detail as to where the transport costs and school build costs actually come from, for example. We request further detail on this, and detail on how these costs are proportionately shared. Paragraph 35 of Circular 3/2012 requires that where “planning authorities propose to rely on standard charges and formulae, they should include these in supplementary guidance along with information on how standard charges have been calculated, how monies will be held, how they will be used and, if applicable, how they will be returned to the developer.” There is therefore the requirement to include detail on the background methodology. It appears that this layer of the evidence base is missing.</p> <p>We also suggest that the 2017/18 census roll is added to the evidence base, and the inclusion of the working capacity for each school. The evidence base could also benefit from the inclusion of a table showing the planning and working capacity of each school relative to the number of classes (as has been provided by City of Edinburgh Council for its guidance, and which is considered to be a useful additional source of information).</p>
<p>ELC Response</p>	<p>Firstly the Council does not rely on standard charges as only the likely scale and nature of contributions is now set out in the DCF. The exact level of contributions will be determined during the application demand assessment process and the Council will make available the evidence behind the sought contributions at that point. Regarding the Technical Note and the Supplementary Guidance, the Council considers that the relevant information has been made available both during this consultation, the 2016 consultation and the briefings with Homes for Scotland that took place in 2016 and 2018. Regarding Education, the technical note provides the relevant current school capacities and the future committed and LDP school rolls and class numbers required. It then sets out the scales of extensions required for each school and what the development and Council responsibility split is for that. The expansions are costed and the developer cost then clearly apportioned between the numbers of contributing developments in each catchment. This is a significant level of technical information and is more than sufficient to determine the likely per home contributions set out in the DCF. When the demand assessments of individual applications are undertaken the Council is committed to providing updated workings setting out how the contributions have been calculated.</p> <p>The methodology behind the transportation contributions is clearly signposted in the Technical Note as being set out in the DPMTAG Report and the Developer Contribution Framework: Outline Methodology Technical Note. The Council is happy to reconfirm these during the application demand assessment process when the exact level of contributions are established.</p> <p>Capacities for East Lothian Primary Schools are expressed as planning capacities and classroom numbers. The Planning Capacity is a measure of the total number of pupils and classes which could be accommodated in a school, based on the number and size of teaching spaces. It is also informed by the pupil distribution across class stages and the class organisation required for the projected pupil numbers. This is the capacity figure which is provided to the Scottish Government in the annual School Estate Core Facts</p>

	Statistical return and together with the class organisation profile prepared by the Council is the realistic figure used in the assessment of the impact of development on the schools' infrastructure. Providing two different definitions of school capacity would result in confusion.
Modifications	None Required

Homes for Scotland	Q6 – Additional or General Comments	Level of Evidence
Key Points from Representation	Homes for Scotland refers to the letter from Scottish Government to Fife Council in relation to its Supplementary Guidance on Planning Obligations in March this year in which it requires the authority to prepare new guidance following statutory procedures, and for “information regarding the approach taken (the justification and methodology) for the developer contributions zones to be made available as part of the consultation process”. The letter also reiterates the need to consider the tests of Circular 3/2012. Whilst we acknowledge and support the publication of Technical Note 14 in support of this draft guidance, we consider that the note does not go far enough to provide all the necessary detail required to fully scrutinise the draft guidance. We request that this detail is provided, as outlined above.	
ELC Response	As stated in the previous response, the Council does not rely on standard charges as only the likely scale and nature of contributions is now set out in the DCF. The exact level of contributions will be determined during the application assessment process and the Council will make available the evidence behind the sought contributions at that point. Regarding the Technical Note and the Supplementary Guidance, the Council considers that the relevant information has been made available both during this consultation, the 2016 consultation and the briefings with Homes for Scotland that took place in 2016 and 2018. An evidence base has been made available to adopt the Supplementary Guidance which sets out the principles for how contributions will be calculated, secured and gathered and also what the likely level of contributions may be based on the whole LDP demand assessment undertaken at this time. The type and nature and scale of contributions that will be secured will be based on the assessment of development proposals.	
Modifications	None required.	

Persimmon Homes	General Comments	Lammermoor Terrace Education & Transport
Key Points from Representation	<p>Education Contributions</p> <p>We note the capacity of Windygoul Primary School has decreased from 9 additional classrooms required in the 2016 iteration of the DCF to present requirement of 6 additional classrooms. Whilst Persimmon are aware of the error associated with the figures on p40 of the Technical Note 14 whereby the associated costs specify £7,287 and the DCF states £6,390 per unit, we remain unclear as to why the number of classrooms has reduced and where we can find evidence to support this change. Whilst the cost aspect is understood and generally accepted, it appears that there is a level of information missing from Technical Note 14 which demonstrates how the peak years and peak rolls have been calculated by ELC Education Officers. We would therefore be grateful if this information could be provided and request the right to make further comment once it has been received.</p> <p>Transport Contribution Levels</p>	

