



West Lothian  
Council

## ***Council Executive***

West Lothian Civic Centre  
Howden South Road  
LIVINGSTON  
EH54 6FF

21 May 2015

A meeting of the **Council Executive** of West Lothian Council will be held within the **Council Chambers, West Lothian Civic Centre** on **Tuesday 26 May 2015** at **10:00am**.

For Chief Executive

### **BUSINESS**

#### **Public Session**

1. Apologies for Absence
2. Order of Business, including notice of urgent business
3. Declarations of Interest - Members should declare any financial and non-financial interests they have in the items of business for consideration at the meeting, identifying the relevant agenda item and the nature of their interest.
4. Confirm Draft Minutes of Meeting of Council Executive held on Tuesday 28 April 2015 (herewith)

#### **Public Items for Decision**

5. 5th General Review of Local Government Electoral Arrangements - Proposals on Ward Boundaries - Report by Chief Executive (herewith)
6. Public Bodies (Joint Working) (Scotland) Act 2014 - Draft Integration Scheme - Report by Depute Chief Executive, Community Health and Care Partnership (herewith)
7. Consultation on Compulsory Purchase - Report by Head of Corporate Services (herewith)

8. West Lothian Villages Improvement Fund Applications - Linlithgow Local Area Committee - Report by Lead Officer (herewith)
9. West Lothian Villages Improvement Fund Applications - Fauldhouse & Breich Valley Local Area Committee - Report by Lead Officer (herewith)
10. Supplementary Planning Guidance "Planning for Nature - Development Management and Wildlife" - Report by Head of Planning and Economic Development (herewith)
11. Accident Investigation and Prevention (AIP) - Casualty Reduction Programme 2015-16 - Report by Head of Operational Services (herewith)
12. Smarter Choices Programme and Active Travel Progress - Report by Operational Services (herewith)
13. Consultation on a Proposed Bill relating to Burial and Cremation and other Related Matters in Scotland - Report by Head of Operational Services (herewith)
14. Consultation on SEPA's Second Catchment Management Plan for the Scotland River Basin District - Report by Head of Operational Services (herewith)
15. Reservoirs Act 1975 - Biennial Report to Scottish Ministers - Report by Head of Operational Services (herewith)
16. Policy on Adoption of Private Roads - Report by Head of Operational Services (herewith)
17. Proposed Change of Speed Limit - 40pmh to 30mph on part of the B9080, Winchburgh - Report by Head of Operational Services (herewith)
18. Procurement Arrangements - Bathville Flats Urban Regeneration - Report by Head of Finance and Estates (herewith)
19. Minor Changes to Financial Regulations - Repot by Head of Finance and Estates (herewith)
20. Proposed Sale of North Lodge, Almondell Country Park, Broxburn - Report by Head of Finance and Estates (herewith)
21. Mobile Phone Mast Site, Caputhall Road, Deans Industrial Estate - Report by Head of Finance and Estates (herewith)
22. Lease of Former Auld School, 9 School Lane, Mid Calder - Report by Head of Finance and Estates (herewith)
23. Armadale Partnership Centre - Report by Head of Finance and Estates (herewith)
24. Mortgage to Rent Scheme - Report by Head of Housing, Construction

and Building Services (herewith)

- 25. Update on the 1,000 New Build Council House Programme - Report by Head of Housing, Construction and building Services (herewith)
- 26. New Model of Customer Service Delivery - Report by Head of Area Services (herewith)
- 27. Broxburn Library Relocation to Strathbrock Partnership Centre - Report by Head of Area Services (herewith)
- 28. Publication of Elected Members Remuneration, Expenses and Allowance Information 2014-15 - Report by Head of Corporate Services (herewith)

**Public Items for Information**

- 29. Early Retiral and Voluntary Severance - 1 October 2014 to 31 March 2015 - Report by Head of Corporate Services (herewith)
- 30. Councillors' Local Disbursement Fund - Report by Head of Corporate Services (herewith)
- 31. Community Council Grants 2014-15 - Report by Head of Corporate Services (herewith)
- 32. St John's Hospital Stakeholder Group - Report by Depute Chief Executive, Community Health and Care Partnership (herewith)
- 33. West Lothian Community Health and Care Partnership Board - Report by Depute Chief Executive, Community Health and Care Partnership (herewith)
- 34. Procurement - Month 12 Out-Turn Report 2014-14 - Report by Head of Finance and Estates (herewith)

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NOTE      **For further information please contact Val Johnston, Tel No.01506 281604 or email [val.johnston@westlothian.gov.uk](mailto:val.johnston@westlothian.gov.uk)**





MINUTE of MEETING of the COUNCIL EXECUTIVE of WEST LoTHIAN COUNCIL held within COUNCIL CHAMBERS, WEST LoTHIAN CIVIC CENTRE, on 28 APRIL 2015.

Present – Councillors John McGinty (Chair), Cathy Muldoon, Frank Anderson, Tom Conn, Jim Dixon, Lawrence Fitzpatrick, Peter Johnston, Dave King, Danny Logue, Anne McMillan, Angela Moohan, George Paul

1. ORDER OF BUSINESS, INCLUDING NOTICE OF URGENT BUSINESS

The Chair ruled in terms of Standing Order 11 that an amended report relating to Agenda Item 8 (Realigning Children's Services Strategic Commissioning Support Programme) would be considered at the meeting.

2. DECLARATIONS OF INTEREST

- a) Agenda Item 5 (Appointment of Elected Members to the Integration Joint Board) – Councillor Peter Johnston declared a non-financial interest as a Non-Executive Director of NHS Lothian and as a Non-Executive Director of Healthcare Improvement Scotland, for which a specific exclusion applied. He also declared an interest as COSLA's spokesperson for the Health and Well-Being Strategic Group;
- b) Agenda Item 9 (Clarendon House – Proposed Lease) – Councillor Tom Conn declared a non-financial interest in that he was the Chair of Linlithgow Town Centre Management Group; and
- c) Agenda Item 5 (Appointment of Elected Members to the Integration Joint Board) – Councillor Danny Logue declared a non-financial interest in that he was an NHS Lothian Health Board employee.

3. MINUTE

The Council Executive confirmed the Minute of the meeting held on 14 April 2015 as a correct record. The Minute was thereafter signed by the Chair.

4. APPOINTMENT OF ELECTED MEMBERS TO INTEGRATION JOINT BOARD

The Council Executive considered a report (copies of which had been circulated) by the Chief Executive seeking approval of the appointment of council representatives to the Integration Joint Board (IJB) and to agree which of those appointed members should be the first Chair of the Integration Joint Board.

The Chief Executive recalled that at the meeting of 24 March 2015 Council Executive approved the Integration Scheme for submission to the

Scottish Government in line with the requirements of the Public Bodies (Joint Working) (Scotland) Act 2014. Once the scheme had been approved the West Lothian Integration Joint Board would be established by Order of Scottish Ministers.

In order to be ready for the establishment of the IJB the parties to the scheme were required to appoint four voting members to the IJB in line with the requirements of the 2014 Act and the Integration Scheme. The Integration Scheme also stipulated that the council would hold the Chair of the IJB for the first two years of its existence.

Council Executive was asked to appoint four councillors as the four voting members of the Integration Joint Board and to appoint one of them to be the first Chair of the IJB.

### Motion

“Council Executive welcomes the establishment of the Integration Joint Board and agrees to appoint the following elected members to the IJB from West Lothian Council :

Councillor Anne McMillan

Councillor Frank Toner

Councillor Danny Logue

Councillor John McGinty

Council Executive also agrees to appoint Councillor Frank Toner to be the first Chairperson of the Integration Joint Board”.

- Moved by the Chair and seconded by Councillor Muldoon

### Amendment

“ Council Executive agrees to appoint two administration representatives and two opposition representatives with the Chair to be held by one of the administration representatives.”

- Moved by Councillor Johnston and seconded by Councillor Anderson

It was agreed that a roll call vote be taken which resulted as follows :-

### Motion

Tom Conn

Jim Dixon

Lawrence Fitzpatrick

Dave King

### Amendment

Frank Anderson

Peter Johnston

Danny Logue

Anne McMillan

John McGinty

Angela Moohan

Cathy Muldoon

George Paul

### Decision

Following a vote the motion was successful by 10 votes to 2 and it was agreed accordingly.

## 5. SECOND CONSULTATION ON A NEW TENANCY FOR THE PRIVATE SECTOR

The Council Executive considered a report (copies of which had been circulated) by the Head of Housing, Construction and Building Services advising of a second Scottish Government consultation on a new tenancy for the private rented sector, details of which were attached to the report at Appendix 1.

The Head of Housing, Construction and Building Services advised that in responding to changes in the Private Rented Sector (PRS) the Scottish Government had produced a strategy for the sector back in May 2013. Contained within that strategy was an action to examine the suitability and effectiveness of the current PRS system which was considered complicated with many landlords and tenants not clear about their rights and responsibilities. Part of the reform was also to make the sector more professional.

The purpose of the new tenancy was to also address the following :-

- Clearly define the circumstances where tenants could be evicted.
- Address security of tenure for tenants.
- Simplify the arrangements for recovering possessions of landlords' properties.
- Provide arrangements to avoid excessive rent increases.

The report then went on to provide a summary of the key proposals that it was proposed would be amended or further developed and included matters such as length of tenancy, notice to leave, shorter notice to leave, grounds for repossession, rent levels and further rent regulation.

The report concluded that the private rented sector was a growth area in

West Lothian and it was important that investment in the sector continued. The provisions set out in the consultation provided a fair balance between the interests of the tenants and landlords and it was recommended that the Council Executive note the contents of the consultation on the private rented sector and approve the proposed response as attached to the report at Appendix 1.

### Decision

To approve the terms of the report.

## 6. HOUSING ALLOCATION POLICY 2015-16 REVIEW

The Council Executive considered a report (copies of which had been circulated) by the Head of Housing, Construction and Building Services providing an update on the progress with a review of the council's Housing Allocation Policy and Points Framework and Suspension Policy.

The Head of Housing, Construction and Building Services explained that the Housing Allocation Policy 2015-18 was a strategic policy document that explained how the council addressed a wide range of housing needs in West Lothian. The policy was also aligned to a wide range of other council strategies and policies

The aim of the Housing Allocations Policy review was therefore to build on and further enhance the council's approach through the continued promotion of good practice and the introduction of innovative solutions to meet people's needs and sustain communities.

There were four main drivers that were considered as part of the review; these being Welfare Reform, Homeless Prevention, Legislative Change and 1000 New Houses.

The report continued to provide details of the consultation undertaken as part of the review and also the areas the review had covered. The next steps in the approval process were summarised in the report and it was anticipated that the new Allocation Policy would be introduced in the Autumn of 2015.

It was recommended that the Council Executive :-

1. Approves the proposals to amend the Housing Allocations Policy and Suspension Policy; and
2. Notes that an Equality Impact Assessment had been carried out and notes the outcome of that assessment.

### Motion

"Council Executive welcomes the outcome of the Housing Allocation Policy Review and in addition to agreeing the recommendations i. and ii as detailed in the committee paper adds a further recommendation.

iii. Council Executive agrees to a report on the implementation of the new Housing Allocation Policy being brought to the first Services for the Community PDSP six months after the implementation date of the new policy.”

- Moved by Councillor Paul and seconded by Councillor Dave King

#### Amendment

“That Council Executive agrees to continue to allow two offers of accommodation to homeless applicants and agrees to a report being brought forward to a future meeting of the Services for the Community PDSP reviewing the council’s policy on transport to schools including nurseries for children of those who were deemed to be homeless”.

- Moved by Councillor Anderson and seconded by Councillor Johnston

It was agreed that a roll call vote be taken which resulted as follows :-

#### Motion

Tom Conn

Jim Dixon

Lawrence Fitzpatrick

Dave King

Danny Logue

Anne McMillan

John McGinty

Angela Moohan

Cathy Muldoon

George Paul

#### Decision

Following a vote the motion was successful by 10 votes to 2 and it was agreed accordingly.

### 7. RELINING CHILDREN'S SERVICES STRATEGIC COMMISSIONING SUPPORT PROGRAMME

The Council Executive considered a report (copies of which had been

circulated) by the Head of Social Policy seeking approval to take part in the national Realigning Children's Services Strategic Commissioning Support Programme offered to West Lothian Community Planning Partnership as part of an initial roll-out.

The Head of Social Policy explained that a national programme was being set up to provide extensive support whilst creating an evidence base for joint strategic commissioning of children's services. The evidence base would be centred around gathering children's needs via an epidemiological survey of school children aged 9-16 years, a community based survey of parents with children under 9 years old and a comprehensive charting of available services with associated cost. Analysis of the evidence would provide a clear picture regarding gaps in service provision or where there could be different costs of services required to best meet the needs of local children and their families.

In addition to supporting outcomes for children and their families the programme aimed to build the capacity of partnership officers in the professional disciplines of strategic commissioning and improvement science.

A copy of the programme was attached to the report at Appendix 1 and it was noted that it would offer support on how governance arrangements and conditions could be created to get the most benefit out of the shared data and create the strongest commissioning strategy for internal and external commissioning.

The Head of Social Policy continued to explain that the Scottish Government was seeking to work ultimately with all Community Planning Partnerships with the programme providing two advisors with the council contributing programme management from existing resources within Social Policy.

It was recommended that the Council Executive approve the engagement of council services with the Realigning Children's Services (RCS) Strategic Commissioning Support Programme.

#### Decision

To approve the terms of the report.

8. CLARENDON HOUSE, 30 MANSE ROAD, LINLITHGOW - PROPOSED LEASE OF ADDITIONAL 55.3SQM TO LINLITHGOW AND LINLITHGOW BRIDGE TOWN MANAGEMENT GROUP

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Estates seeking approval for the lease of an additional 55.3sqm (0.00553ha) of land at Clarendon Estate, Manse Road, Linlithgow to Linlithgow and Linlithgow Bridge Town Centre Management Group with clarification of access rights.

The Head of Finance and Estates explained that following an approach by Linlithgow and Linlithgow Bridge Town Management Group on behalf of

Burgh Beautiful, Council Executive on 15 June 2011, approved a twenty year lease of a site at Clarendon House for horticultural purposes at an initial rent of £100.00 per annum, with five yearly rent reviews increased by RPI.

Burgh Beautiful had recently advised that vehicles visiting the site to deliver plants and distribute hanging baskets in Linlithgow were having difficulty manoeuvring. Therefore following a site visit an area adjacent to the original lease area had been identified as suitable for the creation of a standing area where vehicles could load and unload without interfering with other traffic using the road.

Burgh Beautiful already had access rights under the terms of the existing lease. However in order to avoid any dubiety it was considered appropriate to further define these access rights particularly with the proposed sale of the remainder of the site for development.

It was considered to be in the council's best interests to extend the lease to include an additional 55.3sqm of adjoining land and to further clarify the access rights to the leased area.

Therefore it was recommended that the Council Executive :-

1. Approve the lease of an additional 55.3sqm of land to be incorporated into the existing 20 year lease on the basis that all other terms and conditions in the existing lease remained unchanged;
2. Clarifies the extent of the access rights over the access road; and
3. Grants delegated powers to the Head of Finance and Estates to agree to any changes required to the current offer in order to conclude the transaction.

#### Decision

To approve the terms of the report.

#### 9. PROPOSED MUGA AT BROXBURN PRIMARY SCHOOL - TRANSFER OF LAND FROM HRA TO GENERAL SERVICES

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Estates seeking approval for the transfer of 831m<sup>2</sup> of council owned land at Bridge Place, Broxburn from the Housing Revenue Account (HRA) to the General Services Account at nil cost for the purpose of building a new Multi-Use Games Area (MUGA) as part of the approved capital investment works at Broxburn Primary School.

The Head of Finance and Estates explained that as part of the three year General Services Capital Programme, approved by Council at its meeting on 29 January 2015, a MUGA was to be built at Broxburn Primary School during the 2015-16 financial year at an estimated cost of £50,000.

Following the consultation the design team responsible for delivery of the project had identified an area, extending to 831m<sup>2</sup> or thereby at Bridge Place, Broxburn as the preferred location for the new MUGA on the basis that it would avoid the need to lose any of the school's existing playground space.

The proposed area was located outwith the school's existing curtilage on neighbouring council owned land that was currently held on the HRA. At present the land comprised an area of redundant informal open space that was not considered to be strategically significant and which represented a drain on revenue resources in terms of its ongoing maintenance.

The Head of Housing, Construction and Building Services had been consulted and given the small and isolated nature of the site had confirmed that there was no operational use for the site. Therefore as had been the case with the recent transfer of council land from the General Services account to the HRA the Head of Housing, Construction and Building Services was satisfied that the site could transfer to General Services at a nil cost, subject to any necessary consents being secured from Scottish Ministers.

Therefore it was recommended that the Council Executive approve the transfer of 831m<sup>2</sup> of Council owned land at Bridge Place, Broxburn from the HRA to the General Services account at a nil cost for the purpose of building a new MUGA as part of the approved capital investment works at Broxburn Primary School.

#### Decision

To approve the terms of the report.





## **COUNCIL EXECUTIVE**

### **5<sup>TH</sup> GENERAL REVIEW OF LOCAL GOVERNMENT ELECTORAL ARRANGEMENTS – PROPOSALS ON WARD BOUNDARIES**

#### **REPORT BY CHIEF EXECUTIVE**

##### **A PURPOSE OF REPORT**

To inform the Council Executive of the Local Government Boundary Commission for Scotland's (LGBCS) consultation with the local authority on their proposals for ward boundaries.

##### **B RECOMMENDATION**

That the Council Executive agrees a response to the consultation on the LGBCS proposals for ward boundaries.

##### **C SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; working in partnership
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Local Government (Scotland) Act 1973
<b>III Implications for Scheme of Delegations to Officers</b>	None
<b>IV Impact on performance and performance Indicators</b>	None
<b>V Relevance to Single Outcome Agreement</b>	None
<b>VI Resources - (Financial, Staffing and Property)</b>	None
<b>VII Consideration at PDSP</b>	Partnership and Resources PDSP 24 April 2015
<b>VIII Other consultations</b>	None

##### **D TERMS OF REPORT**

## **D1 Background**

The Local Government Boundary Commission for Scotland (LGBCS) is currently undertaking the 5th General Review of local government electoral arrangements in Scotland. The first stage of the review focused on the number of councillors and this stage is focused on their proposals for ward boundaries.

They aim to report on this review by 2016 so that the resulting wards are available for the local government elections in Scotland which are planned for 2017.

## **D2 Previous Stage of the Review - Number of Councillors**

The LGBCS initially proposed that the number of councillors in West Lothian increase from 33 to 34 and consulted with the council on this recommendation. The Council Executive on 15 April 2014 agreed that a formal response be sent to the commission in the following terms:

- That the council notes that no evidence has been provided by the commission in relation to the correlation of incidence of deprivation and elected member workload, is unconvinced by the proposal for the use of area deprivation as a basis for determination of the number of councillors, and agrees to write to the commission to ask them to share the evidence that underpins this proposal.
- That the council does not believe that in the current economic climate an increase in the number of councillors at individual council level is justified.
- That the council believes that the current council of 33 elected members remains an appropriate size for West Lothian.

Following on from the conclusion of the consultation with council's on council numbers, the LGBCS undertook a period of public consultation.

## **D3 Current Stage of the Review - Ward Boundary Proposals**

The council received the LGBCS proposals on 19 March 2015.

The proposals are for no change to councillor numbers, ward boundaries or ward names.

In relation to councillor numbers, the LGBCS advises that their methodology for calculating councillor numbers proposed 34 councillors but during their consideration of ward designs they agreed 33 councillors because doing so allowed them to take better account of factors in the legislation.

Parity is the first criteria set down in the Rules to Be Observed in Considering Electoral Arrangements contained in Schedule 6 of the Local Government Scotland Act 1973 (as amended). The legislation states that the number of electors in each electoral ward divided by the number of councillors to be returned in that ward shall be, as nearly as may be, the same. Subject to this requirement, it is desirable to fix boundaries which are easily identifiable, and to respect local ties.

The table below shows the proposals

Table 1: Proposed Wards Actual and Forecast Variation from Parity

Ward	Cllrs	Electorate Sept 13	Actual Variation from Parity	Forecast Electorate 2019	Forecast Variation from Parity
1. Linlithgow	3	12170	3%	11960	-2%
2. Broxburn, Uphall and Winchburgh	4	14433	-8%	15393	-5%
3. Livingston North	4	17143	9%	16935	4%
4. Livingston South	4	17232	9%	17009	5%
5. East Livingston and East Calder	4	15094	-4%	16041	-1%
6. Fauldhouse and the Breich Valley	3	11679	-1%	11906	-2%
7. Whitburn and Blackburn	4	14778	-6%	15022	-7%
8. Bathgate	4	15815	0%	16997	5%
9. Armadale and Blackridge	3	11726	-1%	12651	4%
Total	33	130070	5%	133914	4%

#### D4 Current Stage of the Review – Methodology

The LGBCS developed their proposals using electorate data from 1 September 2013. In developing their proposals for wards, they had regard to the likely changes in the number of electors by considering forecast electorate counts in 2019. A detailed explanation of the methodology they have used to forecast electorates is available at [http://www.lgbc-scotland.gov.uk/reviews/5th\\_electoral/resources.asp](http://www.lgbc-scotland.gov.uk/reviews/5th_electoral/resources.asp).

The dataset does not include 16 and 17 year olds, but the LGBCS have considered the impact their inclusion on the electoral register would have and are content that this would not affect their proposals.

#### D5 Consideration by the Partnership and Resources PDSP

The consultation was considered by the Partnership and Resources PDSP on 24 April 2015. The PDSP agreed to note the terms of the consultation on the LGBCS ward boundary proposals; that the report be forwarded to the Council Executive with the recommendation that the Council supports the LGBCS proposals; but note that although no alternative suggestions were made by Panel members the SNP group reserved the right to bring an alternative view to the Council Executive

#### D6 Consultation Period

The LGBCS is consulting with councils on their recommendations on ward boundaries for a statutory period of 2 months. All comments should be submitted by 19 May 2015, but the LGBCS has confirmed they will accept submissions made before the end of May. Following this there will be a period of public consultation.

## D5 Next Stages

The expected timetable for the review is:

Table 2: Stages of the Review

Stage	Start	End
Consultation with councils on council size	Feb 14	April 14
Public consultation on council size	May 14	Aug 14
LGBCS considers responses and agrees council size	Sep 14	Dec 14
LGBCS develops proposals on ward boundaries	Sep 14	Dec 14
Consultation with councils on ward boundaries (2 months)	Mar 15	May 15
Public consultation on ward boundaries (12 weeks)	July 15	Oct 15
<i>(Optional) Development of revised proposals for wards, consultation on revised proposals, local inquiry</i>	Nov 15	Feb 16
LGBCS considers all representations and develops final recommendations before submitting reports to Scottish Ministers	Oct 15	May 16

## E. CONCLUSION

The LGBCS is consulting with the council on their proposals for ward boundaries. The proposals for West Lothian are for no change to councillor numbers, ward boundaries or ward names

Responses need to be submitted to the LGBCS by the end of May.

The Council Executive is asked to consider the LGBCS proposals on ward boundaries and agree a response to the consultation.

## F. BACKGROUND REFERENCES

Meeting of the Partnership and Resources PDSP held on 16 August 2013 - Fifth Periodic Review of Electoral Arrangements in Scotland

Meeting of the Partnership and Resources PDSP held on 14 April 2014 - Fifth Periodic Review of Electoral Arrangements in Scotland

Meeting of the Council Executive held on 15 April 2014 - Fifth Periodic Review of Electoral Arrangements in Scotland

Meeting of the Partnership and Resources PDSP held on 24 April 2015 – 5<sup>th</sup> General Review of Local Government Electoral Arrangements

Appendices/Attachments: None

Contact Person: Caroline Burton, EP/Elections Officer; [caroline.burton@westlothian.gov.uk](mailto:caroline.burton@westlothian.gov.uk); 01506 281651

Graham Hope, Chief Executive

Date of meeting: 26 May 2015



## **COUNCIL EXECUTIVE**

### **PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014 – DRAFT INTEGRATION SCHEME**

### **REPORT BY DEPUTE CHIEF EXECUTIVE, COMMUNITY HEALTH AND CARE PARTNERSHIP**

#### **A. PURPOSE OF REPORT**

The purpose of this report is to inform Council Executive of amendments, following feedback from the Scottish Government, to the draft West Lothian Integration Scheme produced by West Lothian Council and NHS Lothian for the establishment of a Health and Care Partnership in line with the requirements of the Public Bodies (Joint Working) (Scotland) Act 2014 and request that Council Executive agrees to the changes being made to secure early approval of the Scheme.

#### **B. RECOMMENDATION**

Council Executive is asked to approve the changes to the draft Integration Scheme to secure its approval by the Scottish Ministers.

#### **C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	<ul style="list-style-type: none"><li>• Focusing on our customers' needs</li><li>• Being honest, open and accountable</li><li>• Working in partnership</li></ul>
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Compliance with the Public Bodies (Joint Working) (Scotland) Act 2014 and associated regulations
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None at present.
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	Supports the delivery of high level performance indicators.

