

# Planning Committee

2.00pm, Wednesday, 23 February 2022

## Non-Statutory Guideline on Developer Contributions and Infrastructure Delivery – approval for preparation and consultation of draft guideline

Executive/routine	Executive
Wards	All
Council Commitments	<a href="#">1, 4, 6 10, 11 16, 17, 22, 26 28, 32 43</a>

### 1. Recommendations

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- 1.1 It is recommended that Committee agrees that new non-statutory guideline on developer contributions and infrastructure delivery be prepared, consulted on and reported for final approval as set out in paragraphs 4.5 to 4.9.

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## Non-Statutory Guideline on Developer Contributions and Infrastructure Delivery – approval for preparation and consultation of draft guideline

### 2. Executive Summary

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- 2.1 A new guideline is being prepared to address the need for guidance on how to interpret and implement Edinburgh Local Development Plan (LDP) policy Del 1: Developer Contributions and Infrastructure Delivery. The Committee is asked to agree that this is prepared, consulted on and reported back for final approval as set out in paragraphs 4.5 to 4.9.

### 3. Background

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- 3.1 The LDP set out a requirement for the preparation of Supplementary Guidance on Developer Contributions and Infrastructure Delivery. A final draft was prepared and submitted to Scottish Ministers for approval in 2018 but it was not adopted as set out in 3.2 below. This report proposes that new non-statutory supplementary planning guideline is now prepared to assist with the continued implementation of the statutory development plan in relation to developer contributions.
- 3.2 LDP Policy Del 1: Developer Contributions and Infrastructure Delivery set out the requirement to prepare statutory Supplementary Guidance (SG) to support the LDP's implementation. The Council sought to progress such guidance to adoption, however in January 2020 the Scottish Government instructed the Council not to adopt its finalised SG. Reasons are given in a report to Planning Committee in [February 2020](#). As reported in the annual review of guidance on [3 February 2021](#) the preparation of new guidance was delayed due to the on-going impacts of the Covid-19 emergency.
- 3.3 The finalised SG from 2018 remains in use as a material consideration in determining planning applications and significant weight has been attached to it in appeals dealing with developer contributions. However, the guidance now needs to be updated to:
- 3.3.1 Reflect subsequent housing land audits and Action Programmes;
  - 3.3.2 Include updated costs;

3.3.3 Provide updated actions; and

3.3.4 Set out more clearly the evidence for the calculation of transport and education contributions.

## 4. Main report

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### General Principles

- 4.1 One of the aims of the LDP is to ensure that developers make a fair and realistic contribution to the delivery of necessary infrastructure provision and improvement associated with development.
- 4.2 LDP policy Del 1: Developer Contributions and Infrastructure Delivery requires development to:
- 4.2.1 Contribute to the infrastructure provision, where relevant and necessary, to mitigate any negative additional impact (either on an individual or cumulative basis) commensurate to the scale of the proposed development; and
- 4.2.2 Only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time.
- 4.3 To support the implementation of this policy, guidance is required. However, following the background described above and in light of the forthcoming removal of statutory supplementary guidance from the planning system following the Planning (Scotland) Act 2019, it is considered appropriate that non-statutory planning guideline is now prepared. This will provide guidance on how to implement LDP Policy Del 1, be a material consideration in the determination of planning applications and assist in the realisation of the aims of the LDP and delivery of its statutory action programme.
- 4.4 The consultation draft guideline will address the matters raised in the Ministerial Direction.
- 4.5 The new guideline will provide a robust basis for taking developer contributions, using the best available evidence base to demonstrate the levels of contributions sought fairly and reasonably relate in scale and kind to the proposed development, and reflect actual impacts of, and are proportionate to, the proposed development.

### Education Infrastructure

- 4.6 In order to set out an evidence-based approach to contributions for education infrastructure, the guideline will:
- 4.6.1 Use updated pupil generation rates;
- 4.6.2 Provide reasonable thresholds for taking education contributions with 'per unit' rate(s), which account for units that are not expected to create a significant impact on education infrastructure;

- 4.6.3 Set contributions based on the latest education appraisal (currently the [City Plan 2030 Education Appraisal, September 2021](#)) using contributions zones for actions needed to address cumulative impacts; and
- 4.6.4 Use the actions and costs in the latest LDP Action Programme (December 2021).