	<p>It is noted that the Lammermoor Terrace site and the majority of the sites within the urban limited of the Tranent Cluster are expected to contribute to Segregated Active Travel whilst the site at Windygoul South is excluded from any calculation. Similarly, in terms of the proposed rail contribution (which is generally dealt with separately in our submission via Holder Planning) the site at Windygoul South is anticipated whilst Lammermoor Terrace is not. It is not entirely clear within either the Technical note or DCF how specific costs are allocated on a site by site basis.</p> <p>Looking globally at the Transport Contribution Levels with specific regard to the Tranent Cluster on page 29 of the DCF and subsequently working these out on a per unit basis for the sites located within or around the urban limit results in a very wide range of contributions which breaks down to £196.90 per unit at Windygoul South to £784.71 per unit at Lammermoor Terrace and the highest of £11.89.16/unit at Bankpark Grove. Given that all these sites are located in fairly close proximity to each other, these disparities appear fairly significant in scale. It is not clear from the DCF and background papers exactly how these zones have been established and it may be that further detail is necessary to increase the transparency of the calculations on a site by site basis.</p>
ELC Response	<p><u>Education Contributions</u></p> <p>The Windygoul Primary projection now forecasts an established school roll (factoring in committed development only) that is 3 classes less than the 2016 projection. This is why the additional capacity requirement has reduced by 3 classrooms from 9 to 6. The established roll for Windygoul is set out on page 27 of the Technical Note. This school projection will be subject to an updated assessment when applications for catchment developments are submitted, as the scale and phasing of development is likely to be different than that used as evidence for this assessment. The updated projections will be made available to applicants upon request.</p> <p>Windygoul South is not required to make Segregated Active Travel Corridor contributions because the site is not within 1.2km buffer of the route. The methodology for the SATC contributions was set out in the Council’s responses to representations to the Proposed Plan and was considered at the LDP examination. It is also set out in the Developer Contribution Framework: Outline Methodology Technical Note and was signposted in the DCF Technical Note.</p> <p><u>Transport Contributions Levels</u></p> <p>It would not be appropriate for contributions for all Tranent sites to be the same per house value as that would not consider how the impacts of development are specific to the location and nature of each development. Transportation contribution methodology is set out in the Developer Contribution Framework: Outline Methodology Technical Note. With the exception of active travel, transportation modelling of all the LDP sites has identified the likely number of trips from each site related to each transport intervention. If the full costs of the intervention is to be received from contributions then that is split proportionally by the number of journeys/trips from each site. Whist not exact, the closer the routing from a development to an intervention, the higher the number of journeys is likely to be. That way the contribution directly arises from the scale and nature of the relationship between development and transport intervention. Appendix B sets out a worked example of how the specific contributions for Blindwells have been calculated. Appendix C in the Developer Contribution Framework: Outline Methodology Technical Note sets out the proportional split of additional trips from LDP sites by each intervention.</p>
Modifications	None Required

Hallhill Developments Ltd	General	Segregated Active Travel, Rail Contributions, Education Costs and Viability
Key Points from Representation	<p>Referring to the document setting out East Lothian Council (ELC) responses to representations which refers to the Local Development Plan (LDP) Examination Report, Hallhill Developments Limited (HDL) notes that none of the concerns raised by HDL, Homes for Scotland or house builders have been accepted and no changes on these points are proposed. Notwithstanding, the views of HDL remain as previously expressed.</p> <p>Supplementary comments are as follows:</p> <p>PROP T3 – Active Travel Corridor</p> <p>Technical Note 14 refers to an indicative cost of £23,400,000 and a developer proportion of £3,856,501. That would mean an amount of £19,543,499 relating to existing stock. Using the Council’s figures, that means that the level of additional contribution from new development over and above the existing base case is $£3,856,501 \div £19,543,499 = 19.7\%$. Albeit that there may be some marginal impact from non-residential developer contributions, it is not clear that the new developments would result in a projected 19.7% population increase. It is, therefore, not clear that the level of developer contributions is proportionate. It is suggested that reference to developer contributions to T3 Active Travel Corridor be deleted from all LDP policies, proposals and supplementary guidance.</p> <p>T9 and T10</p> <p>It is noted that the Examination Reporter uses the terminology <i>“Whilst I agree that Network Rail has a duty to maintain, renew and develop the rail network, I am not persuaded that its role is to effectively subsidise the transport impacts of new development in the plan”</i>. This appears to be a subjective view and it is not accepted that Network Rail is in any way subsidising new development.</p> <p>Network Rail’s Strategic Business Plan, in its breakdown of income sources, refers to other sources of income – grants and income from operators. There is no indication that the £100M that Network Rail states it spends every week on improving Britain’s railway (www.networkrail.co.uk/who-we-are/jobs-and-growth) is dependent on Planning Gain income. In fact, Network Rail makes reference to profits from its own property holdings as a source of revenue, reinforcing the point raised previously by HDL that Network Rail seeks to make a profit from its activities to reinvest in rail infrastructure improvements.</p> <p>At a more detailed level, Network Rail’s information displays at Dunbar station set out why the Dunbar station improvements are being progressed. The information provided is as follows:</p> <p>“Q: Why is the project being delivered?</p>	

A: The new platform will provide increased capacity and improve operational flexibility. Currently all northbound and southbound services have to use the same platform. Northbound stopping services will use the new once it is constructed. Beyond 2020, there are aspirations by train companies operating on the East Coast Main Line to operate more long distance and local services on the route. These cannot be accommodated within the existing infrastructure.”