<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	Supports the delivery of local and national health and wellbeing outcomes.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	Within existing resources.
<b>VII</b>	<b>Consideration at PDSP</b>	Health & Care PDSP (19 December 2014)
<b>VIII</b>	<b>Other consultations</b>	The draft Scheme has been developed in consultation with West Lothian Council, NHS Lothian, CHCP Senior Management Team, Short Life Working Group and prescribed consultees as specified in the Act.

#### **D. TERMS OF REPORT**

On 24 March 2015 Council Executive approved a revised draft Integration Scheme to be submitted to Scottish Ministers by 31 March 2015. In line with the process across the country initial and informal feedback was received from the Scottish Government (SG) on the scheme.

The comments received indicated where changes were required either to comply with the legislation or where SG felt further clarification was required. Changes have been made in the revised Scheme attached in Appendix 1 where it was accepted that the point made was valid, or where there a difference of opinion or interpretation but no significant impact on the terms of the Scheme. Other suggested changes have been resisted on the basis that they went beyond what the legislation allowed, or that they misinterpreted a provision in the Scheme in relation to governance arrangements within the council and health board.

The changes which are worth noting are as follows:-

- The lists of functions and services to be delegated have been clarified to make clearer the difference between “functions” (those defined by reference to legislation) and “services” (the particular services though which council and health board deliver those functions). No additional services have been added to the list of those being delegated
- A reference had been made to the IJB making decisions within the policy direction set by council and health board. Although this had at an earlier stage been seen as acceptable, it is correct to say that the IJB cannot be restricted in that way as a matter of law, and the partners; opportunity to influence that aspect will be through their voting members at IJB meetings

- In relation to the financial provisions various amendments have been made to ensure that the scheme is consistent with the final guidance issued by the Integrated Resources Advisory Group. The amendments confirm the IJB will be a joint venture for accounting purposes, and include updated wording for the process for agreeing payments from the IJB to the council and NHS Lothian, the position for underspends, and the frequency of budget monitoring reports to the IJB.

Consultation has taken place with the other Lothian IJBs, via a Lothian-wide integration working group, to ensure shared learning wherever appropriate. The proposed adjustments are acceptable to the health board.

The revised scheme is appended and Council Executive is asked to approve the scheme for re-submission to Scottish Ministers.

## **E. CONCLUSION**

The Public Bodies (Joint Working) (Scotland) Act 2014 requires new arrangements to be put in place for the delivery of integrated health and social care functions. A draft Integration Scheme has been developed for West Lothian in line with the model issued by Scottish Government. Following feedback from the Scottish Government, the scheme has been revised and is submitted for consideration to Council Executive for approval and agreement to re-submit to Scottish Ministers.

## **F. BACKGROUND REFERENCES**

Public Bodies (Joint Working) (Scotland) Act 2014

Council Executive, 24 March 2015

Appendices/Attachments: 1

Draft Integration Scheme between West Lothian Council and NHS Lothian

Contact Person: Jim Forrest, Depute Chief Executive, CHCP

01506 281002

Jim.Forrest@westlothian.gov.uk

Date of meeting: 26 May 2015





**INTEGRATION SCHEME**  
**BETWEEN**  
**WEST LoTHIAN COUNCIL**  
**AND**  
**NHS LoTHIAN**

## **INTRODUCTION TO THE INTEGRATION SCHEME**

This document is in two parts.

This first part of the document is a general Introduction and explanation of the vision and intentions of the council and NHS Lothian. The legislation leaves many things to be decided by the Integration Authority when it is established. Nevertheless, building on the successful West Lothian Community Health and Care Partnership model and working arrangements which have been in place since 2005, the council and NHS Lothian have a joint vision of the arrangements which will assist the Integration Authority in developing its Strategic Plan and carrying out its statutory role, and this Introduction sets out some of that vision.

The second part is the formal Scheme which has been agreed between the council and NHS Lothian and approved by both for submission to the Scottish Government for approval in accordance with section 7 of the Public Bodies (Joint Working) (Scotland) Act 2014 (“the Act”). It contains the provisions required by the Act and associated regulations, and those are the provisions which will be approved and which will be binding on the council, NHS Lothian and the new Integration Authority.

It is though essential to understand that the contents of this Introduction are not part of the Scheme and so will not be binding on the Integration Authority – when it is constituted it will be entitled in law to make its own decisions.

### **Aims and Outcomes of the Integration Scheme**

The main purpose of integration is to improve the wellbeing of families, of communities and of people who use health and social care services, particularly those whose needs are complex and involve support from health and social care at the same time.

The Integration Scheme will assist the IJB in achieving the statutory National Health and Wellbeing Outcomes namely:-

1. People are able to look after and improve their own health and wellbeing and live in good health for longer.
2. People, including those with disabilities, 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. People who use health and social care services have positive experiences of those services, and have their dignity respected.
4. Health and social care services are centred on helping to maintain or improve the quality of life of service users.
5. Health and social care services contribute to reducing health inequalities.

6. People who provide unpaid care are supported to look after their own health and wellbeing, including to reduce any negative impact of their caring role on their own health and wellbeing.

7. People who use health and social care services are safe from harm.

8. People who work in health and social care services feel engaged with the work that they do, and are supported to continuously improve the information, support, care and treatment they provide.

9. Resources are used effectively and efficiently in the provision of health and social care services.

The vision of the Parties is to enhance and develop the delivery of integrated health and social care services to the population of West Lothian with the intended impact of increasing the wellbeing of West Lothian citizens and reducing health inequalities across all communities in West Lothian.

In order to achieve this vision the Parties are strongly committed to the development of a preventative outcomes-based approach focusing on effective early interventions to tackle health and social inequalities. They will assist the Integration Authority to develop such an approach through their Board members and the support services to be provided by them to the Integration Authority.

The work of the Integration Authority, and in particular the preparation of its Strategic Plan, will be guided by the integration delivery principles, namely:-

- that the main purpose of services which are provided in pursuance of integration functions is to improve the wellbeing of service users,
- that, in so far as consistent with the main purpose, those services should be provided in a way which, so far as possible:-
  - is integrated from the point of view of service users
  - takes account of the particular needs of different service users
  - takes account of the particular needs of service users in different parts of the area in which the service is being provided
  - takes account of the particular characteristics and circumstances of different service users
  - respects the rights of service users
  - takes account of the dignity of service users
  - takes account of the participation by service users in the community in which service users live
  - protects and improves the safety of service users
  - improves the quality of the service
  - is planned and led locally in a way which is engaged with the community (including in particular service users, those who look after service users and those who are involved in the provision of health or social care)

- best anticipates needs and prevents them arising
- makes the best use of the available facilities, people and other resources.

### **Name of the Integration Authority**

The legislation does not specify what name should be given to the new Integration Authority – it prescribes what form the body should take, but not the name to be used. The Parties have agreed that the name to be used for the Integration Authority in West Lothian should be “West Lothian Integration Joint Board”. It is referred to in the rest of this Introduction and in the Scheme as “the Board”.

### **The Chief Officer, or Director**

The legislation requires the Board to appoint a Chief Officer who has responsibilities to the Board and for the management and operational delivery of the delegated functions. The Parties have chosen to use the word “Director” instead of Chief Officer – that designation fits better with terminology used within the Parties’ existing organisations and using the phrase “Chief Officer” risks confusion with the Chief Finance Officer to be appointed, the Chief Finance Officer of the council and even the Chief Executives of both Parties.

The Director has responsibilities which are set out in the legislation, and which will be contained in a separate document to be approved by the Scottish Ministers under section 10 of the Act.

As well as the responsibilities of the post in relation to the delegated functions, the post will carry additional responsibilities and duties in relation to council and health board functions and services that are not delegated. The Director is in addition responsible for ensuring that service delivery improves the agreed outcomes and any locally agreed responsibilities for health and wellbeing and for assisting the Board in measuring, monitoring and reporting on the underpinning measures and indicators that will demonstrate progress.

### **Role of the Board**

The Board is to be established as a separate and distinct legal entity from the council and the health board. All three bodies have their own roles to play under this Scheme and to deliver on agreed outcomes – the Board’s role is strategic and the council’s and health board’s roles are operational.

The legislation contains many legal requirements in relation to the Board’s membership and constitution, but allows for some voluntary additional rules to be put in place. As part of the support services to be provided to the Board prior to and after its establishment the Parties will co-operate in preparing a proposed structure and draft constitutional documents to assist the Board in meeting those legal requirements, and including any voluntary additional rules the Parties consider are appropriate. On its establishment, the Parties intend that the Board will adopt that structure and those constitutional documents, but they recognise that the Board has the ultimate legal power to make those decisions for itself.

The Board's task is to set the strategic direction for the delegated functions through the Strategic Plan developed by its Strategic Planning Group in accordance with the policy framework and direction set by the Parties, and which will inform the method of determining the budget contributions to be made by the Parties. It receives payments from the council and health board determined in accordance with this Scheme to enable it to deliver on local strategic outcomes. It gives directions to the council and health board as to how they must deliver carry out the delegated functions in pursuit of the Strategic Plan and allocates payments to them to permit them to do that.

The practical and day-to-day link amongst the three bodies is the Director. The Director reports to the Board on strategy, finance and performance, and is responsible to the council and health board for the management and delivery of the delegated functions in accordance with this Scheme and in accordance with the directions issued by the Board to the Parties.

As well as being responsible for the Strategic Planning Group and the Strategic Plan, the Board also requires to publish an annual financial statement and an annual performance report covering both service delivery and financial performance. The members of the Board therefore have a role to play in the strategic oversight and scrutiny of the performance by the council and the health board of their roles in complying with directions from the Board and in implementing the Scheme, and will be able to carry out those responsibilities through receipt of regular and detailed reports on service and financial performance at Board meetings and advice about them at those meetings from the Director and other senior advisers.

As well as the requirement for the Parties to provide service and performance information to the Board, the Parties recognise that it is important that they are given assurance about the Board's performance of its roles and responsibilities in relation to its financial management of the budget to which the Parties will have contributed and its strategic role within the policy framework set by the Parties. The Parties intend that arrangements will therefore be put in place to ensure that regular monitoring reports are made by the Director to the Parties to assist them in that regard.

### **Board Membership**

The legislation sets out the compulsory and additional Board membership but only requires the Scheme itself to say how many voting members will be appointed by the Parties. The Parties consider it is helpful in understanding the Scheme and how the Board will operate to set out those statutory rules about membership here in this Introduction.

Prior to the Board being constituted it will have the following members who will be appointed, will remain as members and will have their membership terminated in accordance with the Scheme and the governing legislation.

- There will be four West Lothian councillors as voting members on the Board, chosen by the council, and appointed for periods of three years unless their appointment is terminated earlier. The first period of appointment shall start on the date the Board is established. Members leaving their position at the end of a three year period are eligible for reappointment.

- There will be four health board members as voting members on the Board, chosen by the health board and appointed for periods of three years unless their appointment is terminated earlier. The first period of appointment shall start on the date the Board is established. Members leaving position at the end of a three year period are eligible for reappointment.
- The council's Chief Social Work Officer will be a non-voting member.
- A registered medical practitioner chosen by the health board from its list of primary medical services performers will be a non-voting member.
- A registered medical practitioner chosen by the health board and employed by it otherwise than in the delivery of primary medical services will be a non-voting member.
- A registered nurse chosen by the health board and who is either employed by it or by a person or body with which the health board has entered into a general medical services contract will be a non-voting member.
- The Director will be a non-voting member.
- The Finance Officer shall be a non-voting member.

After it is constituted, the Board is to appoint in addition the following as non-voting members:-

- One member in respect of the combined staff of the Parties engaged in the provision of the delegated services covered by the Scheme.
- One member in respect of third sector bodies carrying out activities in West Lothian in relation to health or social care.
- One member in respect of service users in West Lothian.
- One member in respect of persons providing unpaid care in West Lothian.

In order to assist in the integration process, the Parties in preparing and agreeing their draft Scheme for consultation, agreed that it would be appropriate for there to be two Board members appointed in respect of the combined staff of the Parties engaged in the provision of the delegated services covered by the Scheme. That cannot be imposed on the Board as a requirement, since the Board must appoint its own additional Board members after it is established, but the Parties have agreed that they will co-operate in promoting that additional appointment after the Board is set up.

The Board has the legal power to appoint additional members if it wishes to do so, and the Parties recognise that the Board has the final decision-making powers about those additional members. The Parties however recognise the importance of close co-operation and working in securing the delivery of the outcomes and the success of the Board and so they have agreed that they will co-operate in securing the Board's agreement that it shall consult with them prior to making any such appointments and shall take their respective views into account in that process.

### **Corporate Governance**

Apart from a requirement for the Board to establish Standing Orders containing certain prescribed rules, the legislation does not require any content in the Scheme in relation to the important aspect of corporate governance. The Parties nevertheless consider it appropriate and a matter of good practice to set out their intentions. Although they cannot restrict the Board's ability to decide and make its own structures and rules, nevertheless the Parties have agreed an approach which

recognises the place and importance of good corporate governance in any public body.

Corporate governance is a means of showing that the Board is properly run. It refers to the systems by which the an organisation directs and controls its functions and relates to the community. Good corporate governance will demonstrate to the Board's stakeholders and everyone interested in the delivery of the delegated functions that the Board is well organised to direct their delivery.

In accordance with principles of good corporate governance, on its establishment the Parties shall assist and encourage the Board to adopt and abide by sets of rules and procedures designed to ensure that:-

- the Board has a defined and effective decision-making structure
- decisions are taken by a body or person with the power to do so
- decisions are taken with regard to all relevant factors and circumstances, including access to health and social care professional advice, financial advice, risk advice and legal advice
- decisions are taken in a way which is open and transparent and with public access available unless in defined and exceptional circumstances
- decisions are properly recorded
- structures are in place to ensure decisions are acted upon and implemented
- legislation, rules and professional practice standards and guidelines about financial reporting and accounting practice are applied
- systems are in place to ensure performance and legal and financial compliance are monitored and scrutinised and any failures reported to the Board.

These are systems and procedures such as financial controls, decision-making procedures, standing orders, the risk register, internal audit service and codes of conduct.

They should cover matters such as the creation of committees and sub-committees, and their membership and remits; the calling of meetings and giving notice of meetings and meeting papers to members and to the public; the regulation and conduct of meetings and the keeping of a record of proceedings; wide public access to meetings and meeting papers and records; delegation of powers and authority to the Director and other officers of the Board; roles and responsibilities of Chair, Vice-Chair and Board members; payments to Board members; financial and performance monitoring and reporting; the management of risk; internal audit arrangements; and relationship with external auditors.

## **Audit**

In relation to internal and external audit of its accounts, the Board is subject to the recently introduced regime of internal and external audit and governance under the Local Authority Accounts (Scotland) Regulations 2014. The legislation does not call for the Scheme to contain provisions in relation to these important aspects of financial governance, but the Parties nevertheless consider that they should prepare the way for the Board to make appropriate arrangements and to comply with its statutory responsibilities.

The way in which it will comply with those requirements is ultimately for the Board to determine when it is established but the Parties have agreed to encourage the Board to establish a Risk, Audit and Governance Committee to take a pro-active approach to risk, audit and governance and to have a scrutiny and advisory role in relation to those matters. It should not be a decision-making committee – it will have a scrutiny function and will be able to make recommendations to the Board about the matters within its remit. It will however be for the Board to accept or reject its recommendations and take whatever action it considers appropriate.

The functions of the committee will be carried out with the support of the Parties, and the Board and the Parties shall co-operate in ensuring the committee operates as an effective tool of corporate governance. The Parties shall make arrangements for the provision of the professional services and advice the Board needs in relation to the keeping of its accounting records and financial statements and their audit as it will for other more general support services which the Board will require in order for it to function.

### **Business Continuity and Emergency Planning**

Although the legislation does not require the Scheme to make express provision for business continuity planning, the Parties nevertheless consider that appropriate and adequate arrangements should be made and that they are reviewed periodically and monitored for their effectiveness. The Parties shall therefore build on the existing arrangements in place through the West Lothian Community Health and Care Partnership, and shall develop those in the context of the statutory integration process and structure, under the control of the Director as part of the management arrangements applying to that post.

The Board will be able to seek assurance from the Director and from the Parties that appropriate business continuity and emergency planning arrangements are in place.

### **Procurement & Contracts**

The Board does not have specific powers in relation to public procurement, only the general power to enter into contracts for any goods and services it requires to enable it to carry out its statutory role and functions. Any advice required in relation to future procurement or contract needs shall be provided by the Parties in accordance with the agreement they will put in place in relation to general support services the Board shall require to allow it to operate.

### **Strategic Plan**

The Board is to approve a Strategic Plan which will be developed through its Strategic Planning Group in accordance with legislation. The Board has the legal authority to develop and approve a Plan of its own making. However, the Parties have agreed that the Board should be encouraged to develop and approve a Strategic Plan to cover the next decade, and that it should detail the high level outcomes to be achieved; the performance management approach to monitor progress against these; the strategic commissioning priorities for the Board; and a rolling three year action plan which will be reviewed and updated on an annual basis. Development of an approach like that will assist the Parties and the Board in



financial planning and policy making and assist in the achievement of goals, aims and outcomes.

### **Community Planning and Localities**

Upon the enactment of the Community Empowerment (Scotland) Bill the Board will be a strategic partner within West Lothian's community planning arrangements and the Board's Strategic Plan will require to support wider community planning processes, in particular in delivering the agreed outcomes as defined in the West Lothian Community Planning Partnership Single Outcome Agreement.

The high level outcomes will be set within the context of West Lothian's Community Plan and Single Outcome Agreement and the Parties intend that reporting arrangements will include a commitment to report on progress against these to the Community Planning Partnership.

The legislation requires that the Strategic Plan includes arrangements for the area of West Lothian to be divided into at least two localities, to be determined by the IJB, and for the Plan to include measures for strategic aspects of services to be delivered to those different localities. As an important partner in the Community Planning Partnership, the Parties will work to ensure that the Strategic Plan has regard to and is consistent with the overall approach to community planning amongst the community planning partners in West Lothian.

### **Clinical and Care Governance**

The Council is required by law to appoint a Chief Social Work Officer to oversee and make decisions in relation to specified social work services, some of which are delegated in relation to integration functions, and to report to and alert the council and councillors of any matters of professional concern in the management and delivery of those functions. The Chief Social Work Officer has a duty to make an annual report to the council in relation to the discharge of the role and responsibilities. The Chief Social Work Officer is to be a non-voting member of the Board but the Parties consider it is important that the Board's Standing Orders and other constitutional documents shall make provision for the Chief Social Work Officer to be given the same rights and privileges of access to the Board and Board members as they have in relation to the council and councillors. They also consider it to be a requirement of good corporate and care governance that the Board should adopt, that the Chief Social Work Officers shall also be required to make an annual report to the Board in relation to the aspects of their position which relate to the delivery of the delegated functions.

The Chief Social Work Officer will retain all of the statutory decision making and advisory powers they are given by statute and guidance, and the Director shall not be entitled to countermand or over-rule any decisions or instructions given by the Chief Social Work Officer in carrying out that statutory role.

The West Lothian Community Health and Care Partnership has as part of its arrangements in relation to clinical and care governance appointed a Clinical Director to advise and report to that Partnership Board. That arrangement will continue, with the Clinical Director being appointed by NHS Lothian to that role. The Parties consider it is important that the Board's Standing Orders shall ensure that the

Clinical Director is given the same rights and privileges of access as are to be afforded to the Chief Social Work Officer, and that the Clinical Director shall also be required to make an annual report to the Board in relation to the aspects of their position which relate to the delivery of the delegated functions.

The Clinical Director and Chief Social Work Officer will also have roles in providing regular reports and professional advice to the Board, to its Risk Audit and Governance Committee should it establish such a committee, and to the Strategic Planning Group in addition to reporting into the committees established by the Parties in relation to risk, audit and governance matters.

### **Staff**

The employment status of staff will not change as a result of this integration scheme ie staff will continue to be employed by their current employer and retain their current terms and conditions of employment and pension status.

### **Review**

The Act calls for the Scheme to be reviewed by the Parties jointly within five years of it being approved. In addition, one or both of the Parties can require that the Scheme is reviewed at any time, or that a new Scheme is put in place, and that review is to be carried out jointly by the Parties. When the Scheme is reviewed, the Parties will carry out a consultation process as required by the Act prior to obtaining approval.

The Act also calls for the Strategic Plan to be reviewed every three years, or for a new Plan to be made at any time when called for by both the Parties where they feel the present Plan is or is likely to prevent them from carrying out any of their functions appropriately.

## **INTEGRATION SCHEME**

### **1.0 The Parties**

#### The Parties

- a. The West Lothian Council, a local authority constituted under the local Government etc. (Scotland) Act 1994 and having its headquarters at West Lothian Civic Centre, Howden South Road, Livingston, West Lothian EH54 6FF (“the Council”)
- and
- b. Lothian Health Board, established under section 2(1) of the National Health Service (Scotland) Act 1978 (operating as “NHS Lothian”) and having its principal offices at Waverley Gate, 2-4 Waterloo Place, Edinburgh (“NHS Lothian”)

together referred to as “the Parties”

### **2.0 Definitions and Interpretation**

“The Act” means the Public Bodies (Joint Working) (Scotland) Act 2014

“The Parties” means the Council and NHS Lothian

“The Scheme” means this Integration Scheme (but not the Introduction)

“Integration functions” means the functions delegated by the Parties to the Integration Joint Board

“Integration Joint Board” or “IJB” means the West Lothian Integration Joint Board to be established by Order under section 9 of the Act, and is referred to as “the Board”

“Director” means the “Chief Officer” as referred to in section 10 of the Act

“Finance Officer” and “Proper Officer” mean the officer appointed under the finance and audit requirements in section 13 of the Act and section 95 of the Local Government (Scotland) Act 1973

“IJB Budget” means the total funding available to the Board in the financial year as a consequence of

- The payment for delegated functions from NHS Lothian under section 1(3) (e) of the Act;
- The payment for delegated functions from the Council under section 1(3) (e) of the Act; and
- The amount “set aside” by NHS Lothian for use by the Board for functions carried out in a hospital and provided for the areas of two or more local authorities under section 1(3) (d) of the Act

“Operational Budget” means the amount of budget delegated by one of the Parties to one of their managers in a financial year in order to carry out defined functions or services

“Strategic Plan” means the plan by which the Board is to be prepared and implemented in relation to the delegated provision of health and social care services to adults in accordance with section 29 of the Act

“Outcomes” means the Health and Wellbeing outcomes prescribed in Regulations under section 5(1) of the Act and local outcomes set by the Parties and the Board, and set out in its Strategic Plan.

### **3.0 Integration Model and Integration Functions**

This Scheme has been produced in accordance with the requirements of the Public Bodies (Joint Working) (Scotland) Act 2014.

In accordance with section 2(3) of the Act, the Parties have agreed that the integration model set out in section 1(4) (a) of the Act will be put in place, namely the delegation of functions by the Parties to an Integration Joint Board, a body corporate that is to be established by Order under section 9 of the Act.

This Scheme comes into effect on the date the Parliamentary Order to establish the Integration Joint Board comes into force and the integration functions shall be delegated on a date to be determined by the IJB as part of its Strategic Plan but by 1 April 2016 at the latest.

### **4.0 Local Governance Arrangements**

#### **Membership**

The IJB shall have the following voting members:

- a) **4** councillors nominated by the Council; and
- b) **4** non-executive directors nominated by NHS Lothian, in accordance with articles 3(4) and 3(5) of the Integration Joint Boards Order.

The Parties may determine their own respective processes for deciding who to nominate as voting members of the IJB.

Non-voting members of the IJB will be appointed in accordance with article 3 of the Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014.

The term of office of members shall be the maximum of three years prescribed by regulation 7 of the Integration Joint Boards Order. Members can be reappointed after this period.

#### **Chairperson and Vice Chairperson**

The IJB is required to have a chairperson and vice-chairperson who will both be voting members of the IJB.

The Parties have decided that the position of Chair shall rotate between the Parties every two years, with the council holding the Chair for the first two years of the IJB's existence.

The term of office of the vice chairperson will mirror the arrangements for the Chair, with the holders of the posts alternating between the Parties accordingly. The provisions set out above under which the power of appointment of the chairperson

will alternate between the Parties will apply in relation to the power to appoint the vice chairperson, and on the basis that during any period when the power to appoint the chairperson is vested in one Party, the other Party shall have power to appoint the vice-chairperson.

The Parties may determine their own processes for deciding who to appoint as chairperson or vice-chairperson.

Each Party may change its appointment as chairperson (or, as the case may be, vice chairperson) at any time; and it is entirely at the discretion of the Party which is making the appointment to decide who it shall appoint.

### **Support Services**

The Parties agree to provide the IJB with the corporate support services that it requires to discharge fully its duties under the Act. In the short term, the Parties will continue to use the arrangements that have already been put in place to provide professional, technical and administrative support to Community Health Partnerships, and joint working more generally.

In order to develop a sustainable long term solution, a working party will be convened, with membership from the Health Board and the four local authorities in Lothian. This working party will develop recommendations for approval by the Health Board, the four local authorities, and the four Partnerships.

