

**REPORT TO:** East Lothian Council

**MEETING DATE:** 6 September 2016

**BY:** Depute Chief Executive (Partnerships and Community Services)

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

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## **1 PURPOSE**

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

## **2 RECOMMENDATIONS**

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

### **3 BACKGROUND**

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

#### ***Draft Developer Contributions Framework***

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

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

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

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

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

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

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

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

***Draft Affordable Housing Quota and Tenure Mix***

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

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

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

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

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

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

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

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

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

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

### ***Development Briefs***

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

### ***Plan Procedures and Timescales***

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

## **4 POLICY IMPLICATIONS**

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

## **5 INTEGRATED IMPACT ASSESSMENT**

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

## **6 RESOURCE IMPLICATIONS**

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

## 7 BACKGROUND PAPERS

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

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<b>DATE</b>	26 August 2016