This makes no reference whatsoever to station improvements being as a result of new developments in the town. Rather, the implication is that any improvements derive from the already existing situation.

In terms of funding, the Network Rail information display goes on to state:

“Q: How much will this cost?

A: The project is being funded by Transport Scotland with a current estimate of circa £15m.”

The clear statement is that the project is already funded, therefore developer contributions are neither required or reasonable.

Further, there is precedent elsewhere of railway infrastructure upgrades, funded through Network Rail and without developer contributions, taking place in locations where new housing is being delivered – for example at Robroyston, Glasgow and at Kilmarnock. The proposed approach at Dunbar is inconsistent with this.

The T9 and T10 proposals fail to meet the S.75 tests of being proportionate and arising directly as a result of the proposed development. HDL remains of the view that the T9 and T10 proposals for developer contributions towards rail network improvements are unreasonable. It is, therefore, suggested that references to developer contributions to rail linked infrastructure should be deleted from all LDP policies, proposals and supplementary guidance.

Education contribution

Technical Notes 14, education section, P.35 makes reference to school construction costs of £3,000/m². This has also been referred to in the Council’s responses to representations. The £3,000/m² cost has been challenged, particularly in relation to the treatment of VAT. There has been a suggestion that this figure is inclusive of VAT, whereas the Council should be able to reclaim the VAT in accordance with proven methodology eg through Hub frameworks. If the figure of £3,000/m² is VAT inclusive, the net cost to the Council would be materially lower in the event of VAT reclamation. So far as HDL is aware, the treatment of VAT has never been clarified by the Council. In the absence of any such clarification the stated cost of £3,000/m² is unsubstantiated and is therefore challenged by HDL. Reference to this figure should be removed.

General

	<p>It should be noted that the amounts of S.75 contributions, as set out in the draft Developer Contributions Framework, are proposed at a sufficiently substantial level in aggregate as to impact on development viability.</p> <p>None of the documentation relating to developer contributions takes account of the economic benefits of encouraging and facilitating development. In the case of Dunbar, an economic impact assessment by independent expert Tony Mackay in 2016 concluded that existing and future Hallhill developments in Dunbar will contribute c.£29.4m per annum to the East Lothian economy, and have to date generated over 700 jobs.</p>
ELC Response	<p><u>Segregated Active Travel</u></p> <p>The calculation of the Segregated Active Travel Contributions was set out in the Council's responses to representations made to the Proposed Plan and considered during the examination. The contribution methodology was set out again in the Developer Contribution Framework: Outline Methodology Technical Note. A specific worked calculation has been made available in Appendix 3. PROP T3 is set out in the LDP, is partially required because of new development and the Council will continue to seek contributions towards it, proportional to the relationship between the Segregated Active Travel Corridor and new development.</p> <p><u>Rail</u></p> <p>The Council sets out that the proportional distribution of the rail contributions has changed since the 2016 DCF consultation. The representee should note that no rail contributions are now sought from Dunbar sites. This is because rail contributions are dependent on proximity and journeys made from North Berwick Branch Line stations, of which Dunbar station is not part of. It is proposed that North Berwick services are extended to 8 cars and therefore contributions are sought towards platform extensions to stations on that line. As Dunbar developments will generate rail trips from Dunbar station which is not served by North Berwick Branch services, then contributions are not required from Dunbar developments.</p> <p><u>Education Costs</u></p> <p>The 3,000 per m2 costs are not inclusive of VAT.</p> <p><u>Viability</u></p> <p>The DCF addresses development viability and how it will be considered in paragraphs 1.15, 1.16 and 1.24. The Council recognises the economic benefits of development but development and the increase in land value realised by residential planning consents is required to fund infrastructure required to support the development.</p>
Modifications	None required.

Scottish Government	General Comments	Legal Fees
Key Points from Representation	<p>We note that paragraph 4.20 states that the Council will seek to recover from applicants the cost for drafting legal agreements. With regard to the payment of fees, currently there are no provisions in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 providing for the payment of charges relating to the drafting or conclusion of</p>	

	legal agreements under section 75 of the Act. We do not consider that a planning authority is entitled to charge for undertaking its functions without express authority to do so and we would suggest you seek independent legal advice on this matter.
ELC Response	The Council acknowledges that this was due to be removed after previous consultation but was left in in error. This will now be removed.
Modifications	Remove element of paragraph 4.20

Transport Scotland	General Comments	Engagement and Likely Values
Key Points from Representation	<p>Transport Scotland do not have any significant concerns with the Supplementary Guidance document and welcome the involvement to date on its initiation and progression. We welcome paragraph 1.14 which discusses the need for early engagement and discussion to identify the level of contribution. We trust this will negate situations where, in the past, the Council has asked Transport Scotland to provide a level of contribution it would deem appropriate to apply to a development rather than the Council determining this figure in consultation with ourselves. The Guidance is thorough and we would strongly recommend regular and consistent discussions relating to the timing and delivery of specific trunk road mitigation when developments come forward.</p> <p>The Guidance refers to the “likely” contributions required and seek clarification if the Council will be applying the specific figures within Tables 2 - 5 to the relevant developments? In previous meetings it was discussed the Council would calculate the contributions on a case by case basis utilising information provided by its consultants to meet the tests within the Circular?</p>	
ELC Response	<p>If the scale of proposals do not vary from those set out in the LDP, then the contribution levels set out in Tables 2 to 5 are those likely to be sought. If however, the scale of development is different, then the transportation impacts are likely to change and a further assessment will be required to identify whether a) any additional impacts arise, b) whether they can be mitigated and c) what the revised level of contributions should be. The Council will work with Transport Scotland where this situation arises.</p>	
Modifications	None Required	