Key matters that the working party will address are

- (a) understanding the needs of the Lothian IJBs (in relation to functions delegated to them), as well as the continuing needs of the Parties (for non-delegated functions);
- (b) defining what is meant by “professional, technical or administrative services”;
- (c) systems to appoint the Chief Officer and Chief Finance Officer, as well as addressing their requirements for support;
- (d) bringing all these elements together and devising a pragmatic and sustainable solution.

The working party will link in with any ongoing initiatives that are pertinent to its agenda, so that all relevant work is co-ordinated. Any changes will be taken forward through the existing systems in the Parties for consultation and managing organisational change.

As soon as the proposals have been finalised by the working party and agreed by NHS Lothian and the four local authorities which prepared the integration schemes for the Lothian IJBs, a draft agreement will be prepared reflecting the agreed proposals. The draft agreement will be adjusted in line with discussions among the parties, and, as soon as the terms have been finalised it is intended that the

agreement will then be formally executed by NHS Lothian, the four local authorities, and the Lothian IJBs (including the IJB).

Within a year of the agreement taking effect the Parties and the IJB will undertake a review of the support services put in place pursuant to the agreement to ensure that the IJB has available to it all necessary professional, technical or administrative services for the purpose of preparing its Strategic Plan and carrying out the integration functions. There will then follow a process of annual review on the support services required by the IJB and this process will form part of the annual budget setting process for the IJB which is described in Section 10.

## **5.0 Delegation of Functions**

The functions that are to be delegated by the NHS Board to the Board are set out in Part 1 of Annex 1. The services to which these functions relate, which are currently provided by the NHS Board and which are to be delegated, are set out in Part 2 of Annex 1. The functions in Part 1 of Annex 1 are delegated only to the extent that they are exercised in the provision of services listed in Part 2 of Annex 1. Except where otherwise stated in the scheme those functions and services are delegated for persons aged 18 and over.

The functions that are to be delegated by the Council to the Board are set out in Part 1 of Annex 2. The services to which these functions relate, which are currently provided by the Council and which are to be delegated, are set out in Part 2 of Annex 2. These services are only delegated in relation to persons aged 18 and over.

In addition to the functions that must be delegated in accordance with the legislation, the Parties have chosen to delegate the following health functions to the IJB in relation to the following Health services for people under the age of 18:

- i. Primary Medical Services and General Medical Services (including GP Pharmaceutical services)
- ii. General Dental Services, Public Dental Services and the Edinburgh Dental Institute
- iii. General Ophthalmic Services
- iv. General Pharmaceutical Services
- v. Out of Hours Primary Medical Services
- vi. Learning Disabilities.

## **6.0 Local Operational Delivery Arrangements**

### **Management Arrangements**

The Director shall be employed by one of the Parties and shall be seconded to the Board as its Chief Officer and a member of its staff. The Director will nevertheless be responsible and accountable to the Parties for the management and delivery of the integration functions in accordance with the directions issued by the Board to the Parties. They will be directed and managed by the Chief Executives of both Parties in that regard.

The Director is responsible to the Board for the delivery of the Strategic Plan.

The Parties and the Director shall secure the operational delivery of the integration functions in accordance with the Directions issued to the Parties by the Board.

They shall put in place a management structure, headed by the Director, to manage the delivery of and performance by them of the integration functions, and to manage the staff employed by the Parties in doing so. The integration services will be managed and delivered through close partnership working and protocols, and in conjunction with the health and social care and other functions of the Parties which are not integration functions.

The Parties shall provide the Board with information and performance management information required by it in terms of the powers conferred by the Act. The Parties recognise the importance of close co-operation and working in securing the delivery of the outcomes. The Board will therefore consult with and take account of the views of the Parties in decisions regarding the information to be provided and the dates and regularity to apply to its provision. The Director shall use that information to provide regular reports to the Board on at least a quarterly basis, and including sufficient information to ensure that the membership of the Board is able to adequately oversee the carrying out of the integration functions by the Parties. The Board shall have the ability to request and receive such additional information in relation to service performance and financial performance as is reasonably required by them to perform that duty.

In the interests of efficient governance, the relevant committees of NHS Lothian and the Council will continue to discharge their existing remits for assurance and scrutiny of the carrying out of NHS Lothian and the Council functions, regarding matters such as internal control, quality and professional standards, and compliance with the law. The IJB will not duplicate the role carried out by those committees other than in exceptional circumstances where the IJB considers that direct engagement by the IJB (or by a committee established by the IJB) is appropriate in order to secure the proper discharge by the IJB of its statutory responsibilities.

Each of the Parties shall use reasonable endeavours to procure that in the event that one of its committees identifies an issue which is of direct and material relevance to the IJB, the Council will advise the Chair of the IJB and the Director of that matter and will co-operate with the IJB in supplying such further information and evidence in respect of that matter as the IJB may reasonably request.

The Parties shall ensure that their respective standing orders, schemes of delegation and other governance documents are amended (if required) to reflect the IJB's powers and remit, and its place as a common decision-making body within the framework for delivery of health and social care within the West Lothian Area.

The Parties acknowledge that the Director's role in operational delivery will represent an important means by which closer integration of services, in accordance with the integration delivery principles specified in the Act, can be achieved. For the avoidance of doubt, the Director's role in operational delivery shall not displace:

- a) the responsibilities of each Party regarding compliance with directions issued by the IJB; or
- b) the principle that each Party's governance arrangements must allow that Party to manage risks relating to service delivery.

In addition to the specific commitments set out above and the obligations regarding provision of information attaching to the Parties under the Act, each of the Parties will use reasonable endeavours to provide the IJB with any information which the IJB may require from time to time to support its responsibilities regarding strategic planning, performance management, and public accountability.

### **Strategic Planning**

The Board is required to establish a strategic planning group to develop a strategic plan in accordance with the legislation describing the strategic vision and direction for the Board over the next decade.

The Board is one of four Boards in the area of the Health Board and the Parties and the Board require to work in co-operation amongst themselves and with those other local authorities and Boards in preparing their Integration Schemes, in developing their respective Strategic Plans, in the delivery of the integration functions, and in the interaction with health and social care functions which are not integrated.

In developing this Scheme the Parties have taken into account the other Schemes being developed between the health board and other councils in its area, and the effects that all of those Schemes, and this one, may have on the others.

The Board also requires to have regard to the impact its Strategic Plan will have on services, facilities and resources to be used in relation to the Strategic Plans after their adoption or whilst they are being developed in those other areas. The Parties' will support the Board in putting in place a process and system to secure close collaboration, co-operation and the sharing of relevant information amongst the Chief Officers of the four integration authorities and amongst the Strategic Planning Groups of those integration authorities. The Parties shall ensure through the line management arrangements for the Director set out in the Scheme, that the Director provides information to the other integration authorities where the Board's Strategic Plan is likely to have a significant impact on the Strategic Plans of those other integration authorities, and makes representations on behalf of the Board to those other integration authorities where the interests and objectives of the Board and its Strategic Plan may be affected by the Strategic Plans elsewhere .

In particular, the Parties will provide the support the Board requires for the adoption of arrangements and processes which ensure that the strategic impacts on the other integration authorities and their strategic plans are brought to the attention of the Board in its decision making, both in regard to integration functions and other functions and services which are not delegated.

In addition a template will be introduced for West Lothian IJB, with the support of the Parties, to help to ensure that all major strategic matters are considered in light of the potential impact on neighbouring IJBs and on services provided by the Parties



which are not delivered in the course of carrying out functions delegated to West Lothian IJB.

### **Lothian Hospitals Strategic Plan**

NHS Lothian will develop a plan (the 'Lothian Hospitals Strategic Plan') to support the IJBs to fulfil their duties. The Lothian Hospitals Strategic Plan will not bind the IJB and the strategic plan of the IJBs will inform the Lothian Hospitals Strategic Plan.

The Lothian Hospitals Strategic Plan will be developed in partnership with the Lothian IJBs whose delegated functions are delivered by NHS Lothian in a hospital. The first Lothian Hospitals Strategic Plan will be published by 1 December 2015.

The purpose of the Lothian Hospital Strategic Plan is to ensure that planning for hospital functions and use of hospital facilities is:

- Responsive to and supports each IJB Strategic Plan; and
- Supports the requirement of NHS Lothian to deliver hospital services required by the IJB and other hospital services that are not the responsibility of the IJB (e.g. tertiary, trauma, surgical, planned and children's services).

The Lothian Hospitals Strategic Plan will be a plan developed jointly by NHS Lothian and the Lothian IJBs. The elements of the Lothian Hospitals Strategic Plan addressing non delegated functions can only be agreed by the NHS Lothian Board after the four Lothian IJBs have been consulted and their views and requirements appropriately considered. Elements of the Lothian Hospitals Strategic Plan which cover functions delegated to the respective Lothian IJBs will be signed off by relevant Lothian IJBs in consultation with NHS Lothian and all Lothian IJBs.

The Lothian Hospitals Strategic Plan will be updated at least every three years; the process to update the plan will be led by NHS Lothian.

### **Performance Targets and Reporting Arrangements**

The Parties shall develop and agree between them a list of the targets, measures and arrangement in relation to the performance of the delegated functions, and shall do so prior to the constitution of the Board. After the constitution of the Board, the Parties shall agree with the Board and, prior to the date of delegation of functions, a final list of such targets, measures and arrangements and the frequency with which information about them is to be provided.

The Parties shall also develop and agree between them a separate list of targets, measures and arrangements in relation to health and social care functions which have not been delegated and which are to be taken into account by the Board in its preparation of the strategic plan.

In developing and agreeing those matters, the Parties shall build on the successful performance measuring, monitoring and reporting systems operated through the West Lothian Community Health and Care Partnership. They shall through officers of

both Parties develop those systems further by identifying those performance indicators and outcomes for which responsibility shall pass to the Board in relation exclusively to integration functions and those for which responsibility shall be shared where they relate to both integration functions and functions and services which have not been delegated. Those outcomes and indicators will be refined to reflect and support the priorities set out in the Board's Strategic Plan. The Parties and the Board shall ensure that the systems, outcomes and indicators put in place are regularly reviewed, refreshed and updated to reflect changes to those priorities, to the Strategic Plan and other changes in circumstances.

After it is established, the Board will be responsible for the development of its own performance management approach to enable the Board to monitor progress against quality improvement and service delivery required to achieve the high level outcomes in the strategic plan. To continue the development work of the Parties to be carried out prior to the establishment of the Board, the Parties will encourage that Board to adopt an approach to performance management which will detail the suite of performance indicators to be used to monitor progress against the high level outcomes and will confirm the reporting arrangements on performance.

## **7.0 Clinical and Care Governance**

### **Introduction**

This section of the Scheme sets out the arrangements that will be put in place to allow the IJB to fulfil its role with professional advice and with appropriate clinical and care governance in place.

The Parties have well established systems to provide clinical and care governance as well as assurance for professional accountabilities. Those systems will continue following the establishment of the IJB and the scope of these systems will extend to provide the IJB with the requirements to fulfil their clinical and care governance responsibility.

Continuous improvement and the quality of service delivery (and its impact on outcomes) will be addressed through the development of the IJB's performance management framework (pursuant to section 6 of this Scheme).

The IJB will not duplicate the role carried out by the Parties existing governance arrangements other than in exceptional circumstances where the IJB considers that direct engagement by the IJB is appropriate in order to secure the proper discharge by the IJB of its statutory responsibilities.

The Parties agree that in the event that one of its committees within its governance arrangements identifies an issue which is of direct and material relevance to the IJB, the committee will advise the chairperson of the IJB and the Director of that matter and will co-operate with the IJB in supplying such further information and evidence in respect of that matter as the IJB may reasonably request.

The Parties shall ensure that its standing orders, schemes of delegation and other governance documents are amended (if required) to reflect the IJB's powers and remit, the IJB's place as a common decision-making body within the framework for

delivery of health and social care within the West Lothian Area and the Parties role in supporting the IJB to discharge its duties.

The voting members of the IJB are engaged in the governance of their respective Party, and it is likely that they will be members of one or more committees of the relevant Party.

The Parties will use reasonable endeavours to appoint voting members of the IJB (regardless of which party nominated the voting members) onto the NHS Lothian and Council governance arrangements with a remit relevant to the clinical and care governance of integration functions.

Within its existing governance framework, NHS Lothian has :

- A healthcare governance committee, the remit of which is to provide assurance to the Board that the quality of all aspects of care in NHS Lothian is person-centred, safe, effective, equitable and maintained to a high standard and to provide assurance to the Board of NHS Lothian that the Lothian NHS Board meets its responsibilities with respect to:-
  - NHS Lothian Participation Standards
  - Volunteers/Carers
  - Information Governance
  - Protection of Vulnerable People including children, adults, offenders
  - Relevant Statutory Equality Duties

And

- A staff governance committee, the remit of which is to support and maintain a culture within Lothian NHS Board where the delivery of the highest possible standard of staff management is understood to be the responsibility of everyone working within NHS Lothian and is built upon partnership and collaboration. The Staff Governance Committee must ensure that robust arrangements to implement the (NHS Scotland) Staff Governance Standard are in place and monitored

The staff governance committee has the primary role on staff governance matters, but can and does refer matters of relevance to the healthcare governance committee.

The healthcare governance committee can request assurance from the staff governance committee on matters of direct relevance to its remit, e.g. quality of recruitment, learning and development, completion of mandatory training.

West Lothian Community Health and Care Partnership has as part of its arrangements in relation to clinical and care governance appointed a Clinical Director to advise and report to that Partnership Board. That arrangement will

continue in the IJB, with the Clinical Director appointed by the Health Board providing clinical expertise to the IJB as a non-voting member.

Within the Council, the Chief Social Work Officer has overall responsibility for the professional standards of the Council's social work and social care staff. The workforce is also regulated by the Scottish Social Services Council (SSSC), and all professional staff must by law be registered with the SSSC. This registration requirement will, in due course, extend to all social care staff employed by the Council and the voluntary and independent sectors.

The Chief Social Work Officer reports annually to the Council on the registration of the workforce and on training, including mandatory training and post-qualifying learning and development. The Chief Social Work Officer will provide a copy of this annual report to the IJB.

The Chief Social Work Officer also reports annually to the Council on standards achieved, governance arrangements including supervision and case file audits and volume/quantity of statutory functions discharged. This report must comply with national guidance issued by the Scottish Government. The Chief Social Work Officer will also provide a copy of this annual report to the IJB.

The intention of using the existing NHS Lothian and Council committees as a primary source of assurance is to recognise that the parties will have continuing governance responsibilities for both integration and non-delegated functions, and that the parties wish to minimise unnecessary bureaucracy. The IJB will be engaged through its membership being on these committees, and its relationship with the committee chairs. The IJB will be in a position to holistically consider the information/ assurance received from the Parties, and arrive at a determination for all of its functions. If the IJB is in any way dissatisfied with the information or assurance it receives from the parties, or the effectiveness of the parties committees, it may give a direction to the parties to address the issue, or revise its own system of governance.

### **Clinical and Care Governance Risk**

There is a risk that the plans and directions of the IJB could have a negative impact on clinical and care governance, and professional accountabilities. This section of the Scheme sets out the arrangements that will be put in place to avoid this risk.

### **Professional Advice**

NHS Lothian has within its executive membership three clinical members (referred to below as 'Executive Clinical Directors'); a Medical Director, a Nurse Director, and a Director of Public Health. Their roles include responsibility for the professional leadership and governance of the clinical workforce (medical, nursing, allied health professionals, healthcare scientists, psychology, pharmacy), as well as clinical governance within NHS Lothian generally. The creation of the IJB does not change their roles in respect of professional leadership, and they remain the lead and accountable professionals for their respective professions.

The Council has a Chief Social Work Officer who reports to the Chief Executive and councillors. The Chief Social Work Officer monitors service quality and professional standards in social care and social work, for staff employed in both adult and children's services, together with standards in relation to the protection of people at

risk. The Chief Social Work Officer role also includes quality assurance of decision-making with regard to adult social care, mental health criminal justice and children's services, in particular in relation to public protection and the deprivation of liberty.

The creation of an IJB does not change the Chief Social Work Officer's role in respect of professional leadership and he or she will remain the lead and accountable professional for his or her profession.

The Chief Social Work Officer must be a non-voting member of the IJB. The IJB may elect to appoint one or both of the Medical Director and the Nurse Director as additional non-voting members of the IJB. The Order requires NHS Lothian to fill the following non-voting membership positions on the IJB:

- A registered medical practitioner whose name is included in the list of primary medical services performers prepared by NHS Lothian in accordance with Regulations made under section 17P of the National Health Service (Scotland) Act 1978;
- A registered nurse who is employed by NHS Lothian or by a person or body with which NHS Lothian has entered into a general medical services contract; and
- A registered medical practitioner employed by NHS Lothian and not providing primary medical services.

NHS Lothian will consider the advice of the Executive Clinical Directors, and any other relevant officer it deems fit before making appointments to fill the membership positions referred to above. The appointees will be professionally accountable to the relevant executive clinical director. NHS Lothian will develop a role description for the appointments referred to above, to ensure that their role on the IJB with regard to professional leadership and accountability is clearly defined and understood.

The three health professional representatives referred to above will each also be:

- A member of an integrated professional group (should it be established); and/or
- A member of a NHS Lothian committee; and/or
- A member of a consultative committee established by NHS Lothian.

If a new "integrated professional group" is established, the Chief Social Work Officer must also be a member.

The three health professional representative set out above and the Chief Social Work Officer will be expected by the Parties to play a lead role in:

- Communicating and having regard to their duties to NHS Lothian or the Council as the case may be whilst discharging their role as a member of the IJB;
- Communicating and having regard to the interests of the IJB whilst discharging their duties as professionals employed by NHS Lothian or (as the case may be) the Council.
- The members will be expected to communicate regularly with the Executive Clinical Directors, and the Council's Chief Executive as and when appropriate.

The presence of these four members will ensure that the decisions of the IJB are informed by professional advice from within the membership of the IJB.

The Chief Social Work Officer reports annually to the Council on the registration of the workforce and on training, including mandatory training and post-qualifying learning and development.

NHS Lothian includes a governance statement in its annual accounts, the content of which is informed by the annual reports of its governance committees (such as healthcare governance and staff governance) and certificates of assurance from its Executive Clinical Directors. The IJB may place reliance on these existing processes, and the Parties will provide any such reports from those processes as the IJB may require.

The Executive Clinical Directors shall be entitled to raise issues directly with the IJB in writing. The IJB shall be required to respond in writing when issues are raised in this way. The Chief Social Work Officer will be a non-voting member of the IJB, and can therefore raise any issues directly at the IJB.

The engagement of professionals throughout the process to develop and consult on the Strategic Plan is intended to ensure that the IJB has all the required information to prepare a Strategic Plan, which will not compromise professional standards.

In the unlikely event that the IJB issues a direction to NHS Lothian, which is reasonably likely to compromise professional standards, then in the first instance, the relevant Executive Clinical Director will write to the IJB.

If the issue is not resolved to their satisfaction, they must inform the board of NHS Lothian before it takes action to implement the direction, and the following measures will apply:

- The relevant Executive Clinical Director must ensure that appropriate advice is tendered to the board of NHS Lothian on all matters relating to professional standards;
- The relevant Executive Clinical Director must set out in writing to NHS Lothian any objections they may have on a proposal that may compromise compliance with professional standards;
- The board of NHS Lothian will inform the IJB that it has received such objections, along with a statement of the views of the board of NHS Lothian on those objections;
- If board of NHS Lothian decides to proceed with a proposal despite those objections, the relevant executive clinical director will be provided with written authority from the board of NHS Lothian to act on the proposal. NHS Lothian must inform the Scottish Government Health and Social Care Directorate if a request for such a written authority is made. A copy of that authority must be sent to the appropriate regulatory body, e.g. General Medical Council;
- Once the relevant executive clinical director has received that written authority, they must comply with it.

The three professional clinical members on the IJB (two medical practitioners, one nurse) are non-voting members. They will be expected by the Executive Clinical

Directors to raise any concerns in relation to matters which may compromise professional standards with the IJB.

If any of the three professional clinical members becomes aware of a matter arising from the conduct of IJB business, which may compromise professional standards, they must immediately notify the relevant executive clinical director(s) of their concerns.

The Chief Social Work Officer will be a non-voting member of the IJB, and as such, will contribute to decision making, and will provide relevant professional advice to influence service development.

In the event that the IJB issues a direction to the Council or NHS Lothian, which in the view of the Chief Social Work Officer compromises professional social work standards or the discharge of statutory functions, the Chief Social Work Officer must immediately notify the Director of their concerns and if their concerns are not resolved by the Director to their satisfaction must then raise the matter with the Chief Executive of the Council.

### **Professionals Informing the IJB Strategic Plan**

With regard to the development and approval of its Strategic Plan, the IJB is required to:

- establish a strategic planning group (which will review the draft Strategic Plan). This strategic planning group must include a nominee from both NHS Lothian and the Council in its membership, as well as representation from health professionals and social care professionals. NHS Lothian and the Council will make recommendations to the IJB with regard to the representation from health professionals and social care professionals;
- consult both NHS Lothian and the Council on its Strategic Plan, and take into account their views before it finalises the Strategic Plan.

There will be three opportunities within these arrangements for professional engagement in the planning process;

- at the IJB;
- in the context of the work of the strategic planning group; and
- as part of the consultation process with the Parties associated with the Strategic Plan.

The membership of the IJB will not be the only source of professional advice available to the IJB. In advance of the establishment of the IJB the Parties agree that the chairs of all appropriate committees and groups will be informed that they are able to, and expected to, directly provide advice to the IJB. Those committees and groups may also advise an integrated professional group that provides advice to the IJB. Those committees and groups include, but are not limited to:

- Area Clinical Forum;
- Local consultative committees that have been established under section 9 of the National Health Service (Scotland) Act 1978;
- Managed Clinical/ Care Networks;

- West Lothian Public Protection Committee (adult and child protection, drug and alcohol, violence against women, offender management etc). The IJB will consult this committee on any plans that may impact on the protection of children or vulnerable adults or people who are assessed as posing a risk;
- Any integrated professional group established.

NHS Lothian and the Council will ensure that the draft Strategic Plan is sent to the following senior professionals in order to secure their input and advice:

- NHS Lothian Medical Director;
- NHS Lothian Nurse Director;
- NHS Lothian Director of Public Health & Health Policy;
- NHS Lothian Allied Health Professions Director;
- Chief Social Work Officer.

The engagement of the Council's professionals will not be limited to social work staff, but will extend to related professionals within social care, such as, but not exclusively, occupational therapists, home care and social care staff.

The approach to locality planning and delivery including the arrangements for clinical and social care governance will be developed through the strategic planning process in a collaborative manner by the IJB.

### **External scrutiny of clinical and care functions**

NHS Lothian seeks assurance for internal control/quality through its Healthcare Governance Committee, which includes reports by external bodies such as Healthcare Improvement Scotland.

The Care Inspectorate (Social Care and Social Work Improvement Scotland) regulates, inspects and supports improvement of adult and children's social work and social care, and their reports feed into the Council's system of governance.

The IJB will consequently be informed of any relevant issues from external scrutiny, as a consequence of drawing from the systems already established by the Parties.

### **Service User and Carer Feedback**

The Parties have a range of systems already in place to capture and respond to service users' experience, and these will continue to be used as the Parties implement the directions of the IJB.

## **8.0 Director**

### **Appointment**

The first Director will be appointed to the post by the Board as required by the Act, but, to reflect the significance of the post to the Parties and the Director's duties and responsibilities, it is expected that the appointment shall be made after consultation by the Board with the Parties and of the jointly agreed holder of the shadow Director post.



Prior to the establishment of the Board the Director's job description, person specification, terms and conditions, salary, pension, responsibilities and powers shall be agreed jointly between the Parties, and appropriate approval obtained under the separate mechanism contained in the Act. Those will reflect and include the responsibilities the Director will have, by agreement between the Parties, to the Parties in relation to matters other than those affecting the integration functions.

Upon the appointment by the Board of the Director, the Parties shall at the same time confirm the appointment of the Director in relation to their own organisations and shall ensure that appropriate powers are delegated to him/her by the Parties to enable him/her to meet the requirements of the post.

Any future appointment to the post of Director shall follow an open and transparent process, except that the recruitment, selection and appointment process shall be carried out by the Board, in reliance on professional advice to be provided to the Board as part of the agreed support services. The Parties shall ensure the availability of appropriate technical, legal and human resources advice through the arrangements to be put in place for the provision of support services as set out in the Scheme, and through an appointment process designed by the Board to reflect the significance to the Parties of the post.

If an interim replacement for the Director of the Board is required, in line with a request from the Board to that effect (on the grounds that the Director is absent or otherwise unable to carry out their functions), the Chief Executives of the Parties will initiate a joint selection process, identifying a list of potential replacements; and selection of a suitable candidate will be undertaken against a set of agreed criteria. The interim replacement will be employed by one of the Parties and will be seconded to the Board on an interim basis.

### **Operational Role**

In terms of the Act the Director will report to and advise the Board in relation to its role and powers over the delegated functions, and they will also be accountable to the Chief Executives of the Parties in relation to operational and service delivery matters.

The Director will be a member of each of the council and health board senior management teams and together with the Chief Social Work Officer will have appropriate delegated powers to enable them to discharge their duties and to manage the two services and secure the operational delivery of the integration functions jointly and in an integrated manner.