### **Transport Infrastructure**

- 4.7 The new guideline will:
  - 4.7.1 Set out evidence-based contribution zones for actions needed to address cumulative impacts, using information from relevant transport appraisals;
  - 4.7.2 Take account of the relative impacts of different developments within a zone; and
  - 4.7.3 Use the actions and costs in the latest LDP Action Programme (December 2021), and, as appropriate, the City Plan Proposed Action Programme (September 2021).

### **Other Infrastructure**

- 4.8 Healthcare is not specifically listed in Section 1 of Policy Del 1 and therefore does not meet legislative requirements for it to be a matter dealt with in statutory SG. Addressing healthcare within non-statutory guideline will satisfy this concern and will:
  - 4.8.1 Establish the basis for taking healthcare actions, in accordance with LDP policy Hou 10: Community Facilities;
  - 4.8.2 Define the contribution zones; and
  - 4.8.3 Set out a formula for calculating contributions.
- 4.9 In addition, the consultation draft guideline will address:
  - 4.9.1 Relevant open space and public realm actions;
  - 4.9.2 Map the geographical extent for contributions zones that address cumulative impacts; and
  - 4.9.3 Provide clarity that developer contributions collected will be used for specified infrastructure delivery related to the proposal.
- 4.10 This guideline will provide the likely contribution levels for development in any given infrastructure contribution zone, however each application after submission will require an assessment as to if they are affected by any material consideration or change in circumstance.

## **5. Next Steps**

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- 5.1 Based on the approach set out in section 4 above, a draft guideline on developer contributions will be prepared, published and consulted on in Spring 2022. Following consideration of the consultation responses, a final guideline will be

reported to Planning Committee for approval allowing it to be in use by Autumn 2022.

## **6. Financial impact**

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6.1 There are direct financial impacts arising from the approval of this report.

### **Financial Risks**

6.2 The Council is able to collect contributions towards infrastructure actions through Section 75 and other legal agreements. This covers the proportional cost of mitigating infrastructure related to the impact of development and in some instances the full infrastructure action also relates to addressing existing infrastructure need. Therefore, these powers may not always lead to full cost recovery from developers and there will still likely be an overall large funding requirement falling to the Council as a result of addressing the full infrastructure provision.

6.3 There is also risk both on the timing and achievement of developer contributions which could create a short-term or overall funding pressure. Delivery of infrastructure actions will cover the full period of the plan and the Council has developed a financial model to calculate a more accurate assessment of costs based on the timing of income and levels of expenditure. This is reported on to the Finance and Resources Committee following the approval of each Action Programme.

6.4 Financial impacts in relation to the Local Development Plan have been reported to Finance and Resources Committee in the Sustainable Capital Budget Strategy 2022-2032 report of 3 February 2022. That report notes that there have been no further changes to Developer Contributions assumed within the strategy, but the funding stream will be kept under review as the Wave 4 schools, Local Development Plan and subsequently City Plan infrastructure progress.

## **7. Stakeholder/Community Impact**

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7.1 While there is not a statutory requirement to consult during the preparation of non-statutory planning guidelines, it is good practice to do so especially where there will be significant implications from interested parties. A formal consultation process will take place on a complete draft guideline to allow interested parties, including communities, developers and landowners to comment and influence on the final draft.

7.2 Consultation responses will be taken into account and a summary of consultation responses will be included when the final draft guideline is reported allowing the Planning Committee to see how consultation views have influenced the guidance.

7.3 An Integrated Impact Assessment will be undertaken during its preparation and its findings will input into its drafting and reported with the final draft.

## **8. Background reading/external references**

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- 8.1 Edinburgh Local Development Plan: Action Programme 2021 – adoption, [1 December 2021](#)
- 8.2 City Plan 2030 – Approval of Proposed Plan for Statutory Representation Period, [29 September 2021](#)
- 8.3 Annual Review of Guidance, Planning Committee, [3 February 2021](#).
- 8.4 Supplementary Guidance in Developer Contributions and Infrastructure Delivery – Update, [26 February 2020](#)
- 8.5 Edinburgh Local Development Plan - Adoption, Full Council, [24 November 2016](#).
- 8.6 [LDP West Edinburgh Transport Appraisal Refresh \(November 2016\)](#).
- 8.7 [LDP Transport Appraisal Addendum update \(November 2016\)](#).
- 8.8 [Report to Finances and Resources Committee of 3 February 2022 on Sustainable Capital Budget Strategy 2022-2032](#).

## **9. Appendices**

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- 9.1 None.