Walker Group	General	General
Key Points from Representation	<p>General</p> <p>The Walker Group acknowledges the reference to Circular 3/2012 in para 1.5 and the paraphrasing of the tests for developer contributions set out in the Circular, however, we do not consider the Supplementary Guidance adequately demonstrates full compliance with the tests.</p> <p>Indeed, in the examination of the LDP, the Council acknowledged that it is not possible at this stage to identify the likely nature and scale of all the requirements, however, the approval of statutory Supplementary Guidance can only be achieved if the Guidance itself clearly justifies the level of contributions as being necessary and being fairly and reasonably related in scale and kind to the proposed development.</p>	

	<p>The Walker Group maintain that the Supplementary Guidance - Developer Contributions Framework and the evidence provided in the Technical Note (14) does not adequately demonstrate that these tests are met.</p> <p>The information provided in the Updated East Lothian Local Development Plan 2018 Technical Note 14 - Developer Contributions Framework and East Lothian Council Education Forecasting Guide May 2018 does not contain a full analysis of the potential requirements arising from the “Proposed LDP Projections”. An assessment of the contribution levels set out in the SG is therefore not possible from the information provided.</p> <p>In presenting its draft Supplementary Guidance, the Council is responsible for demonstrating how each of the allocated sites in its LDP development strategy, including the future potential for windfall sites, impacts on education capacity in the catchment schools; what direct action is needed to mitigate any impacts including cumulative impacts; and explain the cost of this direct action.</p> <p>It is the view of the Walker Group that neither the Supplementary Guidance document nor the information which was put out to consultation is sufficient to enable an informed view to be reached as to whether the proposals are consistent with Circular 3/2012: Planning Obligations and Good Neighbour Agreements.</p> <p>The Council acknowledges that it is difficult to accurately predict pupil populations and school rolls over a long timeframe and therefore the accuracy of the peak roll figures contained in section 3, some of which extend out to 2035, cannot be guaranteed. The use of peak roll figures is crucial to the calculation of the actual developer contributions themselves, since it is these figures which the Council rely upon as being required to be accommodated. Given that the peak roll figures are based upon the Housing Land Audit 2017 which only programs development sites to 2024 the Council should be required to produce a full program extending to year 2035 at the very least in order to justify the use of peak roll figures at that date. Neither the Supplementary Guidance of Technical Note 14 provide this information.</p>
ELC Response	<p>The Council does not agree with the representation that the Supplementary Guidance does not comply with the requirements of Circular 3/2012. The Council cannot at this stage identify the exact level and nature of scale of contributions required as it only can assess requirements of planned development based on LDP site capacities and phasing set out in Housing Land Audits. However, it can identify the likely level and scale of nature of contributions required because of the cumulative demand assessment of all the LDP proposal undertaken in 2016 and updated in 2018 as set out in the Technical Note. The DCF sets out the likely contribution levels following this demand assessment. However, when applications come forward, they often are at different site capacities than set out in the LDP and have different phasing from the Housing Land Audit. A new demand assessment will be required for education to identify the revised impact on school roll projections, this in turn may identify a different level of infrastructure to be required and therefore will impact on contribution levels. Even if the scale of infrastructure required is the same, a change in the number of planned dwellings will impact on the per dwelling contribution value.</p>

	<p>The Supplementary Guidance does therefore set out the likely impacts on education capacity, action required and what the likely costs of this action is based on the cumulative demand assessment. However, the Council cannot forecast the impact of windfall development as by its very nature it is unknown. The approach towards assessing windfall is set out in paragraphs 1.22, 4.5 and 4.6.</p> <p>Projections are based on a variety of inputs, including the Housing Land Audit. The representation states that the Council needs to provide a full development programme to 2035. However, the version of HLA 2017 agreed with Homes for Scotland contains details of completions on individual sites up to 2035. This was used for the basis of the projections.</p>
Modifications	None Required