Except for the services identified in Annex 3 the Director will be the senior manager in each of the Parties responsible for delivery of the delegated functions in accordance with directions from the Board, and for the delivery of other health and social care functions which have not been delegated to the Board.

Directors responsible for the Western General Hospital, the Edinburgh Royal Infirmary, St Johns Hospital and the Royal Edinburgh will provide delegated services on these hospital sites that will not be operationally managed by the Director.

Specific NHS Lothian functions will be managed on a pan Lothian basis as a 'hosted' service by one of the four Chief Officers in Lothian. Annex 3 describes the functions

which NHS Lothian is proposing to the IJBs as suitable for management under hosted services arrangements.

A group consisting of Directors responsible for hospital functions delegated to the IJB and the Chief Officers of the four IJBs in Lothian will be established before the IJBs are established to ensure close working arrangements between a) Chief Officers and Directors responsible for hospital services and b) Chief Officers responsible for the management of a hosted service on behalf of the other three Lothian Chief Officers.

## **9.0 Workforce**

The Parties will provide for workforce development in relation to the staff employed in the delivery of the integration functions and will develop an integrated Workforce Development and Support Plan, and an Organisational Development Plan in relation to teams delivering services. The Parties shall ensure the completion of those Plans prior to the constitution of the Board and they shall be put in place at the date of delegation of the integration functions.

## **10.0 Finance**

### **Finance Officer**

In relation to the preparation of its accounts and their audit, the Board is governed by the same legislation applying to local authorities and will require to make arrangements for the proper administration of its financial affairs; this will include the appointment of a Finance Officer with this responsibility. The Finance Officer will be employed by the Council or NHS Lothian and seconded to the Board. The holder of the post should be a CCAB-qualified accountant, and the Board should have regard to the current CIPFA Guidance on the role.

In the event that the Finance Officer position is vacant or the holder is unable to act, the Director shall secure, in consultation with the Board Chair, and through agreement with both the council section 95 officer and the NHS Lothian Director of Finance, an appropriate interim dedicated resource to discharge the role.

### **Financial Management of the Board**

The Board will determine its own internal financial governance arrangements; and the Finance Officer will be responsive to the decisions of the Board, and the principles of financial governance set out in this Scheme.

### **Principles of Financial Governance**

The following principles of financial governance shall apply:

- NHS Lothian and the Council will work together in a spirit of openness and transparency

- NHS Lothian and the Council will ensure their payments to the Board are sufficient to fund the delegated functions in line with the financial elements of the Strategic Plan
- NHS Lothian and the Council payments to the Board derive from a process that recognises that both organisations have expenditure commitments that cannot be avoided in the short to medium term. The Board, through its Strategic Plan and through the directions issued by it, may, however, be able to influence such commitments over time; and both Parties will work with the Board on service redesign proposals in relation to integration functions.

## **Financial Governance**

The Parties will contribute to the establishment of a Board budget. The Director will manage the Board budget.

The Parties are required to implement the Directions of the Board in carrying out the delegated functions in line with the strategic plan, provided that the Board delegates the required level of resources to meet the anticipated cost of the delegated functions. The Parties will apply their established systems of financial governance to the payments they receive from the Board. The NHS Lothian Accountable Officer and the Council section 95 Officer have legally defined responsibilities and accountability for the financial governance of their respective bodies.

The Director in their operational role within NHS Lothian and the Council is responsible for the financial management of any operational budgets (as defined in section 10 of this Scheme) that may be delegated to them by the Parties, and is accountable for this to the NHS Lothian Chief Executive and WLC section 95 officer.

The Board will develop its own financial regulations. The Finance Officer will periodically review these financial regulations and present any proposed changes to the Board for its approval.

The Council will host the Board Financial Accounts and will be responsible for recording the Board financial transactions through its existing financial systems. This will include the ability to establish reserves.

The Board's Finance Officer will be responsible for preparing the Board's accounts and ensuring compliance with statutory reporting requirements as a body under the relevant legislation.

As part of the financial year end procedures and in order to develop the year-end financial statement, the Finance Officer will work together with NHS Lothian and the Council to coordinate an exercise agreeing the value of balances and transactions with Council and NHS Finance teams. Each Party will provide information to this process on their recorded income, expenditure, receivable and payable balance with the IJB. The Board's Finance Officer will lead with the Parties on resolving any differences.

The Finance Officer will also be responsible for preparing a medium-term financial plan to be incorporated into the Board's Strategic Plan. The Finance Officer will also be responsible for preparing the annual financial statement that the Board must publish under section 39 of the Act, which sets out what the Board intends to spend in implementation of its Strategic Plan.

The Finance Officer will be responsible for producing finance reports to the Board, ensuring that those reports are comprehensive.

The Finance Officer will liaise closely with the Council s95 officer and the NHS Lothian Director of Finance and their teams in order to discharge all aspects of their role section 6 of this scheme has set out the process the Parties will undertake to determine how professional, technical and administrative services will be provided to the Board. The initial focus of this work includes finance support.

### **Payments to the Board (made under section 1(3) (e) of the Act)**

The legislation on Integration uses the term 'payment' to describe the budget contributions that the Parties will delegate to the Board. In the interests of clarity, whilst the term 'payment' is used in this document to remain consistent with the legislation, it is not anticipated that cash transfers will take place between Parties and the Board. Rather, the term 'payment' can be taken to mean the budget contributions of the partner organisations that have been agreed as resources delegated to the Board.

Prior to the start of each financial year, the Parties will agree a schedule of payments to the Board (covering their initial calculated payment for the financial year and the dates for transactions).

Any difference between payments into and out from the Board will result in a balancing payment between the Council and NHS Lothian which reflects the effect of the directions of the Board.

### **Initial Payments to the Board**

The Council and NHS Lothian will identify a core baseline operational budget for each function that is delegated to the Board. This will be used as the basis to calculate their respective payments into the Board budget.

The Council and NHS Lothian already have established financial planning processes which take into account the financial settlements they have received, and identified and assumed expenditure pressures, to arrive at opening budgets for the forthcoming financial year. These same processes will be applied to the core baseline operational budgets for the delegated functions in order to arrive at the initial payments to the Board.

## **Resource Transfer**

The “resource transfer” payments from NHS Lothian to the Council will continue to be made after the Board is established, as these payments are effectively core funding of functions that will be delegated by the Council. Taking account of the process above, the resource transfer payment from NHS Lothian to the Council will be reviewed on an annual basis.

## **Hosted Services**

NHS Lothian carries out functions across four local authority areas. Some of the functions that will be delegated to all four IJBs in the NHS Lothian boundary are currently provided as part of a single Lothian-wide service, commonly referred to as “hosted services”. As such there is not currently a separately identifiable budget for those services by local authority area.

In order to identify the core baseline budget for each of the hosted services in each local authority area, NHS Lothian will initially determine which of the following methodologies is the most appropriate in representing the distribution of the delivery of those services in each local authority area and their respective populations at a given point in time. NHS Lothian will follow the same process for subsequent years:-

- Local activity and cost data for each service within each local authority area
- Population distribution across the local authority areas
- Patient level activity and cost data
- Historically applied and recognised percentages.

The Council and the Board will review the proposals from NHS Lothian as part of a due diligence process, and the core baseline budget will be collectively agreed.

## **Due Diligence**

The Parties will share information on the financial performance over the previous two financial years of the functions and associated services which will be delegated to the Board. This will allow the Parties to undertake appropriate reviews to gain assurance that the services are currently being delivered sustainably within approved resources, and that the anticipated initial payments will be sufficient for the Board to carry out its integration functions.

If any such review indicates that the projected expenditure is likely to exceed the initial payments to the Board, then the relevant Party will be notified. The relevant Party will be required to take action to ensure that services can be delivered within the available operational budget

The Parties recognise that of the functions which are to be delegated to the Board, there are some where there is greater potential for the actual expenditure to vary significantly from projections. The Parties will identify what those functions are, and will ensure that information is provided to the Board so that it may build up its working knowledge of the issues, and focus on those functions within their systems for risk management and financial reporting. This will help the Board and the Parties determine how any particular variances (should they arise) should be

handled (see section below), as well as how the Board decides to direct the use of the Board budget in the future.

This process of due diligence will be applied in future years, and this will be informed by, amongst other things, the intelligence within the financial performance reports covering all integration functions that the Board will routinely receive.

### **Determining the schedules for the Initial Payments**

The Council section 95 officer and the NHS Lothian Director of Finance are responsible for preparing the schedules for their respective party. The amounts to be paid will be the outcome of the above processes. They will consult with the Director and officers in both Parties as part of this process.

- The Council section 95 officer and the NHS Lothian Director of Finance will each prepare a schedule outlining the detail and total value of the proposed payment from each party, and the underlying methodology and assumptions behind that payment. These draft schedules will identify any amounts included in the payments that are subject to separate legislation or subject to restrictions stipulated by third party funders. The schedules will also contain the detail and total value of set aside resources for hospital services, made under section 1(3) (d) of the Act.
- The Council section 95 officer and the NHS Lothian Director of Finance will refer the draft schedules to the Director so that they may have an opportunity to formally consider it.
- The Council section 95 officer and the NHS Lothian Director of Finance will thereafter present the final draft schedules to the Parties. This schedule must be approved by the Director of Finance of NHS Lothian, the Council section 95 officer and the Director.
- The Council and NHS Lothian must approve their respective payments, in line with their governing policies.

### **Subsequent section 1(3) (e) Payments to the Board**

The calculation of payments in each subsequent financial year will essentially follow the same processes as has been described for the initial payment. This section highlights the key differences from the process of calculating the initial payment.

The starting position will be the payments made to the Board in the previous financial year. The Parties will then review the payments, having due regard to any known factors that could affect core baseline budgets, available funding, their existing commitments, the results of their own financial planning processes, the previous year's budgetary performance for the functions delegated to the Board, the Board's performance report for the previous year, and the content of the Board's Strategic Plan.

The Parties will also have due regard to the impact of any service re-design activities that have been direct consequence of Board directions.

In all subsequent financial years, the Board will be established and the Director and Finance Officer will have been appointed to their posts. The Parties will engage the

Board, Director, and Finance Officer in the process of calculating subsequent payments through:

- Both Parties will provide indicative three year allocations to the Board, subject to annual approval through their respective budget setting processes.
- The Parties will ensure the Director and Finance Officer are actively engaged in their financial planning processes. The Director will be expected to feed into the planning processes with any intelligence that is relevant, e.g. the aims of the Strategic Plan, the effect of previous directions on activity and expenditure, projected changes in activity and expenditure. The Director of Finance of NHS Lothian, the section 95 Officer of the Council and the Board Finance Officer will ensure a consistency of approach and consistent application of processes in considering budget assumptions and proposals.

### **The set-aside of resources for use by the IJB under section 1(3) (d) of the Act**

In addition to the section 1(3)(e) payments to the IJB, Lothian NHS Board will identify a set aside budget for delegated functions in large hospitals. The set aside budget for delegated hospital services will be based on an apportionment of the relevant Lothian NHS Board budgets for the delegated hospital services (excluding overheads).

In order to identify the core baseline budget for the set-aside functions in each council area, the Health Board shall initially determine which of the following methodologies is the most appropriate in representing the distribution of the delivery of services in each council area, and their respective populations at a given point in time. NHS Lothian will follow the same process for subsequent years:-

- Local activity and cost data for each service within each council area
- Population distribution across the council area
- Patient level activity and cost data
- Historically applied and recognised percentages.

The Parties and the IJB will review the proposals from Lothian NHS Board referred to above, as part of a due diligence process, and the core baseline budget will be jointly agreed.

### **Process to agree payments from the Board to the Parties**

The IJB will determine and approve, in accordance with the Strategic Plan, the payments to the Parties which will accompany its directions to them for carrying out functions delegated to the IJB. The Parties are required to implement the directions of the IJB in carrying out a delegated function in line with the Strategic Plan, having agreed with the IJB the resources required to deliver the said directions.

The Board will determine and approve, in accordance with the Strategic Plan, the payments to the Parties which will accompany its directions to them for carrying out the functions delegated to the Board. The Party receiving a direction from the Board shall implement it, having agreed with the Board the level of resources required to do so.

The Finance Officer is responsible for providing the Board with appropriate information and advice, so that it may determine what those payments should be.

Each direction from the Board to the Parties will take the form of a letter from the Director referring to the arrangements for delivery set out in the Strategic Plan and will include information on:

- the delegated function(s) that are to be carried out
- the outcomes to be delivered for those delegated functions
- the amount of and method of determining the payment to be made, in respect of the carrying out of the delegated functions.

Once issued, directions can be amended by a subsequent direction by the Board.

Where amounts paid to the Board are subject to separate legislation or subject to restrictions stipulated by third party funders, the Board must reflect these amounts in full, in determining the level of the payments to be made to the Parties in respect of the carrying out of the relevant function or functions. However, the Board is not precluded from increasing the resource allocated to the relevant services.

### **Financial Reporting to the Board**

Budgetary control and monitoring reports (in such form as the Board may request from time to time) will be provided to the Board as and when it requires. The reports will set out the financial position and outturn forecast against the payments by the Board to the Parties in respect of the carrying out of integration functions and against the amount set aside by NHS Lothian for hospital services. These reports will present the actual and forecast positions of expenditure compared to operational budgets for delegated functions and highlight any financial risks and areas where further action is required to manage budget pressures.

NHS Lothian will provide information on the set-aside budgets which will be contained in financial reports to the Board.

Through the process of reviewing the professional, technical and administrative support to the Board and the development of accounting for the set-aside, the Parties will devise a sustainable model to support financial reporting to the new Board. Until that model is in place, both Parties will provide the required information on operational budgetary performance from their respective finance systems, and this will be co-ordinated and consolidated by the Finance Officer to provide reports to the Board on all the Board's delegated functions.

It is expected by the Parties that as a minimum there will be quarterly financial reports to the Director, quarterly reports to the IJB for section 1(3) e and 6 monthly reports to the Director and the IJB on the set-aside and hosted service budgets. The IJB can request more reports if required.

### **Process for addressing variance in the spending of the Board**

#### **Treatment of forecast over- and under-spends against the Operational Budget**

The Board is required to deliver its financial out-turn within approved resources.



Section 15 of this scheme sets out the arrangements for risk management, and financial risk (within the Board and both Parties) will be managed in line with those arrangements.

The Parties will make every effort to avoid variances arising. A key measure in this regard will be the due diligence activities, and the sharing of information with the Board, so that the Board has the best opportunity to allocate resources effectively. The Parties will also ensure that the systems that are already applied to delivering public services within fixed and limited resources will continue.

Where financial monitoring reports indicate that an overspend is forecast on the NHS Lothian or the Council operational budget for delegated functions, it is agreed by the Parties that the relevant party should take immediate and appropriate remedial action to prevent the overspend. The manager leading this remedial action could be the Director in his or her operational capacity within the affected party.

In the event that such remedial action will not prevent the overspend, then Finance Officer will, together with the relevant Party, develop a proposed recovery plan to address the forecast overspend. The Finance Officer will then present that recovery plan to the Board as soon as practically possible. The Board has to be satisfied with the recovery plan, and the plan is subject to its approval.

#### **Additional Payments by the Parties to the Board**

Where such a recovery plans is projected to be unsuccessful and an overspend occurs at the financial year end, and where there are insufficient reserves held by the Board to meet the overspend, then the Parties may make additional payments to the Board. The Finance Officer and the Parties shall engage in discussion and negotiation about the amounts to be paid by each Party and the date or dates upon which any such payments are to be made.

The Parties recognise that the delivery of delegated functions in accordance with the Strategic Plan depends on their co-operation between each other and with the Board and that all three parties must approach such discussions in good faith, recognising the pressures and constraints on their respective budgets and services. In such discussions the Parties recognise and accept that an overspend is at the risk of the Party incurring the overspend and the residual amount of overspend after usage of reserves must, in the absence of any other agreement, be met by that Party.

Recurring overspends will be considered as part of the following year's budget process. If a solution to the overspend cannot be agreed by the Parties, or is not agreed by the Board, then the dispute resolution mechanism in this Scheme may require to be implemented.

#### **Underspends**

As part of their normal financial management systems, the Parties conduct in-year reviews of financial performance, and occasionally this may lead to a forecast of an underspend at the year-end on one or more budgets. In the event that this happens within the operational budgets then the following shall apply:

- if the underspend is fortuitous and unrelated to any IJB direction then the underspend should be returned to the affected Party (through an adjustment to the payments to the IJB)
- the IJB will retain all other underspends.

In the event that this happens within the operational budgets, any underspend shall be returned to the integration Party delivering that service for the Board, except where the Parties agree that the underspend should be retained by the Board for future use. For example, this could relate to specific management action planned to result in an underspend.

The Board may hold reserves, as determined by its Reserves Policy.

### **Treatment of variations against the amounts set aside for use by the Board**

A process will be agreed between NHS Lothian and the IJB to manage any variations within the set-aside budget. This process will reflect any variations in the activity that was used to establish the set-aside budget. Any cost variations will be managed in the same way as overspends and underspends within the Integrated payment as laid out above. This process will reflect the guidance issued by the Scottish Government - 'Guidance on Financial Planning for Large Hospital Services and Hosted Services'.

### **Redetermination of payments (made under section 1(3) (e)) to the Board**

Redeterminations of payments made by the Parties for the carrying out of integration functions would apply under the following circumstances:

- Additional one off funding is provided to a Party or Parties by the Scottish Government, or some other body, for expenditure in respect of a function delegated to the Board
- The Parties agree that an adjustment to the payment is required to reflect changes in demand and/or activity levels
- Transfer of resources between set aside hospital resources and integrated budget resources delegated to the Board and managed by the Director.
- The Parties need to recover funds to offset a material overspend in their non delegated health and social care budgets subject to availability of funds.

In all cases full justification for the proposed change would be required and both Parties and the Board would be required to agree to the redetermination. The Parties would apply the process used to calculate the payment to the Board (described earlier) to the affected functions.

Any required additional payments will be added to the schedule of payments for the financial year.

### **Redetermination of payments (made under section 1(3) (d)) to the Board**

Redetermination of set-aside payments will be carried out on the same basis as under section 1(3)(e), above.

### **Use of Capital Assets**

The Board, NHS Lothian and the Council will identify all capital assets which will be used in the delivery of the Strategic Plan.

Changes in use of capital assets will flow from the Strategic Plan and the directions issued by the Board to the Parties. The Strategic Plan process will outline any implications or requirements for capital assets.

The Parties will ensure that their capital asset planning arrangements take due cognisance of the above implications and requirements.

The Director of the Board will consult with the Parties to identify the specific need for improvements/changes to assets owned by each which may be required in connection with the carrying out of integration functions. Where a capital investment need is identified, the Director will present a business case to the Parties to make best use of existing resources and develop capital programmes. Any business case will set out how the investment will meet the strategic objectives set out in the Strategic Plan and identify the ongoing revenue costs/savings associated with implementation of the proposals.

The Board, the Council and NHS Lothian will work together to ensure assets required in connection with the carrying out of integration functions are used as effectively as possible and in compliance with the relevant legislation relating to use of public assets.

### **Audit and Financial Statements**

#### **Financial Statements and External Audit**

The legislation requires that the Board is subject to the audit and accounts provisions of a body under section 106 of the Local Government (Scotland) Act 1973 (section 13). This will require audited annual accounts to be prepared with the reporting requirements specified in the relevant legislation and regulations (section 12 of the Local Government in Scotland Act 2003, the Local Authority Accounts (Scotland) Regulations 2014 and other regulations under section 105 of the Local Government (Scotland) Act 1973). These will be proportionate to the limited number of transactions of the Board whilst complying with the requirement for transparency and true and fair reporting in the public sector.

The reporting requirements for the annual accounts are set out in legislation and regulations and will be prepared following the CIPFA Local Authority Code of Practice. The Parties will agree a clear timetable for the preparation of the Board's annual accounts which will incorporate a process to agree any balances between the Board and the Parties.

The Finance Officer of the Board will supply any information required to support the development of the year-end financial statements and annual report for both Parties. Both Parties will need to disclose their interest in the Board as a joint arrangement under IAS 31 and comply in their annual accounts with IAS 27. Both Parties will report the Board as a related party under IAS 24.

The Board financial statements must be completed to meet the audit and publication timetable specified in the regulations (Regulations under section 105 of the Local Government (Scotland) Act 1973).

The Accounts Commission will appoint the external auditors to the Board.

The financial statements will be signed in line with the governance arrangements for the Board and as specified in the Local Authority Accounts (Scotland) Regulations 2014, made under section 105 of the Local Government (Scotland) Act 1973.

In all forms of audit, the Parties are expected to comply with related requests and to aid the audit process.

## **11.0 Participation and Engagement**

Consultation on this Integration Scheme was undertaken in accordance with the requirements of the Act.

The stakeholders consulted in the development of this scheme were

- All prescribed consultees
- Staff of Parties.

As well as the stakeholders described above the draft scheme was posted on the West Lothian Community Health and Care Partnership website to allow wider exposure and comment from the general public.

Formal internal and external consultation was conducted between 15 January and 20 February 2015.

All responses received during the consultation were reviewed and taken into consideration in the production of the final version of this scheme.

A second draft was produced for approval by the Parties to submit to the Scottish Government.

The Parties will enable the IJB to develop a Participation and Engagement Strategy by providing appropriate resources and support. The Participation and Engagement Strategy shall ensure significant engagement with, and participation by, members of the public, representative groups and other organisations in relation to decisions about the carrying out of delegated functions. The Parties will encourage the IJB to access existing forums that the Parties have established, such as West Lothian Citizens' Panel and other networks and stakeholder groups with an interest in health and social care. The strategy shall be developed alongside the Strategic Plan and will be presented for approval to the IJB within one year of the establishment of the IJB. The strategy will be subject to regular review by the IJB.

## **12.0 Information Sharing and Confidentiality**

There is an existing and long standing Pan-Lothian and Borders General Information Sharing Protocol, to which NHS Lothian, City of Edinburgh Council, East Lothian Council, Midlothian Council and West Lothian Council are all signatories. This Protocol is currently being reviewed by a sub group on behalf of the Pan-Lothian Data Sharing Partnership for any minor modifications required to comply with the Regulations. The final Protocol, following consultation, will be recommended for signature by Chief Executives of respective organisations, and the Chief Officers of the IJBs, once they have been appointed by the IJB, on behalf of the Pan-Lothian Data Sharing Partnership.

The Pan-Lothian and Borders General Information Sharing Protocol update will be agreed by 31 March 2015.

Procedures for sharing information between the Council, NHS Lothian, and, where applicable, the IJB will be drafted as Information Sharing Agreements and procedure documents. This will be undertaken by a sub group on behalf of the Pan-Lothian Data Sharing Partnership, who will detail the more granular purposes, requirements, procedures and agreements for each of the Lothian IJBs and their respective delegated functions. This will also form the process for amending the Pan Lothian and Borders General Information Sharing Protocol.

The Council and NHS Lothian will continue to be Data Controller for their respective records (electronic and manual), and will detail arrangements for control and access. The IJB may require to be Data Controller for personal data if it is not held by either by the Council or NHS Lothian.

Arrangements for Third Party organisations access to records will be jointly agreed by all contributing partners prior to access.

Procedures will be based on a single point of governance model. This allows data and resources to be shared, with governance standards, and their implementation, being the separate responsibility of each organisation. Shared datasets governance will be agreed by all contributing partners prior to access.

Following consultation, Information Sharing Protocols and procedure documents will be recommended for signature by the Chief Executives of respective organisations, and the Chief Officers of the Lothian IJBs.

Once established, agreements and procedures will be reviewed bi-annually by the sub group of the Pan-Lothian Data Sharing Partnership, or more frequently if required.

The information sharing agreements and procedures applicable to the IJB will be agreed by 31 March 2015.

## **13.0 Complaints**

Any person will be able to make complaints either to the Council or NHS Lothian. The Parties have in place well publicised, clearly explained and accessible complaints procedures which allow for timely recourse and signpost independent

advocacy services where appropriate. There is an agreed emphasis on resolving concerns locally and quickly, as close to the point of service delivery as possible.

Complaints can be made to:

West Lothian Council by telephoning 01506 280000, emailing [customer.service@westlothian.gov.uk](mailto:customer.service@westlothian.gov.uk), in writing to Customer Service Centre, West Lothian Civic Centre, Howden South Road, Livingston, West Lothian EH54 6FF, in person at any Council office or by filling in the online complaints form.

NHS Lothian by telephoning 0131 536 3370, emailing [craft@nhslothian.scot.nhs.uk](mailto:craft@nhslothian.scot.nhs.uk), in writing to NHS Lothian Customer Relations and Feedback Team, Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG or in person by visiting Waverley Gate.

There are separate complaints regimes and procedures which apply to councils and health boards, statutory and otherwise. The Parties are not able to dictate arrangements that the Board may wish to put in place in relation to the handling of complaints which may be directed at the Board, but the Parties shall ensure that a single gateway is provided for complaints to be made which relate to their performance of the delegated functions, to be managed by the Director as part of the management arrangements to be made by the Parties.

