



DEVELOPMENT AND TRANSPORT POLICY DEVELOPMENT AND SCRUTINY PANEL

SESPLAN SUPPLEMENTARY GUIDANCE FOR HOUSING

REPORT BY HEAD OF PLANNING AND ECONOMIC DEVELOPMENT

A. PURPOSE OF REPORT

The purpose of this report is to update the panel on progress with the Supplementary Guidance on Housing (SG) as required by the Scottish Ministers in approving the Strategic Development Plan and to seek ratification of the decision of the SESplan Joint Committee to adopt the SG as modified.

B. RECOMMENDATION

It is recommended that the panel:

1. supports the modification to the Supplementary Guidance on Housing as directed by Scottish Ministers and thereafter;
2. supports the approval of the Supplementary Guidance on Housing as modified; and
3. agrees to forward this report to the Council Executive on 16 September 2014 for approval.

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; and working in partnership.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	The Strategic Development Plan has been the subject of Strategic Environmental Assessment and is supported by an Equalities Impact Assessment.
III Implications for Scheme of Delegations to Officers	None.
IV Impact on performance and performance Indicators	Preparation of strategic development plans (SDPs) and local development plans (LDPs) are statutory requirements. Progress with the preparation of the SDP and LDP are monitored by Scottish Government as a performance indicator for local authorities.

V Relevance to Single Outcome Agreement	<p>Outcome 3 - Our economy is diverse and dynamic and West Lothian is an attractive place for doing business.</p> <p>Outcome 8 - We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.</p>
VI Resources - (Financial, Staffing and Property)	<p>Progressing the Supplementary Guidance to approval does not, itself, have any unplanned resource implications for the council.</p> <p>Bringing forward the requirements of the supplementary guidance could have significant infrastructure implications for the council. The implications cannot be fully assessed until such time as the requirements are translated into site specific allocations in the forthcoming local development plan.</p>
VII Consideration at PDSP	<p>The SESplan Supplementary Guidance was considered by the Development & Transport PDSP on 3 April 2014 and subsequently approved by the Council Executive on 15 April 2014.</p>
VIII Other consultations	<p>The council's Head of Finance and Estates was consulted in the preparation of this report.</p>

D. TERMS OF REPORT

D1 BACKGROUND

The SESplan Joint Committee (JC) comprises representatives from City of Edinburgh, East Lothian, Fife, Midlothian, Scottish Borders and West Lothian Councils. The Joint committee met on 30 June 2014 to consider the announcement of Scottish Ministers intention to adopt the SESplan Supplementary Guidance for Housing Land, subject to modification.

In approving the Strategic Development Plan (SDP) on the 27 June 2013, Scottish Ministers made modifications to Policy 5 (Housing Land). The modifications required Supplementary Guidance to be prepared to set out how much of the overall housing land requirement should be met in each of the six member authority areas in the periods 2009 - 2019 and 2019 - 2024. This would inform LDP preparation. Scottish Ministers expected the Supplementary Guidance to be adopted within one year from the date of approval of the SDP.

All papers from the Joint Committee can be accessed on the SESplan web site at http://www.sesplan.gov.uk/about/jc_reports.html A Minute of the Joint Committee will be published in due course.

D2 *Supplementary Guidance for Housing Land*

On 12 November 2013, SESplan published Supplementary Guidance for Housing Land in support of the approved Strategic Development Plan (SDP). Following a period of public consultation and assessment of responses received, the guidance was submitted to Scottish Ministers on 21 May 2014 for approval.

Scottish Ministers have now considered the terms of the SG and on 18 June 2014 notified SESplan of their intention to adopt the guidance subject to a modification. The modification must be made to the SG prior to its adoption. The letter advising of the intention to adopt and the modification is attached as Appendix One.

In that letter Scottish Ministers have given notice under Section 22 (8) of the Town and Country Planning (Scotland) Act 1997 that, before the Supplementary Guidance is adopted, it must be modified to remove the second sentence of paragraph 3.13 of the guidance. This sentence reads *“Member authorities will base their calculation of the five year land supply on the period 2009 – 2024, taking into consideration housing completions.”*

Scottish Ministers consider that the inclusion of this sentence does not comply with Regulation 27 (2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 and as such gives rise to a potential inconsistency between the approved SDP and the SG. Regulation 27 (2) requires that for a matter to be included in Supplementary Guidance that will form part of the development plan it must be *‘expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance’*. Ministers therefore consider that to avoid inconsistency, ensure compliance with the legislation and to avoid potential further delays in the process, that the sentence be removed.

The SESplan Joint Committee considers that Scottish Ministers’ determination and the reasoning which underpins the determination is contrary to the approach which SESplan and the member authorities considered reasonable, pragmatic and consistent with the SDP. Legal advice was thus sought by SESplan. This advice set out three options:

- A. Modify the Supplementary Guidance as directed and adopt it as modified;
- B. Do not adopt the Supplementary Guidance and start the process again; or
- C. Raise a legal challenge against the direction made by Ministers.

Whilst disagreeing with the Ministers’ decision and reasoning, the Joint Committee agreed that options B and C were not appropriate courses of action as these would create further uncertainty and cause significant delay to the preparation of Local Development Plans (LDP) and SDP2. In addition, a judicial challenge would be highly sensitive and carry significant financial and reputational risks to SESplan. The Joint Committee agreed to option A to modify the SG as directed and adopt it as modified.

The implications of modifying the SG by removing the sentence on calculating five year housing land supply are significant. In making the modification, SESplan and the subsequent LDPs will be required to calculate the five year housing land supply over two plan periods 2009–2019 and 2019-2024.

Scottish Ministers have not provided guidance on how the land supply would be calculated for periods bridging the two periods for which the Supplementary Guidance sets requirements. SESplan and the member authorities will investigate the development of a consistent approach to the calculation of the five year land supply to provide this clarity. Such a procedure will not however form part of the development plan. A further report on this will be brought to a future meeting of the panel.

E. CONCLUSION

Preparation of SG is a requirement of Scottish Ministers in approving the SDP. The direction from Scottish Ministers to approve the SG, subject to modifications will allow for this requirement to be met and allow LDPs to move forward.

F. BACKGROUND REFERENCES

Report to Council Executive, 29 October 2013: SESplan Supplementary Guidance For Housing.

Report to Development and Transport Policy Development and Scrutiny Panel (PDSP), 3 April 2014: SESplan Supplementary Guidance For Housing.

Report to Council Executive, 15 April 2014: SESplan Supplementary Guidance For Housing.

Appendices/Attachments: One

Appendix One: Scottish Ministers Notice of Intention to Adopt the SESplan Supplementary Guidance on Housing

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