Walker Group	Tranent	Tranent Contribution Zone, Evidence & Consultation		
Key Points from Representation	<p>The Walker Group's principle interest is in relation to site TT1 Windygoul South, located within the Tranent Area Contribution Zone. The most significant developer contribution relates to the increase in the capacity of Windygoul Primary School.</p> <p>The Council acknowledges that it is difficult to accurately predict pupil populations and school rolls over a long timeframe and therefore the accuracy of the 2033 peak roll, stated as 903 in the 2018 Technical Note 14 must be regarded with some caution. Indeed, as stated above, the supporting information for the consultation does not demonstrate how the figure of 903 peak roll capacity is justified and in turn how many classes a roll of this size will require.</p> <p>An examination of the existing school estate at Windygoul confirms a total of 26 existing classes capable of accommodating 758 pupils. This equates to an average class size of 29.15. Notwithstanding the fact that the Consultation does not justify the peak roll of 903, if we adopt this figure for the purposes of assessing the additional accommodation required and divide it by the class average of 29.15 we get a figure of 30.9 or 31 classes if you round this figure up to a whole class.</p> <p>It is not possible to interrogate the Technical Note 14 to verify either the projected peak roll of 903 or indeed the requirement for an additional 6 classrooms arising from the peak roll projection. In the absence of this information the Consultation is flawed and the Supplementary Guidance cannot be adopted.</p> <p>Furthermore, the description of the accommodation required in the Technical Note 2018 is stated as <i>"6 additional classrooms required to meet LDP roll. Council to fund costs for 1 for increase in Established roll. Additional GP and core accommodation required and new PE hall and changing rooms. Council to fund 50% cost of new hall to reflect current deficit. Alterations and replacement MUGA required"</i> comprising a total additional area of 1517 sqm. Although a breakdown of this total additional area is not contained within the Consultation information, an email dated 20-07-18 was issued by ELC advising that the 1517 sqm was comprised of the following:</p>			
		Cost per sqm	Area (sqm)	Cost
	2 Court Hall plus storage, toilets and changing	£3,000	550	£1,650,000

New accommodation required	6 classrooms plus 2 GP plus toilets / cloaks	£3,000	867	£2,601,000
	Dining extension	£3,000	100	£300,000
	Additional allowance for alteration work			£100,000
	Allowance for replacement play area (MUGA)			£120,000
TOTAL COST			1,517	£4,771,000

The table above contains an additional 100sqm at a cost of £300,000 for a dining extension (highlighted above) which is not identified in the accommodation required as set out in the Technical Note 14. The Council have not explained or justified the inclusion of this additional accommodation. This element of the additional accommodation is not explained or justified based upon the Technical Information provided with the Consultation.

It is understood that the 'standard' classroom size for a class of 33 pupils is around 66sqm¹, which would equate to circa 396sqm for 6 classrooms. This leaves a balance of 471sqm to accommodate "2 GP plus toilets / cloaks" at a cost of £1,413,000. The Supplementary Guidance and the Technical Note do not provide any information which would assist in justifying this level of accommodation.

Conclusion

The Walker Group consider that the Proposed Supplementary Guidance - Developer Contributions Framework has not been supported with sufficient information to test the contribution levels contained within it.

In view of this it is not possible to conclude that the Proposed Supplementary Guidance meets the tests of Circular 3/2012.

The Proposed Supplementary Guidance should not be submitted for adoption until it has been further examined following the publication of additional supporting information and a further round of consultation has taken place.

Finally, the Walker Group, as a member of Homes for Scotland, supports and endorses the submissions made in respect of this Supplementary Guidance in all respects.

ELC Response

The roll projections are the best estimate at this point of the future school rolls, which inform the size of school extension required to accommodate housing development within the catchment. The Council accepts that these projections will change over time but the biggest impact on these is the phasing and scale of development. Therefore the projections and scale of accommodation required are an estimate at this stage, informing a likely contribution value. The Technical Note on pages 27 and 40 set out that a 903 peak roll will required 32 classrooms. When applications are submitted for relevant development proposal and an update demand assessment is required, a full breakdown of the roll distribution by year group will be provided.

Class numbers are not fixed ratio of the number of pupils per class but are based on a detailed class organisation by year group specific to each school and specific to each demand assessment. This will be made available during the application demand

	<p>assessment process. The numbers of classes required will be based on how the P1 to P7 classes can be arranged within teaching requirements and maximum pupil per class.</p> <p>Pages 35 to 41 of the 2018 Technical Note set out how school expansion costs have been calculated, description of each school extension required and the total additional floor space of that extensions. No consultation response was received to the 2016 DCFSG that additional detail on this matter was required. The Council acknowledge in an email to Walker Group on 19 July that there were errors in the 2018 Technical Note regarding the Windgoul Primary calculation on Page 40. The Council then responded in detail 20 July to Walker Group, as well as Homes for Scotland and Persimmon (developer of the other Windygoul Primary catchment development) with the correct calculation and that the likely contribution per home should be £6,672. On the basis of this correction, the Council extended the consultation to the affected parties until Wednesday 20 July. This email also responded to the request from Walker Group, that the Council provided a breakdown of the additional floor space requirement for Windygoul primary based on the cumulative demand assessment informed by HLA2017. The dining extension is part of the expansion of the schools core accommodation. The dining room is required to be extended to accommodate the increased number of pupils in the school, from an established projection of 641 pupils up to 903 pupils in 2033.</p> <p>The Windygoul Primary extension plan is being reworked in the light of the revised projections, which resulted in three fewer classrooms being required in the committed projection. It should be noted that the representee has now submitted a planning application for the Windygoul South allocation (TT1). However, this is for 50 units more than the site capacity set out in the LDP and the phasing is likely to differ from that set out HLA 2017. This emphasises the Council’s position that the DCFSG only sets out likely contribution values and that actual education infrastructure requirements will be based on demand assessment of actual proposals as they are submitted as the impacts will be different than that identified in the cumulative LDP assessment informed by the HLA, undertaken for this Supplementary Guidance. The Council will provide a breakdown of the floor space required from the updated demand assessment when applications are submitted.</p> <p>The Council considers that sufficient information has been made available to all parties over both the 2016 and 2018 consultations on the DCFSG for it now to be adopted. Information provided included how the demand assessment was undertaken, key information from roll projections, including current and projected rolls and capacities, descriptions of extensions required, responsibility between council and developers and proportional likely contributions levels. This information meets the requirements of the circular to adopt supplementary guidance setting out only the likely contribution levels to be required. These are not pre-determined contribution levels but likely levels of contributions. The exact contribution levels will be based on updated demand assessments undertake at the time of the application. The Council is not looking to enforce fixed contribution values set out in the Supplementary Guidance.</p>
<p>Modifications</p>	<p>Update likely Windygoul Primary per home contribution to £6,672. Update Technical Note with correct Windygoul Primary Calculation.</p>