Complaints regarding the delivery of a delegated service will be made to, and dealt with by, the Party that delivers that service, in line with their published complaints procedure and consistent with any statutory complaints handling arrangements that apply. It is the responsibility of the Party receiving the complaint to make sure that it is routed to the appropriate organisation / individual so that a service user only needs to submit a complaint once.

Complaints made to the Board or to one or both of the Parties in relation to the delegated functions shall be allocated by the Director to one of the Parties to address, having regard in particular to the statutory social work services complaints procedure.

The Parties shall co-operate with each other and with the Board in the investigation and handling of complaints in relation to the delegated functions. When a complaint covers both health and social care functions, responsible officers within the Parties will, where necessary, work together to make sure all parts of the complaint are investigated and responded to within established time limits and the complainant is correctly signposted to the options open to them if they remain dissatisfied. Wherever possible there will be a joint response from the identified Party rather than separate responses.

#### **14.0 Claims Handling, Liability & Indemnity**

The Parties agree that the Parties will manage and settle claims arising from the exercise of integration functions in accordance with common law and statute.

#### **15.0 Risk Management**

The Parties already operate an agreed Risk Management Strategy through the past successful operation of the West Lothian Community Health and Care Partnership.

The Parties shall carry that strategy forward prior to and after the establishment of the Board. Each Party has in that strategy identified the risks relevant to existing partnership working arrangements and the Parties shall develop that list to take account of legislative requirements and risks arising from new integrated delivery of the delegated functions. The Director will produce and agree a list of the risks proposed to be monitored and reported by them under the risk management strategy.

The Parties shall provide the support and expertise of their own risk officers in developing and implementing the Board's strategy and risk management measures and procedures. Risk management resources within each partner body will continue to be available to support risk areas that have been delegated to the Board and the development of the Board risk strategy.

An integrated Health and Social Care Risk Register, based on an agreed methodology for the assessment of risk, will be maintained and reviewed at regular intervals.

The Parties shall make arrangements to ensure that the Board will receive regular reports on the risk management strategy.

These arrangements shall be put in place by the Board, supported by the Parties, prior to the date of delegation of the integration functions.

## **16.0 Dispute Resolution Mechanism**

In the event of a failure by the Parties and the Board to reach agreement between or amongst themselves in relation to any aspect of the Scheme or the integration functions, the Director shall use their best endeavours to reach a resolution through discussion and negotiation with the Parties and the Board.

In the event that the matter remains unresolved, a meeting to seek a resolution shall take place amongst the Chief Executives of the Parties, the Chair of the health board, the Leader of the council, the Director and the Chair and Vice-Chair of the Board within 21 days.

In the event that the matter remains unresolved after this stage the Parties will proceed to mediation.

In the event that mediation is unsuccessful then the Parties will notify Scottish Ministers and seek a direction in accordance with s52 of the Act.

## ANNEX 1

### Part 1 Functions delegated by the health board to the Board

#### Functions prescribed for the purposes of section 1(8) of the Act

<i>Column A</i>	<i>Column B</i>
<p><b>The National Health Service (Scotland) Act 1978(a)</b></p> <p>All functions of Health Boards conferred by, or by virtue of, the National Health Service (Scotland) Act 1978</p>	<p>Except functions conferred by or by virtue of –</p> <p>section 2(7) (Health Boards);</p> <p>section 2CB (functions of Health Boards outside Scotland);</p> <p>section 9 (local consultative committees);</p> <p>section 17A (NHS contracts);</p> <p>section 17C (personal medical or dental services);</p> <p>section 17I (use of accommodation);</p> <p>section 17J (Health Boards' power to enter into general medical services contracts);</p> <p>section 28A (remuneration for Part II services);</p> <p>section 38 (care of mothers and young children);</p> <p>section 38A (breastfeeding);</p> <p>section 39 (medical and dental inspection, supervision and treatment of pupils and young persons);</p> <p>section 48 (residential and practice accommodation);</p>



	<p>section 55 (hospital accommodation on part payment);</p> <p>section 57 (accommodation and services for private patients);</p> <p>section 64 (permission for use of facilities in private practice);</p> <p>section 75A (remission and repayment of charges and payment of travelling expenses);</p> <p>section 75B (reimbursement of the cost of services provided in another EEA state);</p> <p>section 75BA (reimbursement of the cost of services provided in another EEA state where expenditure is incurred on or after 25th October 2013);</p> <p>section 79 (purchase of land and moveable property);</p> <p>section 82 (use and administration of certain endowments and other property held by Health Boards);</p> <p>section 83 (power of Health Boards and local health councils to hold property on trust);</p> <p>section 84A (power to raise money, etc., by appeals, collections etc.);</p> <p>section 86 (accounts of Health Boards and the Agency);</p> <p>section 88 (payment of allowances and remuneration to members of certain bodies connected with the health services);</p> <p>section 98 (charges in respect of non residents);</p> <p>and paragraphs 4, 5, 11A and 13 of Schedule</p>
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	<p>1 to the Act (Health Boards);</p> <p>and functions conferred by—</p> <p>The National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989;</p> <p>The Health Boards (Membership and Procedure) (Scotland) Regulations 2001/302;</p> <p>The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000;</p> <p>The National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004;</p> <p>The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004;</p> <p>The National Health Service (Discipline Committees) (Scotland) Regulations 2006;</p> <p>The National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006;</p> <p>The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009;</p> <p>The National Health Service (General Dental Services) (Scotland) Regulations 2010; and</p> <p>The National Health Service (Free Prescription and Charges for Drugs and Appliances) (Scotland) Regulations 2011.</p>
<p><b>Disabled Persons (Services, Consultation and Representation) Act 1986</b></p> <p>Section 7</p>	

(persons discharged from hospital)	
<b>Community Care and Health (Scotland) Act 2002</b>  All functions of Health Boards conferred by, or by virtue of, the Community Care and Health (Scotland) Act 2002.	
<b>Mental Health (Care and Treatment) (Scotland) Act 2003</b>  All functions of Health Boards conferred by, or by virtue of, the Mental Health (Care and Treatment) (Scotland) Act 2003.	Except functions conferred by— section 22 (approved medical practitioners);  section 34 (inquiries under section 33: cooperation);  section 38 (duties on hospital managers: examination, notification etc.);  section 46 (hospital managers' duties: notification);  section 124 (transfer to other hospital);  section 228 (request for assessment of needs: duty on local authorities and Health Boards);  section 230 (appointment of patient's responsible medical officer);  section 260 (provision of information to patient);  section 264 (detention in conditions of excessive security: state hospitals);  section 267 (orders under sections 264 to 266: recall);  section 281 (correspondence of certain persons detained in hospital);  and functions conferred by—  The Mental Health (Safety and Security) (Scotland) Regulations 2000);

	<p>The Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005;</p> <p>The Mental Health (Use of Telephones) (Scotland) Regulations 2005; and</p> <p>The Mental Health (England and Wales Crossborder transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008.</p>
<p><b>Education (Additional Support for Learning) (Scotland) Act 2004</b></p> <p>Section 23 (other agencies etc. to help in exercise of functions under this Act)</p>	
<p><b>Public Services Reform (Scotland) Act 2010</b></p> <p>All functions of Health Boards conferred by, or by virtue of, the Public Services Reform (Scotland) Act 2010</p>	<p>Except functions conferred by— section 31 (public functions: duties to provide information on certain expenditure etc.); and</p> <p>section 32 (public functions: duty to provide information on exercise of functions).</p>
<p><b>Patient Rights (Scotland) Act 2011</b></p> <p>All functions of Health Boards conferred by, or by virtue of, the Patient Rights (Scotland) Act 2011</p>	<p>Except functions conferred by The Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012/36.</p>

**Part 2            Services currently provided by the Health Board which are to be delegated**

- accident and emergency services provided in a hospital
- inpatient hospital services relating to the following branches of medicine—
  - general medicine
  - geriatric medicine
  - rehabilitation medicine
  - respiratory medicine
  - psychiatry of learning disability,
- palliative care services provided in a hospital
- inpatient hospital services provided by general medical practitioners
- services provided in a hospital in relation to an addiction or dependence on any substance
- mental health services provided in a hospital, except secure forensic mental health services
- district nursing services
- services provided outwith a hospital in relation to an addiction or dependence on any substance
- services provided by allied health professionals in an outpatient department, clinic, or outwith a hospital
- the public dental service
- primary medical services provided under a general medical services contract, and arrangements for the provision of services made under section 17C of the National Health Service (Scotland) Act 1978, or an arrangement made in pursuance of section 2C(2) of the National Health Service (Scotland) Act 1978
- general dental services provided under arrangements made in pursuance of section 25 of the National Health (Scotland) Act 1978
- ophthalmic services provided under arrangements made in pursuance of section 17AA or section 26 of the National Health Service (Scotland) Act 1978
- pharmaceutical services and additional pharmaceutical services provided under arrangements made in pursuance of sections 27 and 27A of the National Health Service (Scotland) Act 1978
- services providing primary medical services to patients during the out-of-hours period
- services provided outwith a hospital in relation to geriatric medicine
- palliative care services provided outwith a hospital
- community learning disability services
- mental health services provided outwith a hospital
- continence services provided outwith a hospital
- kidney dialysis services provided outwith a hospital
- services provided by health professionals that aim to promote public health.

**ANNEX 2****Part 1 Functions delegated by the council to the Board**

<i>Column A Enactment conferring function</i>	<i>Column B Limitation</i>
<p><b>National Assistance Act 1948</b> Section 48 (duty of councils to provide temporary protection for property of persons admitted to hospitals etc.)</p> <p><b>The Disabled Persons (Employment) Act 1958</b> Section 3 (provision of sheltered employment by local authorities)</p> <p><b>The Social Work (Scotland) Act 1968</b> Section 1 (local authorities for the administration of the Act)</p> <p>Section 4 (provisions relating to performance of functions by local authorities)</p> <p>Section 8 (research)</p> <p>Section 10 (financial or other assistance to voluntary organisations etc for social work)</p> <p>Section 12 (general social welfare services of local authorities.)</p> <p>Section 12A (duty of local authorities to assess needs)</p> <p>Section 12AZA (assessments under section 12A - assistance)</p> <p>Section 12AA (assessment of ability to provide care)</p>	<p>So far as it is exercisable in relation to another integration function.</p> <p>So far as it is exercisable in relation to another integration function.</p> <p>So far as it is exercisable in relation to another integration function.</p> <p>So far as it is exercisable in relation to another delegated function.</p> <p>Except in so far as it is exercisable in relation to the provision of housing support services.</p> <p>So far as it is exercisable in relation to another delegated function.</p> <p>So far as it is exercisable in relation to another delegated function.</p>

<p>Section 12AB (duty of local authority to provide information to carer.)</p> <p>Section 13 (power of local authorities to assist persons in need in disposal of produce of their work.)</p> <p>Section 13ZA (provision of services to incapable adults)</p> <p>Section 13A (residential accommodation with nursing)</p> <p>Section 13B (provision of care or aftercare.)</p> <p>Section 14 (home help and laundry facilities)</p> <p>Section 28 (The burial or cremation of the dead)</p> <p>Section 29 (power of local authority to defray expenses of parent, etc., visiting persons or attending funerals)</p> <p>Section 59 (provision of residential and other establishments by local authorities and maximum period for repayment of sums borrowed for such provision)</p>	<p>So far as it is exercisable in relation to another delegated function.</p> <p>So far as it is exercisable in relation to another delegated function.</p> <p>So far as it is exercisable in relation to another delegated function.</p>
<p><b>The Local Government and Planning (Scotland) Act 1982</b></p> <p>Section 24(1) (The provision of gardening assistance for the disabled and the elderly)</p>	
<p><b>Disabled Persons (Services, Consultation and Representation) Act 1986(b)</b></p> <p>Section 2 (rights of authorised representatives of disabled persons)</p>	

<p>Section 3 (assessment by local authorities of needs of disabled persons)</p> <p>Section 7 (persons discharged from hospital)</p> <p>Section 8 (duty of local authority to take into account abilities of carer)</p>	<p>In respect of the assessment of need for any services provided under functions contained in welfare enactments within the meaning of section 16 and which are integration functions.</p> <p>In respect of the assessment of need for any services provided under functions contained in welfare enactments (within the meaning set out in section 16 of that Act) which are integration functions.</p>
<p><b>The Adults with Incapacity (Scotland) Act 2000(c)</b></p> <p>Section 10 (functions of local authorities)</p> <p>Section 12 (investigations)</p> <p>Section 37 (residents whose affairs may be managed)</p> <p>Section 39 (matters which may be managed)</p> <p>Section 41 (duties and functions of managers of authorised establishment)</p> <p>Section 42 (authorisation of named manager to withdraw from resident's account)</p> <p>Section 43 (statement of resident's affairs)</p> <p>Section 44 (resident ceasing to be resident of authorised establishment)</p> <p>Section 45 (appeal, revocation etc)</p>	<p>Only in relation to residents of establishments which are managed under integration functions.</p> <p>Only in relation to residents of establishments which are managed under integration functions.</p> <p>Only in relation to residents of establishments which are managed under integration functions.</p> <p>Only in relation to residents of establishments which are managed under integration functions.</p> <p>Only in relation to residents of establishments which are managed under integration functions.</p> <p>Only in relation to residents of establishments which are managed under integration functions.</p> <p>Only in relation to residents of establishments which are managed under integration functions.</p> <p>Only in relation to residents of establishments which are managed under integration functions.</p>



	under integration functions.
<b>The Housing (Scotland) Act 2001</b>  Section 92 (assistance to a registered for housing purposes)	Only in so far as it relates to an aid or adaptation
<b>The Community Care and Health (Scotland) Act 2002</b>  Section 5 (local authority arrangements for residential accommodation outwith Scotland)  Section 14 (payments by local authorities towards expenditure by NHS bodies on prescribed functions)	
<b>The Mental Health (Care and Treatment) (Scotland) Act 2003</b>  Section 17 (duties of Scottish Ministers, local authorities and others as respects Commission)  Section 25 (care and support services etc)  Section 26 (services designed to promote well-being and social development)  Section 27 (assistance with travel)  Section 33 (duty to inquire)  Section 34 (inquiries under section 33: Co-operation)  Section 228 (request for assessment of needs: duty	Except in so far as it is exercisable in relation to the provision of housing support services.  Except in so far as it is exercisable in relation to the provision of housing support services.  Except in so far as it is exercisable in relation to the provision of housing support services.

on local authorities and Health Boards) Section 259 (advocacy)	
<b>The Housing (Scotland) Act 2006</b>  Section 71(1)(b) (assistance for housing purposes)	Only in so far as it relates to an aid or adaptation.
<b>The Adult Support and Protection (Scotland) Act 2007</b>  Section 4 (council's duty to make inquiries)  Section 5 (co-operation)  Section 6 (duty to consider importance of providing advocacy and other services)  Section 11 (assessment Orders)  Section 14 (removal orders)  Section 18 (protection of moved persons property)  Section 22 (right to apply for a banning order)  Section 40 (urgent cases)  Section 42 (adult Protection Committees)  Section 43 (membership)	
<b>Social Care (Self-directed Support) (Scotland) Act 2013</b>  Section 3 (support for adult carers)  Section 5	Only in relation to assessments carried out under integration functions.

<p>(choice of options: adults)</p> <p>Section 6 (choice of options under section 5: assistances)</p> <p>Section 7 (choice of options: adult carers)</p> <p>Section 9 (provision of information about self-directed support)</p> <p>Section 11 (local authority functions)</p> <p>Section 12 (eligibility for direct payment: review)</p> <p>Section 13 (further choice of options on material change of circumstances)</p> <p>Section 16 (misuse of direct payment: recovery)</p> <p>Section 19 (promotion of options for self-directed support)</p>	<p>Only in relation to a choice under section 5 or 7 of the Social Care (Self-directed Support) (Scotland) Act 2013.</p>
<p>PART 2</p> <p>Functions, conferred by virtue of enactments, prescribed for the purposes of section 1(7) of the Public Bodies (Joint Working) (Scotland) Act 2014</p>	
<p><b>The Community Care and Health (Scotland) Act 2002</b></p> <p>Section 4</p> <p>The functions conferred by Regulation 2 of the Community Care (Additional Payments) (Scotland) Regulations 2002</p>	

**Part 2            Services currently provided by the Local Authority which are to be delegated**

- Social work services for adults and older people
- Services and support for adults with physical disabilities, learning disabilities
- Mental health services
- Drug and alcohol services
- Adult protection and domestic abuse
- Carers support services
- Community care assessment teams
- Support services
- Care home services
- Adult placement services
- Health improvement services
- Housing support services, aids and adaptations
- Day services
- Local area co-ordination
- Respite provision
- Occupational therapy services
- Re-ablement services, equipment and telecare.

## **ANNEX 3**

The provisions within this annex are not intended to create legally binding obligations. They are intended to be illustrative of the proposed management arrangements for the functions delegated to the IJB.

The IJB will issue directions to the Parties via its Chief Officer. Those directions will in the main require that the Chief Officer take forward the development of the IJB's Strategic Plan, and lead on ensuring that the plan is delivered. As the Chief Officer will not be personally managing all of the integration functions, ensuring the Strategic Plan is being delivered will include getting assurance from other Chief Officers (for hosted services – see below) and other managers in NHS Lothian and the Council.

The Chief Officer will have direct management responsibility for the following services:

- All Council services described in Annex 2, Part 2.
- All NHS Lothian services describe in Annex 1, Part 2 with the exception of the following:

### Hosted Services

There are NHS Lothian services for which it would not be suitable for the Chief Officer to have operational management responsibility. The factors contributing to determining these services are the degree of medical specialism of the service and scale of the service required for it to be safe, efficient and effective.

It is proposed that the following services will be managed at a pan-Lothian level by one of the Chief Officers of the Lothian IJBs in their role as Joint Director of NHS Lothian (area in brackets confirms the Chief Officer who would manage this service)

- Dietetics (Midlothian)
- Art Therapy (Midlothian)
- Royal Edinburgh and Associated Services (Director of Mental Health accountable to the Chief Officer of Edinburgh and the NHS Lothian Chief Executive)
- Lothian Unscheduled Care Service (East Lothian)
- Integrated Sexual and Reproductive Health Service (Edinburgh)
- Clinical Psychology Services (West Lothian)
- Continence Services (Edinburgh)
- Public Dental Service (including Edinburgh Dental Institute (West Lothian)
- Podiatry (West Lothian)
- Orthoptics (West Lothian)
- Substance Misuse (only Ritson Inpatient Unit, LEAP and Harm Reduction (Director of Mental Health)
- Independent Practitioners (East Lothian via the Primary Care Contracting Organisation)
- SMART Centre (Edinburgh)

Acute Hospitals

The three acute hospitals in NHS Lothian (Western General Hospital, Edinburgh Royal Infirmary, St Johns Hospital) will be managed by the relevant Site Director.



**COUNCIL EXECUTIVE**

**CONSULTATION - COMPULSORY PURCHASE**

**REPORT BY HEAD OF CORPORATE SERVICES**

**A. PURPOSE OF REPORT**

To invite the Council Executive to approve the draft response to the discussion paper issued by the Scottish Law Commission entitled "Discussion Paper on Compulsory Purchase".

**B. RECOMMENDATION**

That the Council Executive approves the draft response as set out in Appendix 1.

**C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; Being honest, open and accountable.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Lands Clauses Consolidation (Scotland) Act 1845; Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; Section 71 of the Local Government (Scotland) Act 1973; Sections 103, 104, 105, 106 and 107 of the Roads (Scotland) Act 1984; Sections 9 and 121 of the Housing (Scotland) Act 1987; Section 189 of the Town and Country Planning (Scotland) Act 1997 and Section 40 of the Housing (Scotland) Act 2006
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	None.
<b>VI Resources - (Financial, Staffing and Property)</b>	None.
<b>VII Consideration at PDSP</b>	Considered at Partnership And Resources PDSP on 24th April 2015 and the recommendation was that the draft response should be referred to Council Executive for

approval.

## **VIII Other consultations**

Property Management & Development, Planning Services , Housing and Operational Services.

## **D. TERMS OF REPORT**

### **D1. Background**

The Scottish Ministers require that Councils should seek wherever practicable to acquire land by negotiation rather than by compulsory purchase. However, there may be cases where it is not possible to acquire land voluntarily and compulsory purchase powers require to be used.

There is a general compulsory purchase power to deal with situations where compulsory purchase is required but not authorised by any other statutory provision. This is section 71 of the Local Government (Scotland) Act 1973. However, this should only be used in the absence of a more specific power. Various statutes contain specific compulsory purchase powers such as the Town and Country Planning (Scotland) Act 1997 and the Housing (Scotland) Act 1987.

At present, legislation relating to compulsory purchase is in various statutes and some of these are very old. The Act relating to procedure is the Lands Clauses Consolidation (Scotland) Act 1845. However, other Acts containing specific compulsory purchase powers dis-apply parts of the 1845 Act and replace them with other provisions. Accordingly, the legislation is presently complex and contained in a range of different statutes.

There is a continuing cost when legislation is unclear. Professionals and members of the public spend a considerable amount of time trying to ascertain its meaning. The present complexity may also act as a barrier to undertaking projects.

The Discussion Paper on Compulsory Purchase which has been published by the Scottish Law Commission can be accessed at <http://www.scotlawcom.gov.uk/consultations/discussion-papers-and-consultative-memoranda-2010-present/> by selecting the option "Current consultations". The Discussion Paper contains a large number of questions and proposals on the detail of the procedure, with a view to bringing the law up to date. The draft response is contained within Appendix 1.

The key question posed by the Discussion Paper is whether the current legislation should be repealed and replaced by a new statute. The proposed response at Appendix 1 agrees that the current legislation should be replaced by a new statute and highlights that it would be useful if the new statute could be in plain English.

### **D2. Consideration at PDSP**

The draft response set out at Appendix 1 was considered at the Partnership And Resources Policy Development And Scrutiny Panel on 24th April 2015. The Panel agreed that the response should be referred to the Council Executive for approval.

## **E. CONCLUSION**

The current legislative framework relating to Compulsory Purchase is complex and confusing. Proposals in the Scottish Law Commission Discussion Paper on Compulsory Purchase Orders would repeal the current legislation and replace with a



new statute, providing greater clarity on the procedures and bringing the law up to date.

## **F. BACKGROUND REFERENCES**

Discussion Paper on Compulsory Purchase which can be accessed at <http://www.scotlawcom.gov.uk/consultations/discussion-papers-and-consultative-memoranda-2010-present/> by selecting the option "Current consultations".

Appendices/Attachments: Appendix 1: Draft Response Form – Discussion Paper On Compulsory Purchase.

Contact Person: Kerri Murphy, Solicitor, Legal Services (01506 281615)

Julie Whitelaw

Head of Corporate Services

Date of meeting: 26th May 2015





## RESPONSE FORM

### DISCUSSION PAPER ON COMPULSORY PURCHASE

We hope that by using this form it will be easier for you to respond to the proposals or questions set out in the Discussion Paper. Respondents who wish to address only some of the questions and proposals may do so. The form reproduces the proposals/questions as summarised at the end of the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please note that information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only a few of the proposals, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk). Comments not on the response form may be submitted via said email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR.

**Name:**

Carol Johnston, Chief Solicitor

**Organisation:**

West Lothian Council

**Address:**

West Lothian Civic Centre

**Email address:**

carol.johnston@westlothian.gov.uk

# Summary of Questions and Proposals

## PART 1: INTRODUCTORY AND GENERAL

### Chapter 1 Introduction

1. The current legislation as to compulsory purchase should be repealed, and replaced by a new statute.

(Paragraph 1.14)

#### Comments on Proposal 1

Agreed. It would be most useful if the new statute could be in plain English.

### Chapter 2 General issues

2. For the purposes of compulsory purchase, is the current definition of “land”, set out in the 2010 Act, satisfactory?

(Paragraph 2.56)

#### Comments on Proposal 2

“Land” includes buildings and other structures, land covered with water, and any right or interest in or over land. The first part of the definition of land is clear and unambiguous. The words “any right or interest in or over land” should be clarified.

3. Should the general power to acquire land compulsorily include power to create new rights or interests in or over land?

(Paragraph 2.70)

#### Comments on Proposal 3

Agreed. Those rights or interests should be clearly set out and should be limited to rights required as a consequence of the Compulsory Purchase Order. If a general power to create new rights was granted it would create challenges as to what can be created.

4. What comments do consultees have on the relationship between the compulsory acquisition of new rights or interests in or over land and general property law?

(Paragraph 2.70)

#### **Comments on Proposal 4**

The creation of new rights and interests would create challenges if there was a general power to create new rights and interests. If a list of rights and interests that could be acquired by CPO were made and that would assist. A caveat to creating new rights and interests is that there may be unintended consequences which follow the creation of new rights and interests. Any such new rights and interests would need to be carefully considered before being adopted into law.

Clarity should be provided on what rights to compensation would be available to owners and others adversely affected by the creation of new rights.

5. Would a general power to take temporary possession, as described in paragraphs 2.71 to 2.73, be useful for acquiring authorities, and, if so, what features should it have?

(Paragraph 2.73)

#### **Comments on Proposal 5**

Such a general power would appear to have its attractions and would be welcomed in practical terms for purposes such as accommodation works. The legislation would need to be carefully worded so that it is only the temporary use and possession that the acquiring authority can make of the land.

Landowners will want to be satisfied that there is clarity in the provisions and that there are penalties imposed on an acquiring authority who breaches the temporary arrangements.

This would fit in with the requirements of Article 1 of the First Protocol of the Human Rights Act 1998.

### **Chapter 3 Human rights**

6. The right to compensation as a result of compulsory purchase in Scots law should be expressly provided for in the proposed new statute.

(Paragraph 3.51)

#### **Comments on Proposal 6**

Agreed. This would provide clarity.

7. Do consultees agree with our view that the current statutory provisions applicable to compulsory purchase in Scotland are compatible with the Convention?

(Paragraph 3.87)

**Comments on Proposal 7**

No.

There is a reference to interference with human rights and that any such interference needs to be the least intrusive. The council considers that the requirement needs to be higher than that. The party affected by the CPO order should, so far as is practicable, be kept in a position where they are no worse off than they were before the exercise of the power. That should include rehoming and payment of financial compensation at a level that allows the party subject to the CPO to not be disadvantaged by the CPO process.

**PART 2: OBTAINING AND IMPLEMENTING A CPO; THE MINING CODE**

**Chapter 5 Procedure for obtaining a CPO**

8. Compulsory purchase by local authorities under local Acts should be carried out by means of the standard procedure.

(Paragraph 5.5)

**Comments on Proposal 8**

Agreed.

9. Is there any reason why the procedures to be set out in the proposed new statute should not be used for compulsory acquisition under any of the enactments listed in Appendix B?

(Paragraph 5.18)

**Comments on Proposal 9**

No.

10. Is there any relevant legislation missing from that list?

(Paragraph 5.18)

**Comments on Proposal 10**

The council is not aware of any relevant legislation missing from the list.

11. Do the powers to survey land, contained in section 83 of the 1845 Act, operate satisfactorily in practice? If not, what alterations should be made?

(Paragraph 5.20)

#### **Comments on Proposal 11**

The legislation does not set out the form of notice or how it should be served. The new Act should set out the form of notice and the information that should be provided in such a notice. It should also reflect the wording of Section 26 of the 2010 Act which refers to service of documents.

The party seeking to exercise a right to survey should be obliged to provide information on what they are proposing. The landowner has no right, in terms of Section 83 to object to or challenge the notice or the proposed action. The new Act should make provision for a landowner affected by such a notice to challenge the notice within a tight timeframe. The grounds for challenge should be set out in the legislation.

Any exercise of rights to survey should carry with it a requirement to pay adequate compensation for losses incurred by owners or others affected by it.

12. Is the current list of statutory objectors satisfactory and, if not, what changes should be made, and why?

(Paragraph 5.24)

#### **Comments on Proposal 12**

Heritable creditors should be included in the list of statutory objectors. The proposed CPO could adversely affect the value of the land that is secured to them.

13. Should there be any further restrictions on the circumstances in which a statutory objector can insist upon a hearing or inquiry?

(Paragraph 5.25)

#### **Comments on Proposal 13**

No.

14. Should the proposed new statute provide that Scottish Ministers must refer cases to the DPEA within a specified time limit and, if so, within what time limit?

(Paragraph 5.26)

**Comments on Proposal 14**

Agreed. Six months would be appropriate.

15. Should the DPEA have discretion over the process for determining objections to a CPO similar to that which they have in relation to planning matters?

(Paragraph 5.30)

**Comments on Proposal 15**

The issues in a planning appeal are not necessarily the same issues that will arise in a CPO appeal. Accordingly, reporters would need to be trained in the issues that arise in a CPO appeal.

With appropriate training leaving the DPEA to determine the process is appropriate.

The DPEA process for dealing with CPO appeals should require the reporter to come to a conclusion as to how the case should be dealt with. The process of evidence gathering should be based on the current planning appeals processes.

16. The timescales for the process of securing CPOs should continue to be set out in subordinate legislation.

(Paragraph 5.32)

**Comments on Proposal 16**

Agreed.

17. Should all CPOs made by local authorities and statutory undertakers require to be confirmed by Scottish Ministers and, if not, in what circumstances should acquiring authorities be able to confirm their own CPOs?

(Paragraph 5.41)

**Comments on Proposal 17**

An acquiring authority should be able to confirm their own CPO on the same basis as that permitted in England and Wales ie that the confirming authority is satisfied that the notification requirements have been complied with, that no objection has been made to the CPO, or that any objection has been withdrawn, and that the CPO can be confirmed without modification.



18. Are the current requirements for advertisement and notification of the making or confirming of a CPO satisfactory and, if not, what changes should be made, and why?

(Paragraph 5.42)

**Comments on Proposal 18**

Bringing in provision for electronic communication of a notice would be appropriate, in addition to, but not instead of traditional methods of communication. Email is not a robust method of communication.

19. An acquiring authority should be able to revoke a CPO.

(Paragraph 5.46)

**Comments on Proposal 19**

Agreed.

20. Should any conditions be attached to a revocation, so that the acquiring authority cannot initiate the same proposal within a certain period, or without specific consent of the Scottish Ministers?

(Paragraph 5.46)

**Comments on Proposal 20**

Agreed. Removal of the ability to bring forward another CPO within 5 years of the revocation of a CPO should give a landowner some peace of mind. 5 years appears to be a reasonable balance between the rights of the landowner and the needs of the acquiring authority.

21. Any person directly affected by the revocation of a CPO should be able to recover reasonable out-of-pocket expenses.

(Paragraph 5.47)

**Comments on Proposal 21**

Agreed. However, there may be other losses in addition such as property blight.

22. Acquiring authorities should be required to register CPOs and revocations of CPOs.

(Paragraph 5.50)

**Comments on Proposal 22**

Agreed.

23. Should there be a new Register of CPOs, or should an entry be made in the Land Register?

(Paragraph 5.50)

**Comments on Proposal 23**

Both.

24. Is the current three year validity period of a confirmed CPO reasonable?

(Paragraph 5.59)

**Comments on Proposal 24**

Agreed that the current three year validity period is reasonable.

25. Should there be a precondition that a CPO will only be confirmed where there is clear evidence that the project is reasonably likely to proceed?

(Paragraph 5.59)

**Comments on Proposal 25**

Agreed. However, consideration requires to be given as to what level of evidence would be required and this should be set out in the new statute.

26. Where the acquiring authority offer to replace a public right of way which will be affected by a proposed development, should the right to insist upon an inquiry be removed?

(Paragraph 5.64)

**Comments on Proposal 26**

Only if the replacement right of way is substantially similar to or better than the one being stopped up. There should be no substantial detriment to the users of the right of way.

27. Where there is to be an inquiry into the loss of a public right of way, should any such inquiry be combined with any inquiry into the making of the related CPO?

(Paragraph 5.64)

**Comments on Proposal 27**

Agreed.

28. Are there any other aspects of the process for making or confirming a CPO upon which consultees wish to comment?

(Paragraph 5.65)

**Comments on Proposal 28**

No.

**Chapter 6 Challenging a (confirmed) CPO**

29. Should the proposed new statute make it clear that objections to a CPO, on the basis of allegations of bad faith on the part of those preparing the Order, are not competent under whatever provision will replace paragraph 15 of Schedule 1 to the 1947 Act?

(Paragraph 6.38)

**Comments on Proposal 29**

Agreed.

30. Should the proposed new statute make it clear that applicants claiming that there has been bad faith in the preparation of a CPO have a right to claim damages from those allegedly responsible?

(Paragraph 6.38)

**Comments on Proposal 30**

In the case of local authorities, any decision to pursue a Compulsory Purchase Order should be approved at Committee and be a decision of the Council rather than individual Officers. Any claims should therefore be against the local authority.

31. Do paragraphs 15 and 16 of Schedule 1 to the 1947 Act operate satisfactorily?

(Paragraph 6.39)

**Comments on Proposal 31**

The council is not aware of any issues with these provisions.

32. Should any challenge to a CPO, on the ground that it is incompatible with the property owner's rights under the Convention, be required to be made during the six-week period for general challenges to a CPO?

(Paragraph 6.44)

**Comments on Proposal 32**

Agreed.

33. Are there circumstances in which such a challenge should be permitted to be made at a later stage?

(Paragraph 6.45)

**Comments on Proposal 33**

No. The council cannot envisage circumstances in which such a challenge could not be formulated at the time the CPO is confirmed.

34. Where an applicant has been substantially prejudiced by a procedural failure, should the court have a discretion to grant some remedy less than the quashing of the CPO, either in whole or in part?

(Paragraph 6.48)

**Comments on Proposal 34**

Agreed. In some circumstances a re-hearing of the inquiry may be appropriate.

35. Should the time period of validity of a confirmed CPO be expressly extended, pending the resolution of any court challenge to the CPO?

(Paragraph 6.51)

**Comments on Proposal 35**

Agreed.

## **Chapter 7     Implementation of a CPO**

36. Any restatement of the law relating to compulsory acquisition should include provision along the lines of sections 6 to 9 of the 1845 Act.

(Paragraph 7.9)

### **Comments on Proposal 36**

Agreed.

37. Should the proposed new statute list all the interests in respect of which a notice to treat should be served?

(Paragraph 7.15)

### **Comments on Proposal 37**

Agreed. This would provide clarity and certainty.

38. It should be made clear that a person claiming to be the holder of an interest in land, and who has not been served with a notice to treat, has the right to raise proceedings to determine (a) that the interest attracts compensation and (b) the amount of that compensation.

(Paragraph 7.19)

### **Comments on Proposal 38**

Agreed. This would protect anyone not served with a notice to treat.

39. Should there be a time limit within which such proceedings must be raised?

(Paragraph 7.19)

### **Comments on Proposal 39**

Agreed. 6 months from becoming aware of the CPO appears appropriate.

40. Should a notice to treat be accompanied by information as to how compensation may be claimed?

(Paragraph 7.25)

**Comments on Proposal 40**

Agreed. This would provide clarity for members of the public.

41. Does paragraph 7 of Schedule 2 to the 1947 Act operate satisfactorily in practice?

(Paragraph 7.29)

**Comments on Proposal 41**

The council is unable to confirm whether this provision operates satisfactorily in practice as the council has used the General Vesting Declaration procedure rather than the notice to treat procedure.

42. When fixing interests in land, should any action taken or alterations made before service of a notice to treat, be considered differently from any action taken or alterations made after such service?

(Paragraph 7.29)

**Comments on Proposal 42**

Compensation should be payable in relation to any alterations made before service of a notice to treat.

43. Does the three-year time limit on the validity of the notice to treat work satisfactorily in practice?

(Paragraph 7.40)

**Comments on Proposal 43**

The council is unable to confirm whether the three year time limit on the validity of the notice to treat works satisfactorily in practice as the council has used the General Vesting Declaration procedure.

44. Should it be competent for an acquiring authority to withdraw a notice to treat and, if so, within what period?

(Paragraph 7.51)

**Comments on Proposal 44**

Agreed that this should be competent. Withdrawal of a notice to treat within six weeks of delivery of a notice of claim by the holder of a relevant interest appears to be reasonable.

45. Should there be any circumstances which would entitle an acquiring authority to withdraw a notice to treat after they have entered on to the land?

(Paragraph 7.51)

**Comments on Proposal 45**

It would appear reasonable to allow an acquiring authority to withdraw a notice to treat after they have entered onto the land where the acquiring authority fully compensates the land owner for the period during which the authority has entered onto the land and for any damage caused by the acquiring authority.

46. Should the period after which entry can proceed, following a notice of entry, be extended to, say, 28 days?

(Paragraph 7.67)

**Comments on Proposal 46**

Agreed.

47. Alternatively, should it be competent for a landowner to serve a counter-notice within a set time limit following service of a notice of entry, whether or not the acquiring authority have entered on to the land?

(Paragraph 7.67)

**Comments on Proposal 47**

Not applicable.

48. For how long should a notice of entry remain valid?

(Paragraph 7.73)

**Comments on Proposal 48**

Six months.

49. Should the acquiring authority be required to serve notice of their intention to make a GVD on holders of a short tenancy or a long tenancy with less than one year to run?

(Paragraph 7.78)

**Comments on Proposal 49**

Agreed.

50. Where a GVD applies to part only of a house, factory, park or garden, do the current provisions adequately safeguard the interests of the acquiring authority and the landowner and, if not, what alterations should be made?

(Paragraph 7.86)

**Comments on Proposal 50**

The council has not encountered this situation in practice. However, the council agrees that the current provisions appear to be a reasonable balance between the landowner's and acquiring authority's interests.

51. Should a GVD be available in all circumstances?

(Paragraph 7.89)

**Comments on Proposal 51**

Agreed that a GVD should be available in all circumstances.

52. Are the time limits for implementing a GVD satisfactory?

(Paragraph 7.89)

**Comments on Proposal 52**

Agreed that the time limits are satisfactory.

53. Compensation should be assessed as at the date when the property vests in the acquiring authority, and interest should run on the compensation from that date.



(Paragraph 7.97)

**Comments on Proposal 53**

Agreed.

54. Where the acquiring authority enter on to the land before it has vested in them, compensation should be assessed as at, and interest on compensation should run from, the date of entry.

(Paragraph 7.98)

**Comments on Proposal 54**

Agreed. This is reasonable.

55. In a situation falling within section 12(5) of the 1963 Act, the date upon which compensation should be assessed, and the date from which interest on the compensation should run, should be the date upon which reinstatement of the building on another site could reasonably be expected to begin.

(Paragraph 7.99)

**Comments on Proposal 55**

Agreed.

56. Should the proposed new statute confer upon the LTS a discretion to fix the valuation date at a date different from any of those mentioned above, where it appears to the LTS to be in the interests of justice?

(Paragraph 7.101)

**Comments on Proposal 56**

Agreed. This would provide flexibility.

57. Where an acquiring authority are in genuine doubt as to whether or not they own a particular part of a parcel of land which they intend to acquire, where title is in the Register of Sasines, they should be able to:
- (a) use a GVD in relation to the whole of the land, and
  - (b) register the GVD in the Land Register.

(Paragraph 7.106)

**Comments on Proposal 57**

Agreed. This would provide clarity.

58. The provisions of sections 84 to 86 of the 1845 Act should be repealed and not replaced.

(Paragraph 7.114)

**Comments on Proposal 58**

Agreed. These provisions are not required. The GVD procedure currently available allows authorities to enter land without paying compensation.

59. What, if any, alterations should be made to the time limits for the various steps involved in the implementation of a CPO?

(Paragraph 7.115)

**Comments on Proposal 59**

The council has not experienced any issues with the time limits involved in implementation of a CPO and therefore does not propose any alterations.

60. Would a new method of implementation of a CPO, along the lines described in paragraph 7.119, be preferable to continuing with the current two methods of implementation?

(Paragraph 7.120)

**Comments on Proposal 60**

Agreed. A single method of implementation would provide clarity.

61. If so, what features should it have in addition to, or in place of, those mentioned above?

(Paragraph 7.120)

**Comments on Proposal 61**

The council does not propose any additional features.

## **Chapter 8     Conveyancing procedures**

62.     Where there has been a confirmed CPO the land can be transferred to the acquiring authority by means of an ordinary disposition registered in the Land Register.

(Paragraph 8.39)

### **Comments on Proposal 62**

Agreed.

63.     Do consultees agree that, if the GVD procedure is retained, the current rules on transfer of the land should continue, namely that:

- (a)     title to the land will vest in the acquiring authority at the end of the period specified in the GVD allowing the authority to take entry to the land, and
- (b)     registration in the Land Register will be required for the acquiring authority to obtain the real right of ownership?

(Paragraph 8.40)

### **Comments on Proposal 63**

Agreed.

64.     The existing methods of transferring the land following a notice to treat should be replaced with a unitary method, to be known provisionally as a Compulsory Purchase Notice of Title. This would be executed by the acquiring authority.

(Paragraph 8.42)

### **Comments on Proposal 64**

Agreed. This would simplify the process.

65.     Do consultees agree that, if the notice to treat and GVD procedures are replaced by a unitary procedure, there should be a single statutory method of transferring the land to the acquiring authority?

(Paragraph 8.43)

**Comments on Proposal 65**

Agreed. This would simplify matters.

66. The acquiring authority should always obtain a valid title where they have used a method of transfer specified in the new legislation.

(Paragraph 8.45)

**Comments on Proposal 66**

Agreed. This would provide certainty.

67. Should the Keeper be required to add a note on the Land Register stating that the title has been acquired by compulsory purchase?

(Paragraph 8.46)

**Comments on Proposal 67**

Agreed. This would provide clarity for members of the public.

68. The acquiring authority may serve a notice to treat on any tenant and extinguish the tenant's right under the lease in return for compensation.

(Paragraph 8.54)

**Comments on Proposal 68**

Agreed.

69. The acquiring authority may serve a notice to treat on any liferenter and bring the liferent to an end in return for compensation.

(Paragraph 8.57)

**Comments on Proposal 69**

Agreed.

70. It should be made clear that, on the acquiring authority becoming owner of the land, any subsisting securities would be extinguished.

(Paragraph 8.65)

**Comments on Proposal 70**

Agreed. This would provide certainty.

71. Do the 1997 Act section 194 and the 2003 Act sections 106 and 107 require reform or consolidation?

(Paragraph 8.75)

**Comments on Proposal 71**

The Discussion Paper highlights that there may be doubt as to what is required to satisfy section 107 (as to whether the authority merely has to have compulsory purchase powers or whether it must show that it could have obtained a confirmed compulsory purchase order in the specific circumstances). This should be clarified.

72. It should be competent to acquire new rights subordinate to ownership by means of a CPNT or GVD or equivalent.

(Paragraph 8.81)

**Comments on Proposal 72**

Agreed.

**Chapter 9 The Mining Code**

73. Should provision along the lines of the Code be included in the proposed new statute and, if so, should any additions or deletions be made?

(Paragraph 9.26)

**Comments on Proposal 73**

Agreed that provisions along the lines of the Code should be included in the proposed new statute. The council's suggestion would be that the wording is in plain English.

**PART 3: COMPENSATION**

**Chapter 11 Valuation of land to be acquired – basic position**

74. The concept of “value to the seller” should continue to reflect any factors which might limit the price which the seller might expect to receive on a voluntary sale.

(Paragraph 11.30)

**Comments on Proposal 74**

Agreed.

75. Should depreciation of the value of the acquired land, caused by its severance from the retained land, be taken into account when assessing its value?

(Paragraph 11.34)

**Comments on Proposal 75**

No.

76. Does the current law take account of negative equity satisfactorily and, if not, what changes should be made?

(Paragraph 11.42)

**Comments on Proposal 76**

Agreed that the current law does take account of negative equity satisfactorily.

77. Provision along the lines of rules 2, 4 and 5 should be included in the proposed new statute.

(Paragraph 11.53)

**Comments on Proposal 77**

Agreed. This appears to be fair and reasonable.

78. Should a test along the lines of the “devoted to a purpose” test be retained?

(Paragraph 11.55)

**Comments on Proposal 78**

Agreed that this test should be retained.

79. In cases of equivalent reinstatement, should there be an onus on the claimant to show that compensation assessed on the basis of market value (and disturbance, where appropriate) would be insufficient for the activity to be resumed on another site?

(Paragraph 11.58)

**Comments on Proposal 79**

Agreed.

80. Should the LTS be entitled to impose conditions on the payment of equivalent reinstatement compensation in order to ensure that such compensation is properly used for the reinstatement in question?

(Paragraph 11.66)

**Comments on Proposal 80**

Agreed. The purpose of compensation is to put the individual into the position they were in before the loss or damage occurred.

**Chapter 12 Valuation of land to be acquired – rule 3 and the “no-scheme” world**

81. How should the “scheme” be defined?

(Paragraph 12.78)

**Comments on Proposal 81**

A wide definition of scheme would be preferred.

82. Should an increase in the value of the land being acquired as a result of the scheme be taken into account for the purpose of assessing compensation?

(Paragraph 12.78)

**Comments on Proposal 82**

No. This would involve looking into the future. It is not appropriate to include a potential increase in value should a scheme go ahead.

83. To what extent should an increase in the value of the land being acquired, as a result of the effect of the scheme on other land being acquired, be disregarded?

(Paragraph 12.78)

**Comments on Proposal 83**

It should be disregarded entirely.

84. Should any such disregard be limited by reference to the time elapsed since the adoption of the scheme or, if not, on what alternative basis should or might it be limited?

(Paragraph 12.78)

**Comments on Proposal 84**

In the event that the scheme is to be adopted in such a short period of time that it would not be reasonable to disregard its effect on the valuation of the land that could be considered, but it would be difficult to make provision for this. However, any disregard should be applied to limit compensation on the basis of speculative or theoretical elements of value.

**Chapter 13 Valuation of land to be acquired – establishing development value**

85. Should the statutory planning assumptions apply to land other than the land which is compulsorily acquired?

(Paragraph 13.14)

**Comments on Proposal 85**

No. The statutory planning assumptions should only apply to land which is compulsorily acquired.

86. Any existing planning permission should continue to be taken into account in assessing the value of the land to be acquired.

(Paragraph 13.19)

**Comments on Proposal 86**

Agreed. This appears to be reasonable.



87. What should be the relevant date for determining whether there is existing planning permission over land to be compulsorily acquired?

(Paragraph 13.22)

**Comments on Proposal 87**

This should be the same as the relevant valuation date.

88. Should there continue to be a statutory assumption that planning permission would have been granted for the acquiring authority's proposals if it were not for the compulsory purchase?

(Paragraph 13.30)

**Comments on Proposal 88**

No. This could lead to complication in assessing value.

89. If so, should this continue to be limited (a) to planning permission which might reasonably be expected to be granted to the public and, (b) by the *Pointe Gourde* principle?

(Paragraph 13.30)

**Comments on Proposal 89**

N/A.

90. The statutory assumption of planning permission for development in terms of paragraph 1 of Schedule 11 to the 1997 Act should be repealed.

(Paragraph 13.34)

**Comments on Proposal 90**

Agreed. Otherwise a windfall could be received by a claimant due to value attributable to rebuilding and alteration rights.

91. Should the statutory assumption of planning permission for development in terms of paragraph 2 of Schedule 11 to the 1997 Act be repealed?

(Paragraph 13.36)

**Comments on Proposal 91**

Agreed. Otherwise windfall compensation is payable where one dwellinghouse is being developed for use as two or more dwellinghouses.

92. In terms of special assumptions in respect of certain land comprised in development plans, what should be the relevant date for referring to the applicable development plan?

(Paragraph 13.40)

**Comments on Proposal 92**

The relevant valuation date.

93. The underlying “scheme” should be deemed to be cancelled, for the purposes of considering statutory planning assumptions, at the time when the CPO is first published.

(Paragraph 13.59)

**Comments on Proposal 93**

Agreed. Waiting until the relevant valuation date appears to be too late.

94. The scope of the underlying “scheme” to be deemed to be cancelled for the purposes of considering statutory planning assumptions, should be the entire scheme and not simply the intention to acquire the relevant land.

(Paragraph 13.61)

**Comments on Proposal 94**

Agreed.

95. Provision along the lines of section 14 of the 1961 Act, as amended, should be included in the proposed new statute.

(Paragraph 13.68)

**Comments on Proposal 95**

Agreed. This would simplify matters.

96. Should the provisions of Part V of the 1963 Act, relating to compensation where there is permission for additional development after the compulsory acquisition, be repealed and not re-enacted?

(Paragraph 13.76)

**Comments on Proposal 96**

Agreed. It is unfair to allow a valuation to stretch on beyond the relevant valuation date up to 10 years. It would be very difficult to budget for projects if compensation could still be payable up to 10 years after the valuation date.

97. If not, should the period for considering subsequent planning permission remain as 10 years?

(Paragraph 13.76)

**Comments on Proposal 97**

No reduce to 3 years.

**Chapter 14 Valuation of land to be acquired - CAADs**

98. Should there be a time limit for applying for a CAAD following the making of the CPO and, if so, what should that limit be?

(Paragraph 14.6)

**Comments on Proposal 98**

Agreed. The time limit should be 3 - 6 months following the making of the CPO.

99. Do CAADs currently provide sufficient information and, if not, what further information should they provide?

(Paragraph 14.12)

**Comments on Proposal 99**

As comprehensive as possible and include details on what level of development would have been permitted.

100. Provision along the lines of section 30(2) of the 1963 Act should be included in the proposed new statute and should apply to statutory planning assumptions as well as to CAADs.

(Paragraph 14.19)

**Comments on Proposal 100**

Agreed. This would fix the date for determination of CAADs as early as possible in the process.

101. When an acquiring authority are considering a CAAD, the proposal to acquire the relevant land, and the underlying scheme, should be assumed to be cancelled at the time when the CPO is first published, with no assumption to be made about what may or may not have happened before that date.

(Paragraph 14.30)

**Comments on Proposal 101**

Agreed. This would provide consistency.

102. The cancellation assumptions in relation to CAADs should be set out expressly in the proposed new statute.

(Paragraph 14.30)

**Comments on Proposal 102**

Agreed. This would be a consistent approach.

103. The same cancellation assumptions should apply to consideration of all potential planning consents, including CAADs.

(Paragraph 14.30)

**Comments on Proposal 103**

Agreed. This would be a consistent approach.