Appendix 1 – Projecting Annual Primary 1 Intakes

a) The Evidence Base

As stated in Section 9.2 of the Education Provision Forecasting Guide, there are three key sets of data that are used to make informed assumptions when projecting the annual start of session P1 intakes:

1. Live births data tracked for each primary school catchment area from 1996/97 through to the most recent months' worth of data available from the NHS (usually up to date to within 2 months of the date the projection is run).
2. Birth to P1 intake migration rates tracked for each primary school catchment area from academic session 2003/04 to the most recent academic session (P1 relates to the start of session P1 intake numbers attending the primary catchment school as at the September Pupil Census of each session). This data tracks P1 deferrals as well as district/non district P1 intake numbers. Births and P1 intake numbers from new housing sites built since 2003/04 are separated out from births and P1 intake numbers from existing sites built before 2003/04. This allows us to make informed judgements about the projected baseline annual birth and start of session P1 intake rates for each catchment primary school. This also allows us to avoid any potential over inflating when the projected new build element is added on for the "Established Supply" and "LDP" projection sets.
3. Start of Session P1 intake pupils tracked from academic session 2003/04 to the most recent academic session for each new build development that has taken place within each primary school catchment area in East Lothian. Note: data prior to 2003/04 on new builds and stage by stage pupil outputs is not available for analysis. These new build P1 intake datasets allow us to calculate annual new build P1 per house rates for each of those new housing developments from street level to catchment area level. This provides a robust evidence base for projecting the number of new start of session P1 pupils arising specifically from new housing sites each year over a period of up to 15 years.

Note: The P1 data in No.3 above relates purely to the P1 children living in the tracked new developments and attending East Lothian local authority schools as at the September Pupil Census of each academic session.

From the data we have tracked we can see that, as a direct consequence of approx. 6000 houses built across East Lothian since 2003/04, there has been a 21% increase in the total start of session P1 intake. During this time the proportion of the total annual P1 intake living in the tracked new build sites each year has risen steadily from 3% of the total P1 intake in 2003/04 to 27% of the P1 intake total in 2017/18. Within individual primary catchment areas the impact has been proportionally greater. For example, the total annual P1 intake at Dunbar Primary School increased by 80% between 2003/04 and 2016/17 with just under 50% of the total P1 intake living in the new build sites. This impact is not just seen in large scale strategic developments but also from smaller scale developments. For example, the new houses that have been built in the Macmerry Primary catchment area since 2003/04 have generated an additional 76 new P1 pupils, doubling the number of P1 pupils living in the Macmerry catchment area at the start of session over the last 6 years with between 7 and 13 new P1 pupils each year since 2011/12. The Greendykes development in Macmerry alone, 69 units built between 2004/05 and 2005/06, has generated 49 new P1 pupils alone over the last 14 years, with 11 new P1 pupils living in the development at its peak in 2013/14, contributing to 42% of the peak P1 pupil intake of 26 pupils at Macmerry Primary School in 2013/14.

As the new build P1 intake datasets are based on individual pupil level data and are aggregated at different granular levels from street level up to whole scale strategic site and catchment area level, they are subject to disclosure control. It is not possible to publish the full set of base numbers used in the calculation of the annual P1 per house rates that are selected as where these base numbers are based on small cohorts of children, particularly at street level, it may be possible to identify individuals.

b) The Process for Establishing P1 intake assumptions

The first step in the P1 intake assumptions process is to establish the “Baseline” start of session P1 intake projections. The projected baseline P1 intake for each primary school assumes that there will be no further new house build in the associated primary catchment area and aims to provide a base on which to layer the impact from new housing.

The baseline projected P1 intake for each primary school for the next academic session is based on the latest Pupil Placement data available at that time, taking into account underlying migration trends for the area and excluding the new build element.

Baseline P1 intake projections for each primary school for the years following the next academic session are then considered and set, consulting the data in points 1 and 2 above. These two datasets allow officers to make informed judgments about:

- What the likely P1 intake at each primary school will be over the next 5 enrolment years, given the last 5 years of live births info and historical birth to P1 intake rates for its associated primary catchment area;
- What the baseline births and P1 intakes within each primary catchment area and primary school may be beyond the next 5 years if there was no further new house build;

As stated in the Education Provision Forecasting Guide paragraph 9.2 (ii) the births and P1 intake numbers from new sites since 2003/04 and the births and P1 intake numbers from existing sites built prior to 2003/04 are separated out in the key supporting datasets. As a result, officers are able to use the numbers excluding the new sites element to project a baseline that avoids creating a compound effect and any potential over inflating when the projected new build P1 element is added on.

Once the baseline annual P1 intake projections are completed. The next step is to consider the impact of new housing on the projected baseline P1 intake numbers for the “Established Supply” and the “LDP” projections. The new build P1 intake dataset in point 3 above is used to make informed judgements about:

- What the potential cumulative impact on the projected baseline P1 intake data may be from new housing, from the start of the new build for a period of up to 15 years

Using the evidence from the new build P1 intake dataset, an annual new build P1 per house rate has then been applied to the baseline P1 projections to project new P1s arising from the projected new house build each year. A bespoke rate is applied in each year from the start of the new build for a period of up to 15 years separately for the “Established Supply” and the “LDP” projection sets.

It is important to note that there is no single average rate that is applied to each of the P1 intake calculations. Annual new build P1 per house intake rates vary from year to year and from site to site depending on the type, scale and annual build out rates of each new development. Therefore it would not be appropriate to create an average P1 intake rate to be applied across the board.

For example, the number of P1 pupils and resulting annual new build P1 per house rates arising from small scale sites are based on small cohorts of children and have varied and fluctuated widely, creating extreme peaks and troughs. These extreme fluctuations in rates have less of an impact cumulatively over time on the P1 intakes from small scale developments. If a pattern of these extreme fluctuations were applied to a larger scale development, it would create extreme peaks and troughs for the projected P1s. This would not be consistent with the patterns seen in larger developments, particularly of 100 units or more. Applying a pattern of average new build P1 per

house rates from the small scale developments in the assessment of a larger scale site would also produce higher rates than is typical of larger developments and would overinflate the projected P1 figures.

New build P1 per house rates do fluctuate over time in the larger scale developments but these fluctuations tend to be less exaggerated from year to year. The P1 evidence datasets show that the peak rate from new build sites often appears 8 to 10 years from the start of the new build. In developments of 50 units or more, this often results in a 100% increase in the P1 intake over and above the baseline demographic.

The new build P1 per house rates that are applied in the calculations for each school's projected P1 intake are bespoke to each primary school's "Established Supply" and "LDP" projection set. Each annual rate that is applied is individually selected from the P1 new build evidence base, taking into account the particular circumstances of the projected house build, i.e. the type, scale and phasing of new housing that is projected to be built.

Where a catchment area has not had a period of new build of the scale and size set out for the assessment since 2003/04, we would look to evidence collected from new build sites from another catchment area of similar demographics.

c) Clarification of the role of the CPHR

It is important to clarify and note that the Primary Child Per House Ratio (CPHR) does not feed into the calculations for the projected annual start of session P1 intakes.

As set out in Section 7 of the Education Provision Forecasting Guide, the average New Build CPHRs are only applied to the calculations during the specific years that new houses are projected to be built in. Their purpose is to provide a starting point for the number of primary and secondary aged pupils who might initially move into the new houses, during the first year that each of the new houses are built and ready for occupation, between one academic session and the next.

It is also important to clarify and note that the Primary and Secondary CPHR do not measure the full impact of new house building, over and above current committed development from the established supply and baseline demographics.

The average New Build CPHRs do not calculate the cumulative total number of pupils that we might expect to see arising from a new housing development over the entire development period and beyond. Any additional new pupils arising each year and pupil migration in and out of the area are calculated and modelled through the annual net stage migration rates, projected new P1 intake, P7-S1 transfer rates, and secondary S4-S5 and S5-S6 stay-on rates. The CPHR is therefore one of several factors that are applied in the modelling.

As a result, they must not be used on their own to calculate the total number of primary and secondary aged pupils projected to arise from a new development over time. Applying the average New Build CPHRs as a rate to the total number of houses, does not accurately model how new pupils arise from a new development over time and the impact this has on the total school roll in conjunction with underlying baseline demographics in the catchment area. This approach would be based on too short a time period, not capturing all relevant variables and other factors that are taken in to account to produce robust pupil roll projections over time.

The Education Service uses monitoring checks to track the pupil outputs from new builds within each catchment area. This monitoring allows the Service to review and make any necessary adjustments to the other contributing factors (i.e. stage migration rates, stay-on rates and P7-S1 transfer rates) to address any variances in outputs as

part of the roll forecasting process. The evidence from recent new builds is particularly important for modelling the effect on the annual births and projected new P1 intake over time. The annual net primary and secondary stage migration rates for each school is used to attempt to model natural fluctuations that occur within each catchment area.