104. Should the relevant date for determining a CAAD be linked to the date for cancellation of the scheme for the valuation of planning assumptions?

(Paragraph 14.31)

**Comments on Proposal 104**

Agreed. This would provide certainty and consistency.

105. Should the parties continue to be entitled to insist upon a public inquiry when appealing against a CAAD decision?

(Paragraph 14.33)

**Comments on Proposal 105**

There should be scope for matters to be dealt with by hearing session as opposed to formal inquiry session as this can be the most efficient way to proceed and would accord with other planning appeal processes.

106. Should there be any change in the current (one month) time limit for appealing against a CAAD?

(Paragraph 14.36)

**Comments on Proposal 106**

It should be changed to 3 months.

107. Should an appeal against a CAAD be made to the LTS rather than to the Scottish Ministers?

(Paragraph 14.53)

**Comments on Proposal 107**

Agreed. The LTS would be impartial.

108. If so, should the inquiry procedure before a DPEA reporter be retained, with the reporter reporting to the LTS rather than to the Scottish Ministers?

(Paragraph 14.53)

**Comments on Proposal 108**

Agreed. The first level inquiry by a DPEA reporter should be retained.

109. Should planning permission, which could reasonably have been expected to be granted as at the relevant valuation date, be assumed to have been granted?

(Paragraph 14.64)

**Comments on Proposal 109**

Agreed. The wording “reasonably” have been expected to be granted is preferable to wording simply stating “would have been granted”.

110. Where none of the statutory assumptions apply should such planning permission be reflected, for the purposes of valuation, in hope value only?

(Paragraph 14.64)

**Comments on Proposal 110**

Agreed. Claimants could submit a CAAD if concerned about unfair assessment of compensation.

111. In any event, should the same criteria be applied in relation to all relevant planning assumptions?

(Paragraph 14.64)

**Comments on Proposal 111**

Agreed, where possible. This would provide a consistent approach.

**Chapter 15 Consequential loss – retained land**

112. The statutory definition of retained land should continue to be based on the effect of the acquisition on that land and not merely on the physical proximity of the retained land to the acquired land.

(Paragraph 15.18)

**Comments on Proposal 112**

Agreed. It is a matter of what is equitable.

113. The proposed new statute should provide that the assessment of compensation for severance or injurious affection should be carried out on a “before and after” basis.

(Paragraph 15.25)

**Comments on Proposal 113**

Agreed that this is the appropriate basis.

114. Claims for injurious affection should be assessed as at the date of severance.

(Paragraph 15.37)

**Comments on Proposal 114**

Agreed. Valuation should be carried out as at the date of severance.

115. Compensation for injurious affection, properly so called, should be limited to damage caused to the market value of the retained land.

(Paragraph 15.44)

**Comments on Proposal 115**

Agreed. This keeps the process simple and costs for loss of business can be claimed under a different head of claim i.e. disturbance. This will prevent double counting.

116. The proposed new statute should confer a discretion on an acquiring authority to carry out accommodation works.

(Paragraph 15.49)

**Comments on Proposal 116**

Agreed. This could reduce the compensation payable by an acquiring authority. There may be issues in agreeing the extent of the accommodation works but it has been suggested as a discretionary right rather than an obligation.

117. Is the current rule, that set-off for betterment applies to land which is “contiguous with or adjacent to the relevant land”, satisfactory?

(Paragraph 15.59)

**Comments on Proposal 117**

No. Betterment should apply regardless of whether the land is contiguous or adjacent as land which is not contiguous or adjacent may also benefit from the public works.

118. The provisions which require any betterment to the retained land to be set off against any compensation paid to the landowner in respect of the acquired land should be repealed and not re-enacted.

(Paragraph 15.70)

**Comments on Proposal 118**

No. The acquiring authority should be able to set off compensation against betterment.

**Chapter 16 Consequential loss - disturbance**

119. The assessment of compensation for disturbance should be carried out separately from the assessment of the market value of the property.

(Paragraph 16.30)

**Comments on Proposal 119**

No. It should be connected to the market value although not form part of the compensation for the purchase of the land. Some of the costs incurred as a result of disturbance should be connected to the value of the property i.e. legal costs.

120. There should be an express statutory provision for disturbance compensation.

(Paragraph 16.34)

**Comments on Proposal 120**

Agreed. This would provide clarity.

121. Should the principle of causation in relation to disturbance compensation be set out in the proposed new statute?

(Paragraph 16.38)

**Comments on Proposal 121**

Agreed. This would provide clarity.

122. The proposed new statute should make it clear that compensation for disturbance is payable from the date of publication of notice of the making of the CPO.

(Paragraph 16.44)



**Comments on Proposal 122**

Agreed. This would provide clarity.

123. The proposed new statute should make it clear that compensation is payable in respect of costs incurred in relation to a compulsory acquisition which does not ultimately proceed.

(Paragraph 16.45)

**Comments on Proposal 123**

Agreed. A landowner may be disadvantaged should they, for example, seek legal advice and the CPO does not proceed.

124. If compensation for disturbance is to be payable from before the confirmation of the CPO, should it include losses caused as a result of lost development potential?

(Paragraph 16.47)

**Comments on Proposal 124**

Agreed, if it can be clearly shown that the loss of development potential was directly attributable to the proposed CPO.

125. Should the proposed new statute enable investment owners to claim a wider range of disturbance compensation?

(Paragraph 16.50)

**Comments on Proposal 125**

Agreed. However, these will need to be considered carefully in order to avoid investment owners manipulating the statute in order to claim greater compensation.

126. Do the current rules of compensation for disturbance work satisfactorily where there are issues of corporate structuring involved?

(Paragraph 16.57)

**Comments on Proposal 126**

On a practical level, the council agrees that the current rules work satisfactorily. As the Discussion Paper highlights, ownership and possession of property may be divided between

more than one company in a corporate group. The rule that disturbance payment is restricted to loss caused to an occupier in possession may mean that the company most adversely affected by a CPO is unable to recover disturbance compensation. As noted in the Discussion Paper, in some circumstances, courts may be willing to look at the reality behind the corporate structure. It would be useful to have express provision in order to make it clear that it is possible to look at the reality behind the corporate structure.

127. Should the proposed new statute remove the impecuniosity rule as it has been established at common law?

(Paragraph 16.69)

**Comments on Proposal 127**

In order for disturbance claims to be treated fairly and reasonably this rule should be removed.

128. Should claimants' personal circumstances be taken into account when considering the assessment of disturbance compensation?

(Paragraph 16.77)

**Comments on Proposal 128**

Agreed on the proviso that it is clearly set out and defined in statute and that it is compensation based on the effect of the compulsory purchase on a person in particular circumstances.

129. Claimants should be under a duty to mitigate loss in terms of compensation for disturbance from the date of publication of notice of the making of the CPO.

(Paragraph 16.78)

**Comments on Proposal 129**

Agreed. This is reasonable.

130. It should be made clear that relocation compensation may be available even where this exceeds the total value of the business.

(Paragraph 16.88)

**Comments on Proposal 130**

No. Extinguishment costs should be paid if these are less than the relocation costs.

131. Should the rules regarding disturbance compensation for the displacement of a business be set out in the proposed new statute and, if so, what, if any, modifications should be made to them?

(Paragraph 16.92)

**Comments on Proposal 131**

Agreed. The council does not propose modifications.

132. Should the valuation date for disturbance compensation be different from the valuation date in relation to the compulsorily acquired land, in particular where GVD procedure is used?

(Paragraph 16.99)

**Comments on Proposal 132**

Agreed. Business loss resulting from the relocation of the business made necessary by the CPO may not be fully determined until the business has moved and sufficient time has elapsed to allow the loss to be quantified.

133. Should it be made clear, in the proposed new statute, that a claim for disturbance compensation on the basis of relocation of a business will only be determined when sufficient time has elapsed following the relocation to enable the extent of the loss to be quantified?

(Paragraph 16.99)

**Comments on Proposal 133**

Agreed. This is reasonable.

134. Section 38 of the 1963 Act should be repealed and not re-enacted.

(Paragraph 16.101)

**Comments on Proposal 134**

Agreed, as it would now appear to be obsolete.

135. Should disturbance payments along the lines of those currently provided for by sections 34 and 35 of the 1973 Act be retained?

(Paragraph 16.104)

**Comments on Proposal 135**

Agreed. This appears to be reasonable.

136. Should the LTS have jurisdiction in relation to any question arising with regard to disturbance payments, whether mandatory or discretionary?

(Paragraph 16.104)

**Comments on Proposal 136**

Agreed. This would allow compensation to be dealt with in the one place.

**Chapter 17 Non-financial loss**

137. Should the minimum period of residence necessary in order to qualify for a mandatory home loss payment be increased and, if so, by how much?

(Paragraph 17.14)

**Comments on Proposal 137**

The council would suggest an increase to 3 years to bring it in line with the current period of validity of a confirmed CPO.

138. Should the current system, of calculating home loss payments as a prescribed percentage of market value, be retained?

(Paragraph 17.21)

**Comments on Proposal 138**

Agreed.

139. If so, should primary legislation provide for the periodic review of the relevant maxima and minima or for an automatic increase (or reduction) to reflect inflation?

(Paragraph 17.21)

**Comments on Proposal 139**

Agreed. It should reflect inflation.

140. As an alternative, should a system, either of a flat rate payment, or of a payment individually assessed in each case, be introduced?

(Paragraph 17.21)

**Comments on Proposal 140**

No.

141. Should the provisions relating to farm loss payments be amended so as to be more flexible and less onerous on the agricultural landowner?

(Paragraph 17.28)

**Comments on Proposal 141**

Agreed, in order to be more equitable for loss of farm land.

142. The proposed new statute should provide for two supplementary loss payments, one for home loss, and one for farm loss, which would, in each case, compensate for all aspects of non-financial loss arising from compulsory purchase.

(Paragraph 17.33)

**Comments on Proposal 142**

Agreed. This would provide transparency and consistency.

**PART 4: RESOLUTION OF DISPUTES; THE CRICHEL DOWN RULES;  
MISCELLANEOUS MATTERS**

**Chapter 18 Process for determining compensation**

143. Sections in the 1845 Act relating to the process of dispute resolution should be repealed and not re-enacted.

(Paragraph 18.4)

**Comments on Proposal 143**

Agreed. As a result of the Lands Tribunal for Scotland many of these provisions are no longer required. This should be dealt with in the new statute.

144. What evidence can consultees provide of shortcomings in the current LTS procedures for determining disputed compensation claims, and what changes should be made?

(Paragraph 18.17)

**Comments on Proposal 144**

The council has not been involved in LTS procedures in relation to determining disputed compensation claims. However, it would be useful if the procedure was as quick as possible with the use of case management.

145. Where land is compulsorily purchased which is subject to a tenancy of under one year, disputes about compensation relating to the tenancy should be referred to the LTS rather than the sheriff court.

(Paragraph 18.19)

**Comments on Proposal 145**

Agreed. This would provide consistency.

146. Should it be made clear, in the proposed new statute, that a six-year time limit to claim compensation runs from the date of vesting (or from the date when the claimant first knew, or could reasonably have been expected to have known, of the date of vesting)?

(Paragraph 18.22)

**Comments on Proposal 146**

Agreed. This would provide clarity.

147. Should it be made clear, in the proposed new statute, that the same time limit operates for any claim of disputed compensation, regardless of whether it follows a notice to treat or a GVD?

(Paragraph 18.22)

**Comments on Proposal 147**

Agreed. This would provide consistency.

148. What, if any, changes should be made to the time limit to claim compensation?

(Paragraph 18.23)

**Comments on Proposal 148**

The six year time limit appears to be reasonable.

149. Should the LTS be given discretion to extend the time limit in some circumstances?

(Paragraph 18.23)

**Comments on Proposal 149**

Agreed. This would allow some flexibility.

150. Should the current rules on expenses be amended to allow the LTS a wider discretion to award claimants all of their reasonable expenses in some situations, even if they are ultimately awarded a smaller sum than had been offered?

(Paragraph 18.26)

**Comments on Proposal 150**

Agreed. Otherwise the process could operate harshly against claimants.

151. Should provision be introduced to allow the LTS to make an order at an early stage, to limit the expenses of a claimant in appropriate cases?

(Paragraph 18.27)

**Comments on Proposal 151**

Agreed. This may help to resolve inequality of arms issues and any sense of injustice felt by claimants in having to take part in a dispute not of their choosing.

152. There should be a prescribed form to claim an advance payment.

(Paragraph 18.29)

**Comments on Proposal 152**

Agreed. This would provide clarity.

153. Are there circumstances in which an acquiring authority should be required to make an advance payment before taking possession?

(Paragraph 18.31)

**Comments on Proposal 153**

Agreed. An example is where businesses or home owners incur relocation expenses before the acquiring authority takes possession.

154. Should it be competent for the LTS to provide an enforceable valuation figure for an advance payment?

(Paragraph 18.33)

**Comments on Proposal 154**

Agreed. This would provide clarity.

155. At what rate should interest be paid on advance payments, and should the acquiring authority be liable for an increased rate if payment is delayed?

(Paragraph 18.34)

**Comments on Proposal 155**

The council proposes that the interest rate should be 4% above Bank of Scotland base rate. It is reasonable that the authority should be liable for an increased rate if payment is delayed.

156. It should be competent, where all the parties agree, for an advance payment to be made to the landowner where the land is subject to a security.

(Paragraph 18.36)

**Comments on Proposal 156**



Agreed. This appears to be reasonable.

157. Should the LTS have discretion to:

- (a) provide for interest from a date earlier than its award, and
- (b) increase the rate of interest where it finds that there has been unreasonable conduct by an acquiring authority?

(Paragraph 18.38)

#### **Comments on Proposal 157**

Agreed. This appears to be reasonable.

158. What are the advantages and disadvantages in resolving disputes in compulsory purchase cases by (a) ADR, and (b) a reference to the LTS?

(Paragraph 18.50)

#### **Comments on Proposal 158**

The council has not been involved in disputes in compulsory purchase cases by either method. Accordingly, the council is unable to highlight any advantages/disadvantages other than those already set out in the Discussion Paper.

159. Can consultees provide evidence of costs incurred in relation to resolving disputes by (a) ADR, and (b) a reference to the LTS?

(Paragraph 18.50)

#### **Comments on Proposal 159**

The council has not incurred such costs and is unable to provide evidence of costs.

### **Chapter 19 Crichel Down Rules**

160. Should the Rules for giving former owners of compulsorily acquired land a right of pre-emption, where the land is no longer required for the purpose for which it was purchased, be placed on a statutory footing?

(Paragraph 19.5)

**Comments on Proposal 160**

Agreed. This would provide clarity.

161. Should the Rules apply to all land acquired by, or under threat of, compulsion?

(Paragraph 19.9)

**Comments on Proposal 161**

Agreed. This would provide consistency.

162. Should the obligation to offer back land continue to be limited to cases where the land has undergone no material change since the date of acquisition?

(Paragraph 19.11)

**Comments on Proposal 162**

Agreed. This appears to be reasonable.

163. Are the current provisions setting out the interests which qualify for an offer to buy back land satisfactory?

(Paragraph 19.12)

**Comments on Proposal 163**

Agreed that the current provisions are satisfactory.

164. Should the same time limit apply in relation to the obligation to offer back land, regardless of the type of land acquired, and how long should that time limit be?

(Paragraph 19.15)

**Comments on Proposal 164**

Agreed.

The obligation to offer back should last for 25 years after the date of acquisition.

165. Should a time limit be introduced for land purchased between 1 January 1935 and 30 October 1992?

(Paragraph 19.15)

**Comments on Proposal 165**

The council's proposal is that the obligation to offer back should last for 25 years after the date of acquisition in all cases.

166. Should the seven exceptions to the obligation to offer back, currently provided for in the Rules, be retained and are there other exceptions which should be included?

(Paragraph 19.16)

**Comments on Proposal 166**

The current exceptions should be retained. The council does not propose any other exceptions.

167. Should the special procedure in paragraph 23 of, and Annex 1 to, the Rules, relating to the obliteration of boundaries in agricultural land, be retained?

(Paragraph 19.17)

**Comments on Proposal 167**

Agreed. This appears reasonable.

168. Do time limits in the current Rules to carry out the process to offer back land operate satisfactorily?

(Paragraph 19.21)

**Comments on Proposal 168**

The proposal set out in the Discussion Paper that an overall time limit of up to eight months should be allowed for the process appears reasonable.

169. Should clawback provisions in terms of the development value of surplus land be time limited and, if so, to what extent?

(Paragraph 19.24)

**Comments on Proposal 169**

Agreed. 10 years appears appropriate.

170. The LTS should have a general jurisdiction to resolve disputes which arise in relation to the disposal of surplus land.

(Paragraph 19.26)

**Comments on Proposal 170**

Agreed. The LTS has experience of dealing with a wide range of compulsory purchase issues.

**Chapter 20 Miscellaneous issues**

171. Should section 89 of the 1845 Act be repealed and not re-enacted?

(Paragraph 20.4)

**Comments on Proposal 171**

Agreed. The provision is redundant. An action for recovery of heritable property using the summary cause procedure could be used. This could be clarified in the new statute.

172. The law on the taking of enforcement action should be amended so as to make it clear that a third party under a back-to-back agreement is entitled to enforce possession by virtue of the CPO.

(Paragraph 20.5)

**Comments on Proposal 172**

Agreed. This would provide clarity.

173. Does section 114 of the 1845 Act work satisfactorily?

(Paragraph 20.10)

**Comments on Proposal 173**

It should be brought into line with compensation for other interests.

174. Where a short tenancy is compulsorily acquired, should account be taken, for the purposes of assessing compensation, of the likelihood that it will be continued or renewed?

(Paragraph 20.18)

**Comments on Proposal 174**

If such a likelihood is contained in the tenancy agreement then it should be taken into account.

175. Provision along the lines of sections 99 to 106 of the 1845 Act should be included in the proposed new statute.

(Paragraph 20.23)

**Comments on Proposal 175**

Agreed. These provisions are clear and should be included in the proposed new statute.

176. Should the proposed new statute provide that any tax liability which the landowner incurs as a result of the compulsory acquisition may be recoverable under the head of disturbance?

(Paragraph 20.27)

**Comments on Proposal 176**

Agreed. It would be unfair if tax costs arising from the CPO could not be recovered.

177. Are there any other aspects of the current compulsory purchase system, not mentioned in this Paper, to which consultees would wish to draw our attention?

(Paragraph 20.29)

**Comments on Proposal 177**

No.

**General Comments**

One new comprehensive statute in plain English would reduce the time spent by professionals in dealing with compulsory purchase and would also assist members of the

public in understanding the process.

Thank you for taking the time to respond to this Discussion Paper. Your comments are appreciated and will be taken into consideration when preparing a report containing our final recommendations.



## **COUNCIL EXECUTIVE**

### **WEST LOTHIAN VILLAGES IMPROVEMENT FUND - APPLICATION**

#### **REPORT BY LINLITHGOW LEAD OFFICER**

##### **A. PURPOSE OF REPORT**

The purpose of this report is to seek approval of the attached report which was heard at Linlithgow Local Area Committee on 19 May 2015. Members agreed with the report but could not approve it as the meeting was inquorate.

##### **B. RECOMMENDATION**

1. It is recommended that Council Executive approves the report.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; making best use of our resources; and working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	The project meets the funding eligibility criteria. There is no requirement for a strategic environmental assessment and the projects do not raise any equality or health issues.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.  We live in resilient, cohesive and safe communities.
<b>VI Resources - (Financial, Staffing and Property)</b>	A total of £1.65m capital fund is available for projects and the proposal can be met from within this budget.
<b>VII Consideration at PDSP</b>	These projects have not been considered by a PDSP. The overall Villages Improvement Fund was considered by Development and Transport PDSP.

## **VIII Other consultations**

The report was considered at the Linlithgow Local Area Committee on 19 May 2015. Members of the Local Area Committee agreed that the report should be forwarded to Council Executive for approval.

## **D TERMS OF THE REPORT**

### **D1 Background**

The Linlithgow Local Area Committee considered the attached report on 19 May 2015. The report recommends distribution of funds from the Village Improvement Fund for the Linlithgow ward. The two members present agreed with the report; however, as the meeting was inquorate, the committee could not approve the proposals. In such cases, the Lead Officer is required to present the report to the Council Executive asking that the views of the Local Area Committee be considered. This report fulfils that requirement.

## **E. CONCLUSION**

The members of the Linlithgow Local Area Committee agreed the content of the attached report; however, due to the meeting being inquorate, it could not approve the proposals. Council Executive is now requested to approve the report on behalf of the Linlithgow Local Area Committee.

## **F. BACKGROUND REFERENCES**

Reports to Development and Transport PDSP (April 2013), Council Executive (May 2013 and 15 April 2014), and Linlithgow Local Area Committee (19 May 2015).

Appendices/Attachments: One

Appendix 1: Linlithgow Local Area Committee -

West Lothian Villages Improvement Fund applications

Contact Person: Douglas Grierson, Community Regeneration Officer, Tel. 01506 281088, [douglas.grierson@westlothian.gov.uk](mailto:douglas.grierson@westlothian.gov.uk)

Graeme Struthers, Lead Officer, Linlithgow Local Area Committee  
26 May 2015





## **LINLITHGOW LOCAL AREA COMMITTEE**

### **WEST LOTHIAN VILLAGES IMPROVEMENT FUND - APPLICATION**

### **REPORT BY HEAD OF PLANNING AND ECONOMIC DEVELOPMENT**

#### **A. PURPOSE OF REPORT**

The purpose of this report is to advise the Local Area Committee of the applications received from within the local area committee area seeking funding from the West Lothian Villages Improvement Fund (WLVIF).

#### **B. RECOMMENDATION**

It is recommended that the Local Area Committee:

1. notes that one application has been received for funding;
2. notes that the proposal meets the eligibility criteria for supported projects;
3. supports the funding for the Newton Panna Court kick pitch project; and
4. agrees that the Head of Planning & Economic Development should make an offer of funding as per the details set out in this report.

#### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; Making best use of our resources; Working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	The project meets the funding eligibility criteria. There is no requirement for a strategic environmental assessment and the project does not raise any equality or health issue.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.  We live in resilient, cohesive and safe

	communities.
<b>VI Resources - (Financial, Staffing and Property)</b>	A total of £1.65m capital fund is available for projects and the proposal can be met from within this budget.
<b>VII Consideration at PDSP</b>	This project has not been considered by a PDSP. The overall Villages Improvement Fund was considered by Development & Transport PDSP.
<b>VIII Other consultations</b>	Area Services.

## **D TERMS OF THE REPORT**

### **D1 Background**

In 2012 the Council Executive agreed the eligibility criteria for a West Lothian Villages Improvement Fund (WLVIF). Funding of £1.65m is available to support eligible schemes with the funding phased over five years. The fund has the following two work streams:

**1) A shop frontage/shop improvement scheme**, to which local independent retailers can apply. This operates in a similar way to the shop frontage improvement schemes for traditional town centres i.e. a grant of up to £750 and no more than 50% of the cost of the shop front improvement.

**2) Small scale village improvements and initiatives**, this can include a number of types of investment, including both physical improvements to the streetscape and investment in community provision:

- Provision of street furniture such as seating, cycle stands and direction signs.
- Improved village gateways (e.g.; through planting, landscaping and/or signage).
- Improved sense of place in village centres through hard landscaping, planting and soft landscape improvements.
- Tidying and landscaping of gap sites within villages.
- Access improvements in and around villages.
- Investment in projects that engage and support young people.
- Investment in other local community facilities.

Three villages within the Broxburn, Uphall and Winchburgh ward are eligible under the scheme.

Distribution of funding is based on village size. In April 2014 Council Executive agreed to full allocations to each village to add to the monies already announced for 2013-14 the following represent the full money allocated to each of the eligible villages in the ward:

- Bridgend £55,000
- Philipstoun £20,000
- Newton £20,000

## **D2 Applications**

The following application has been received for this round of funding:

Newton Community Education Association – Provision of a Panna Court Kick Pitch - The Association is applying for £3,157.50 additional funding to provide a Panna Court style kick pitch on land adjacent to the village playpark. Further adjustments to the design following feedback from the land owner have added to the costs which now require the additional funding to deliver the project. This would allocate the full £20,000 available to the village for the project.

## **E. CONCLUSION**

Three villages within the Linlithgow ward are eligible to apply to the Villages Improvement Fund.

The application from Newton Community Education Association meet the eligibility criteria and the Local Area Committee is asked to support the application.