Appendix 2 – Out of Catchment Placement Requests

Legislation enables parents to make a placing request to have their child educated in school of their choice. The Education Authority can only refuse the placing request if a legal ground of refusal stands, as detailed below:

The Council can only refuse a request in accordance with the Education (Scotland) Act 1980 Section 28 (A)(3):

- (3) The Duty imposed by subsection (1) above does not apply –
 - (a) if placing the child in the specified school would –
 - (i) make it necessary for the authority to take an additional teacher into employment;
 - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;
 - (iii) be seriously detrimental to the continuity of the child’s education;
 - (iv) be likely to be seriously detrimental to order and discipline in the school;
 - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school;
 - (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child’s primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school;
or
 - (vii) though neither of the tests set out in sub-paragraphs (i) and (ii) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers;
 - (b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child;
 - (c) if the education authority have already required the child to discontinue his attendance at the specified school;
 - (d) if, where the specified school is a special school, the child does not have special educational needs requiring the education or special facilities normally provided at that school; or
 - (e) if the specified school is a single sex school (within the meaning given to that expression by section 26 of the Sex Discrimination Act 1975) and the child is not of the sex admitted or taken (under that section) to be admitted to the school,

The school roll of Elphinstone Primary School over the last 10 years has been between 50 to 60 pupils which means they require to operate 3 composite classes. The maximum number of pupils in each composite class is 25 which means the school has the capacity to accommodate 75 pupils. It would not be reasonable for the Education Authority to hold all the available places in reserve. This means there are no legal grounds to refuse placing requests and the Education Authority had to grant out of catchment placing requests.

Education Response – Inclusion of 2018 school rolls: The annual school baseline rolls are based on the validated September Pupil Census Rolls. As the DCF was prepared in April 2018, the 2018 September Census School Rolls were unavailable at that time.

Education Response on 2017/18 School Census Rolls: The validated 2017/18 September Pupil Census roll can be added to the evidence base

Appendix 3 – Strategic Active Travel Corridor Contributions

The Segregated Active Travel Corridor was not modelled within the SRM, microsim or junction modelling tools, so a different approach was required to calculate the proportional developer contributions for it. To do this, a spatial catchment for the proposed scheme was defined to determine the area within which developments would be deemed liable for contributions. For the purpose of the Segregated Active Travel Corridor, a buffer was placed around the route creating a 1.2km catchment either side of the proposed route. All LDP developments within this buffer were included in the contribution zones calculation.

To calculate the total contributions of all local development sites the method used was to calculate the net increase in households and jobs as a result of the LDP development. The LDP development within the Segregated Active Travel Corridor buffer was summed and compared with the total household and jobs within the Segregated Active Travel Corridor buffer in the “committed” scenario (which includes base + committed development). This was done to calculate the proportion of new development relative to existing and committed development.

To allow this comparison it was necessary to ensure parity in the assessment for residential and employment impacts. To do this it was necessary to convert the LDP residential data (using 30 dwellings to hectare) to correspond with the unit measurement used in the employment modelling inputs (employees per hectare) drawn from the road based modelling work. Employment figures were converted into pseudo-hectares by using the following development area to jobs factor: 1 hectare = 60 jobs (This is the average land area to employment value calculated across all East Lothian LDP employment sites). This allowed an overall per hectare equivalent to be generated for new development and for the baseline + committed development so that all development was measured using the same units.

There are 5,130 LDP allocated dwellings within the 1.2KM catchment which equates to 171 pseudo hectares and 5,427 LDP allocated jobs which equates to 90.5 pseudo hectares.

The total LDP share of contributions was then calculated as:

$$\text{LDP development pseudo-hectares within catchment} / \text{LDP} + \text{“Committed+Base” pseudo-hectares within catchment} = \text{total LDP impact}$$

$$261.5 \text{ LDP development pseudo-hectares within catchment} / 1,586.4 \text{ LDP} + \text{“Committed+Base” pseudo-hectares within catchment} = 16.5\% \text{ on impact from LDP}$$

To determine the proportional contribution of each development site, the total LDP figure is split across the individual developments based on the size in pseudo-hectares. This figure was calculated at a zonal and development level by using the 30 dwellings to hectare factor. Development site contribution is therefore calculated as:

$$\text{Development site pseudo-hectares} / \text{total LDP development pseudo-hectares} = \text{development site proportional contribution}$$

The costs used for the project and applied in the above calculation was £23,400,000.00 (This taken from the 2016 Transport Appraisal and reconfirmed in the DPMTAG Report). However, only 16.5% of that figure is applied to new development within the buffer since the above calculation apportions this overall cost to the new development within the buffer only so development within that area is paying a proportionate share. Put another way, the above calculation divides the costs between those developers within the buffer and the local authority.

As each pseudo hectare pays this same proportionate contribution, this results in a singular figure per dwelling and per 100sqm employment = £492 per dwelling and £147.50 per 100m2. This is based on the LDP pseudo hectare split of 171 hectares for housing and 90 hectares for employment. If this split is applied to 16.5% of the cost of the SATC that is relate to LDP development, the contributions are calculated as follows:

Costs of SATC attributable to development = £23,400,000 * 16.481% = £3,856,501

Proportion of cost attributable to housing = £3,856,501 * (171/261.5) = £2,525,222

Proportion of cost attributable to employment = £3,856,501 * (90.5/261.5) = £1,336,448

Cost per dwelling = £2,525,222 / 5,130 dwellings = £492 per dwelling

Cost per 100sqm employment = £1,336,448 / 90.5 hectares = £147.50 per 100 sqm