## **F. BACKGROUND REFERENCES**

Reports to Development and Transport PDSP (April 2013), Council Executive (May 2013 and 15 April 2014), Linlithgow Local Area Committee (September 2013)

Appendices/Attachments:      Appendix 1: Newton Community Education Association Village Improvement Fund Application

Contact Person:

Douglas Grierson, Community Regeneration Officer, Tel. 01506 281088,

[douglas.grierson@westlothian.gov.uk](mailto:douglas.grierson@westlothian.gov.uk)

Alice Sinnet, Economic Development Manager, Tel. 01506 283079,

[alice.sinnet@westlothian.gov.uk](mailto:alice.sinnet@westlothian.gov.uk)

[Hazel Hay, Town Centre Manager, Tel: 01506 283098, hazel.hay@westlothian.gov.uk](mailto:hazel.hay@westlothian.gov.uk)

**Craig McCorriston**

**Head of Planning and Economic Development**

**19 May 2015**

## Appendix 1

### West Lothian Villages Improvement Fund

#### Application form

- Please refer to the guidance notes when completing this form
- Please complete in **BLOCK CAPITAL LETTERS** and use **black ink**
- No project should start or commit expenditure before receiving the approval of grant

#### 1. Applicant Organisation Details

Organisation Name	Newton Community Education Association (NCEA)
Project title	Newton Village Kick Pitch (Panna Court)
Contact person	John Cant
Position	Committee Member (NCEA)
Address	
Telephone number	
Email Address	
Type of organisation	Registered Charity
What date was your organisation formed?	24 March 1998
Are you a charity, please quote your number	SC031598
What are the main activities of your organisation?  (please answer in no more than 100 words)	<p>Newton Community Education Association's method of operation:</p> <ul style="list-style-type: none"><li>• 'It makes grants, donations or gifts to organisations'.</li><li>• 'It carries out activities or services itself'.</li></ul> <p>What services Newton Community Education Association provides:</p> <ul style="list-style-type: none"><li>• 'The advancement of education'.</li><li>• 'The advancement of citizenship or community development'.</li><li>• 'The advancement of public participation</li></ul>

	<p>in sport'.</p> <p>Newton Community Education Association provides services to:</p> <ul style="list-style-type: none"> <li>• 'Children / young people'.</li> <li>• 'Older people'.</li> <li>• 'No specific group, or for the benefit of the community'.</li> <li>• 'Other charities / voluntary bodies'.</li> </ul>
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Do you have an equal opportunities policy or statement? If yes please provide a copy	<b>No</b>
Does your organisation take account of equality issues around age, disability, gender, race, religion or belief?	<b>Yes</b>

Are you applying for other funding, if so, please detail	<p><b>Approved</b></p> <p>£16,842.50 (from VIF)</p> <p><b>Anticipated</b></p>
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## 2. Project details

<b>Council Ward</b>	<b>Newton (West Lothian)</b>
<b>Project location</b>	<b>Newton Village (Next to existing play park )</b>
<b>Project start date</b>	<b>April 2015</b>
<b>Project finish date</b>	<b>June 2015</b>
<b>Estimated Outcome</b>	<b>Build a Panna Court kick pitch facility adjacent to existing play park</b>

<p><b>Project description</b></p> <p>Describe fully the project for which grant is being sought (background and context of the project, description of works).</p> <p>Newton Village has been lacking a 'green space' area for kids to kick a ball</p>
--

around /play on. The existing play facility is a playground with no flat area large enough for playing or kicking a ball.

There is therefore a lot of support in the village for building a facility that creates a bigger area for kids to play in (particular ball games).

The grant is being sought to build a kick pitch facility that will allow 2-8 children to play a number of ball games. The facility will be made up of a play surface, goals and enclosed by a pitch parameter. Outside of the play area there will be grass and a perimeter fence surrounding the area with a gate to and from the existing area.

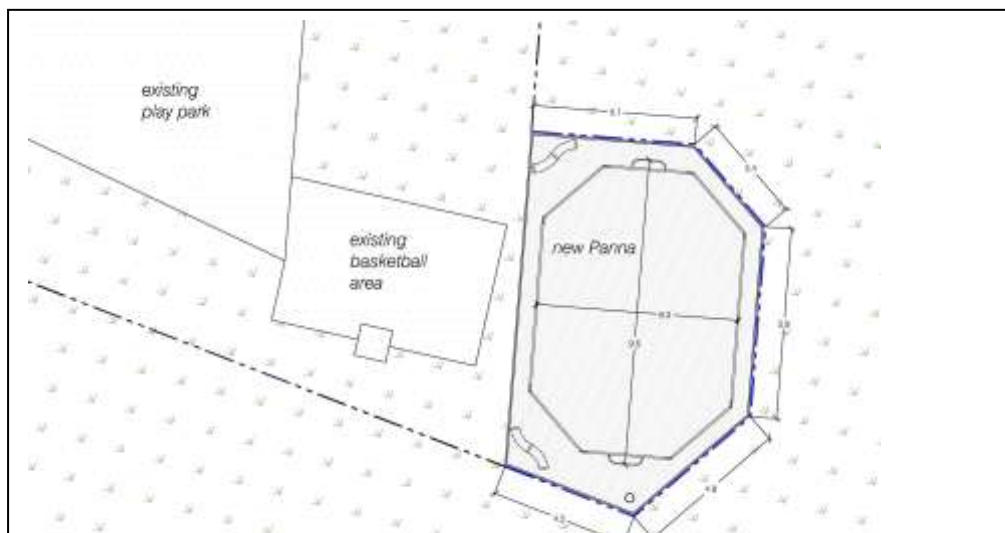
The land itself is owned by Hopetoun estates who have agreed to lease the land (approx. the size of a small tennis court) with a small annual charge to the Committee, who have agreed to cover this.

At the February LAC £16,842.50 was awarded based on the design and quote at the time. However, additional funding is required to deliver the project following further discussion with the landowner. Therefore, we request the remaining £3,157.50 available to the village is allocated to deliver this project.

<b>Partners involved (other local organisations you are working with)</b>	Hopetoun Estate and West Lothian Council Newton Community Council
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<b>Evidence of need</b>
What evidence is there that your project is needed? It is vital that you show that you have identified the need for your project, eg letters of support, or local survey.
The Newton Village has been consulted through an information leaflet where the suggestion of the kick pitch and other ideas were put forward, and there have been several responses in support of the proposed 'kick pitch'. Several noted that currently local children either play in the street

The number of children and the age range have suggested that proposed Panna Court equipment is sufficient for the size of village.



Community Facilities: e.g number of facilities improved -Projected usage
<p>One new football/ball sport facility will be built in the village.</p> <p>The general playpark will be enhanced through the adjacent work.</p>

### 3.Project Costs

<b>Amount of funding requested</b>	<b>£3,157.50</b>
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<b>Item of expenditure</b>	<b>Cost</b>
<b>Kick Pitch/ Panna court build to cover the additional costs based on the new quote for £19,865.70 for the work</b>	<b>£3,157.50</b>

<p><b>Project management</b></p> <p>Describe how your project will be managed and administered including details of any:</p> <ul style="list-style-type: none"> <li>- Design / plans</li> <li>- Implementation arrangements e.g contract tenders</li> <li>- Planning Approval</li> </ul>
<p>This project once funding is granted will be project managed by the NCEA and the work will be delivered on the ground by WL Council's NETS and Land Services parks team.</p> <p>The NCEA contact (John Cant) will be responsible for finalising the</p>



peppercorn lease agreement and for arranging the planning for the facility. WLC will not release the funding until a copy of the signed lease is forwarded.

The WLC team will be responsible for all aspects of the preparing of the area, the build and finishing of the play facility, including the perimeter fencing.

Subsequent to the completion the NCEA accept responsibility of any ongoing maintenance costs, although WLC have indicated that given the small nature of the site any general tidying etc. of the site will be incorporated as part of the normal work in the adjacent WLC park.

#### 4. Declaration

We wish to apply for a Village Improvement Capital Grant. The above is an accurate outline of the proposed project. We have read and understood the guidance notes for applicants and agree to the conditions therein. We understand that the grant may be modified or withdrawn, if all the conditions are not adhered to. We are willing to co-operate in the monitoring of the grant scheme and to meet with their representatives if required to do so. We will acknowledge the support of the Fund in any related PR activities.

<b>Name</b>	John Cant
<b>Position</b>	Committee Member
<b>Organisation</b>	Newton Community Education Association
<b>Date</b>	19/5/15

Please send your completed forms to:

Community Regeneration Officer for your area in the first instance (see guidance notes for contact details)

Or

Hazel Hay  
Town Centre Manager  
Economic Development  
West Lothian Council  
1st Floor North  
West Lothian Civic Centre  
Howden South Road  
Livingston  
EH54 6FF

Tel: 01506 283098

E-mail: [Hazel.Hay@westlothian.gov.uk](mailto:Hazel.Hay@westlothian.gov.uk)

<b>Attachment checklist - as applicable</b>	<b>Please Indicate (x)</b>
Constitution or Articles and Memorandum	X
Committee Members or Directors List	X
Bank Statements - three statements	X
Annual accounts	X



## **COUNCIL EXECUTIVE**

### **WEST LOTHIAN VILLAGES IMPROVEMENT FUND - APPLICATIONS**

#### **REPORT BY FAULDHOUSE AND THE BREICH VALLEY LEAD OFFICER**

##### **A. PURPOSE OF REPORT**

The purpose of this report is to seek approval of the attached report which was heard at Fauldhouse and the Breich Valley Local Area Committee on 19 May 2015. Members agreed with the report but could not approve it as the meeting was inquorate.

##### **B. RECOMMENDATION**

1. It is recommended that Council Executive approves the report.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; making best use of our resources; and working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	The project meets the funding eligibility criteria. There is no requirement for a strategic environmental assessment and the projects do not raise any equality or health issues.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.  We live in resilient, cohesive and safe communities.
<b>VI Resources - (Financial, Staffing and Property)</b>	A total of £1.65m capital fund is available for projects and the proposal can be met from within this budget.
<b>VII Consideration at PDSP</b>	These projects have not been considered by a PDSP. The overall Villages Improvement Fund was considered by Development and Transport PDSP.

## **VIII Other consultations**

The report was considered at the Fauldhouse and the Breich Valley Local Area Committee on 19 May 2015. Members of the Local Area Committee agreed that the report should be forwarded to Council Executive for approval.

## **D TERMS OF THE REPORT**

### **D1 Background**

The Fauldhouse and the Breich Valley Local Area Committee considered the attached report on 19 May 2015. The report recommends distribution of funds from the Village Improvement Fund for the Fauldhouse and the Breich Valley ward. The two members present agreed with the report; however, as the meeting was inquorate, the committee could not approve the proposals. In such cases, the Lead Officer is required to present the report to the Council Executive asking that the views of the Local Area Committee be considered. This report fulfils that requirement.

## **E. CONCLUSION**

The members of the Fauldhouse and the Breich Valley Local Area Committee agreed the content of the attached report; however, due to the meeting being inquorate, it could not approve the proposals. Council Executive is now requested to approve the report on behalf of the Fauldhouse and the Breich Valley Local Area Committee.

## **F. BACKGROUND REFERENCES**

Reports to Development and Transport PDSP (April 2013), Council Executive (May 2013 and 15 April 2014), and Fauldhouse and the Breich Valley Local Area Committee (19 May 2015).

Appendices/Attachments: One

Appendix 1: Fauldhouse and the Breich Valley Local Area Committee -  
West Lothian Villages Improvement Fund applications

Contact Person: Laura Wilson, Community Regeneration Officer, Tel. 01506 281085,  
laura.wilson2@westlothian.gov.uk

Alice Sinnet, Lead Officer, Fauldhouse and the Breich Valley Local Area Committee  
26 May 2015



**FAULDHUSE AND THE BREICH VALLEY LOCAL AREA COMMITTEE**

**WEST LOTHIAN VILLAGES IMPROVEMENT FUND - APPLICATIONS**

**REPORT BY HEAD OF PLANNING AND ECONOMIC DEVELOPMENT**

**A. PURPOSE OF REPORT**

The purpose of this report is to advise the Local Area Committee of the applications received from within the local area committee area seeking funding from the West Lothian Villages Improvement Fund (WLVIF) in 2015/16.

**B. RECOMMENDATION**

It is recommended that the Local Area Committee:

2. notes that three applications have been received for funding;
3. notes that the proposals meet the eligibility criteria for supported projects;
4. supports funding for the projects; and
5. agrees that the Head of Planning & Economic Development should make an offer of funding as per the details set out in this report.

**C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; Making best use of our resources; Working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	The project meets the funding eligibility criteria. There is no requirement for a strategic environmental assessment and the projects do not raise any equality or health issues.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.  We live in resilient, cohesive and safe communities.

<b>VI Resources - (Financial, Staffing and Property)</b>	A total of £1.65m capital fund is available for projects and the proposal can be met from within this budget.
<b>VII Consideration at PDSP</b>	This project has not been considered by a PDSP. The overall Villages Improvement Fund was considered by Development & Transport PDSP.
<b>VIII Other consultations</b>	Area Services.

## **D TERMS OF THE REPORT**

### **D1 Background**

In 2012 the Council Executive agreed the eligibility criteria for a West Lothian Villages Improvement Fund (WLVIF). Funding of £1.65m is available to support eligible schemes with the funding phased over five years. The fund has the following two work streams:

**1) A shop frontage/shop improvement scheme**, to which local independent retailers can apply. This operates in a similar way to the shop frontage improvement schemes for traditional town centres i.e. a grant of up to £750 and no more than 50% of the cost of the shop front improvement.

**2) Small scale village improvements and initiatives**, this can include a number of types of investment, including both physical improvements to the streetscape and investment in community provision:

- Provision of street furniture such as seating, cycle stands and direction signs.
- Improved village gateways (e.g.; through planting, landscaping and/or signage).
- Improved sense of place in village centres through hard landscaping, planting and soft landscape improvements.
- Tidying and landscaping of gap sites within villages.
- Access improvements in and around villages.
- Investment in projects that engage and support young people.
- Investment in other local community facilities.

Eight villages in the Fauldhouse and the Breich Valley ward are eligible under the scheme.

Distribution of funding is based on village size. Total allocations per village are as follows, with the remaining budgets in brackets:

Fauldhouse	£125,000 (£91,514)
West Calder	£125,000 (£123,000)
Longridge	£55,000 (£47,500)
Stoneyburn	£55,000 (£13,278.56)
Addiewell	£55,000 (£53,000)
Polbeth	£55,000 (£51,518)
Breich	£20,000 (£20,000)
Harburn	£20,000 (£0)

## **D2 Applications**

The following applications have been received for this round of funding:

### West Calder & Harburn CDT – Main Street/Union Square Improvements

The application seeks funding to install hanging baskets between the shops on Main Street and Union Square and to locate six planters on the main street. The total amount applied for is £5108. This includes the cost of the hanging baskets, watering equipment, planters, plants and soil and installation. The baskets and planters will be planted up with help from the local primary schools and the maintenance and upkeep will be carried out by the local businesses and the CDT.

### West Calder & Harburn CDT – Path Feasibility Study

This application will allow a feasibility study to be carried out to determine if and where a suitable path could be created between West Calder and Harburn. The path would be suitable for walking and cycling, creating both a leisure and active travel route. The total cost of the study would be £8117 and this includes engineer fees and topography costs.

### Addiewell Community Action Team – Environmental Improvements

This application requests funding to purchase and install four planters and four benches in the village of Addiewell. The planters would be filled by the local primary schools and located throughout the village. The benches would be installed in and around the memorial park. The planters will be maintained by ACAT. The total cost of the project is £3300 and includes the cost of the benches, planters, plants and soil, and the installation costs.

## **E. CONCLUSION**

Eight villages within the Fauldhouse and the Breich Valley ward are eligible to apply to the Villages Improvement Fund. The applications detailed above meet the eligibility criteria of the Village Improvement Fund and the Local Area Committee is asked to support them.

## **F. BACKGROUND REFERENCES**

Reports to Development and Transport PDSP (April 2013), Council Executive (May 2013 and April 2014) and Fauldhouse and the Breich Valley Local Area Committee (August and November 2013; February, June and November 2014, February 2015).

Appendices/Attachments: Three

Appendix 1: West Calder & Harburn CDT – Main Street/Union Square

Appendix 2: West Calder & Harburn CDT – Path Feasibility Study

Appendix 3: Addiewell Community Action Team – Environmental Improvements

Contact Person: Laura Wilson, Community Regeneration Officer, Tel. 01506 281085, [laura.wilson2@westlothian.gov.uk](mailto:laura.wilson2@westlothian.gov.uk)

Alice Sinnet, Economic Development Manager, Tel. 01506 283079, [alice.sinnet@westlothian.gov.uk](mailto:alice.sinnet@westlothian.gov.uk)

**Craig McCorriston**

**Head of Planning and Economic Development**

**19 May 2015**

## Appendix 1

### West Lothian Villages Improvement Fund

#### Application form

- Please refer to the guidance notes when completing this form
- Please complete in **BLOCK CAPITAL LETTERS** and use **black ink**
- No project should start or commit expenditure before receiving the approval of grant

#### 1. Applicant Organisation Details

<b>Organisation Name</b>	West Calder & Harburn Community Development Trust
<b>Project title</b>	Improvements to Main Street and The Square, West Calder
<b>Contact person</b>	[REDACTED]
<b>Position</b>	Chairman
<b>Address</b>	[REDACTED]
<b>Telephone number</b>	
<b>Email Address</b>	[REDACTED]
<b>Type of organisation</b>	Community Development Trust
<b>What date was your organisation formed?</b>	8 <sup>th</sup> April 2013
<b>Are you a charity, please quote your number</b>	SC043914
<b>What are the main activities of your organisation?</b>  <b>(please answer in no more than 100 words)</b>	<p>Following consultation with residents of West Calder and Harburn, the Community Development Trust was formed with our aim being to create:</p> <ul style="list-style-type: none"> <li>- A safe and welcoming place</li> <li>- A superb range of social, educational, shopping and economic opportunities and facilities for recreation, sports and events for people of all ages</li> <li>- A network of paths and trails connecting the village to towns and the countryside</li> <li>- A bright, well kempt, colourful and cheerful natural environment</li> <li>- A townscape that cherishes our fine architectural heritage and encourages first class new buildings</li> <li>- Well connected modern transport links</li> <li>- A rural community with city-class IT communications</li> </ul>



Do you have an equal opportunities policy or statement? If yes please provide a copy	<b>Yes / No</b>
Does your organisation take account of equality issues around age, disability, gender, race, religion or belief?	<b>Yes / No</b>

Are you applying for other funding, if so, please detail  N/A	<b>Approved</b>	<b>Anticipated</b>
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## 2. Project details

<b>Council Ward</b>	Ward 6 Fauldhouse & Breich Valley
<b>Project location</b>	West Calder Main Street, and West Calder Square
<b>Project start date</b>	June 2015
<b>Project finish date</b>	Early 2016
<b>Estimated Outcome</b>	We will have a brighter Main Street and Square improving the experience of living in or visiting West Calder for shopping or leisure activities.

<p><b>Project description</b></p> <p>Describe fully the project for which grant is being sought (background and context of the project, description of works).</p> <p>From research conducted in 2012 and 2013, a Community Action Plan for 2013 to 2018 and Urban Realm Study identified ten key projects that the community of West Calder and Harburn wish to complete. One of the projects that the Community Development Trust is now focusing on is to improve Main Street and The Square aiming to "improve the experience of living in or visiting West Calder and raise the profile of the town" and "to provide a new high quality civic space".</p> <p>The projects to improve Main Street and The Square are in themselves large projects which will be expensive to implement fully. The Trust has decided to focus on splitting these Projects into smaller sub-projects that are easily visible by the community and will have an impact on improving the space for residents and visitors. This is the first step towards achieving some of the main project's outcomes as identified in the research. The next step will be to make other improvements which will be identified through consultation with the Trust, Community Council,</p>
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Business Association and West Lothian Council.

The initial improvements are planned to start in June 2015 with the first job being installation of hanging baskets.

The building and installation of the planters will be a larger job, and will involve Polbeth Community Gardens, local school children and the Community Payback Scheme. This is expected to be a longer-term project starting in the winter of 2015 and being completed in Spring 2016. Please note that quotes for materials, compost and plants for these planters are based on large installations; as the project is developed it is possible that these plans will be revised, with their size being reduced therefore resulting in lower materials costs.

**Partners involved (other local organisations you are working with)**

Polbeth and West Calder Community Gardens Project; St Marys RC Primary School, Polbeth; Parkhead Primary School, West Calder; West Calder Business Association; West Calder & Harburn Community Council; West Lothian's Community Payback Scheme; local retailers and businesses with shops and premises on Main Street and the Square.

Other partners will be introduced when this Project develops to make other improvements to the Main Street and Square. These improvements will include lighting, signage and larger landscaping projects.

**Evidence of need**

What evidence is there that your project is needed? It is vital that you show that you have identified the need for your project, eg letters of support, or local survey.

From the research conducted in 2012 and 2013, the project to carry out works to Union Square was the top priority for local residents.

Research showed that 35% people feel that the village is in a good strategic location with good rail and bus links, close to cities, motorway networks and airports but only 19% said amenities are within walking distance. When asked what they didn't like, 27% said anti-social behaviour, litter, vandalism and under-age drinking was an issue and 25% of people said the village centre appeared run-down with dull unpleasant parks, and poor quality public spaces. Comments included "West Calder High Street lacks interest to attract visitors from outside"; "Union Square does not present a welcoming feel"; "Union Square needs a good clean then needs to be kept clean".

The Community Action Plan identified 5 Themes, with main priorities relevant to this Project being to:

- Underpin the revival of the community – Destination West Calder
- Improving the look of Main Street and the public spaces of the village

The Project aims to make "West Calder and Harburn a thriving, family-friendly, lively and enterprising community with its own unique rural identity".

### **Outcomes**

Describe what your project will deliver.

Village Improvements; e.g Number of sites improved  
Area of landscaping

The Project will make the centre of West Calder a brighter and better place, making West Calder more of a destination for shopping and recreation. This will be achieved by:

- Installing 2 hanging baskets outside each shop (those retailers wishing to take part) 76 baskets in total – including the old CIS building. All shopkeepers and local businesses in the Main Street and The Square have been consulted, with most shops wishing to have 2 outside their premises. 4 baskets are suggested outside Scotmid due to the size of the building and its position on The Square, and 4 baskets being suggested for the old CIS building in the Square and onto Main Street, again to make best use of the empty wall space in that area.
- Introducing 6 large planters located on the Main Street and The Square – these will be large heavy duty planters made using railway sleepers to ensure they last several years, and are not easy to vandalise or move

Community Facilities: e.g number of facilities improved  
-Projected usage

This project focuses on improving the look of all shops in the Main Street, with baskets being hung outside 76 shops, including the old CIS building. Planters will be situated in the Main Street where the trees are but are planned for removal, and the Square. The planters will be sturdy and robust enough to make a big impact on the area, whilst being too large to kick over.

We have visited each shop and business on the Main Street and in The Square, speaking to them about how to improve the area. They are all enthusiastic about having a brighter and more attractive Main Street and Square and have committed to maintaining the hanging baskets and planters outside their shops or businesses. We are also planning to recruit volunteers with the help of Polbeth and West Calder Community Gardens to maintain the planters in particular, over the coming years.

### **3.Project Costs**

**Amount of funding requested**

**£5108**

<b>Item of expenditure</b>	<b>Cost</b>
Supply and Fitting of Hanging Basket Brackets 76 @ £22 each (quote from local joiner firm)	£1672
Hanging Baskets and linings 76 @ £6 each	£456
Compost for hanging baskets	£40
Flowers/plants for hanging baskets	£338
Wood for planters – 6 large heavy duty planters made using railway sleepers – 36 sheets @ £22 each	£792
Compost for planters	£300
Flowers/Plants for planters	£910
Watering equipment x6	£600
<b>TOTAL</b>	<b>£5,108</b>

### **Project management**

Describe how your project will be managed and administered including details of any:

- Design / plans
- Implementation arrangements e.g contract tenders
- Planning Approval

To try to work with a number of local community projects, we will source wood from Beecraigs Sawmill and have asked West Lothian Community Payback Scheme to construct them. Due to their size, wood will be stored at the Council's Depot on Eagle Brae and will be constructed over the Autumn months and moved to site one planter at a time for planting up. This is a large scale project for the Payback Scheme and the Polbeth Gardens Project and due to the seasonality of the growing nature of the project, we aim to start the planter aspect of the project towards the end of 2015, completing in Spring 2016.

The planters will be planted up using plants and flowers provided by Polbeth and West Calder Community Garden Project who will assist the Trust to recruit volunteers to manage this project. Children from Parkhead Primary and St Mary's RC Primary School in Polbeth will work with volunteers from Polbeth and West Calder Community Gardens to nurture the plants and then plant them into the baskets and planters. This will be used by both schools as part of their eco-programme .

We will use a local joiner to safely hang the hanging baskets. The price quoted for this is relatively high but we need to ensure strong brackets are used and securely and safely hung on walls, in places which will be low enough for maintenance and watering, whilst being high enough to ensure they are not an obstacle or can be tampered with.

### **4. Declaration**

We wish to apply for a Village Improvement Capital Grant. The above is an accurate outline of the proposed project. We have read and understood the guidance notes for applicants and agree to the conditions therein. We understand that the grant may be modified or withdrawn, if all the

conditions are not adhered to. We are willing to co-operate in the monitoring of the grant scheme and to meet with their representatives if required to do so. We will acknowledge the support of the Fund in any related PR activities.	
<b>Name</b>	██████████
<b>Position</b>	Chairman
<b>Organisation</b>	West Calder & Harburn Community Development Trust
<b>Date</b>	29 <sup>th</sup> April 2015

Please send your completed forms to:

Catherine Duffin  
Administration Assistant  
Regeneration & Employability  
Area Services  
West Lothian Council  
2nd Floor North  
West Lothian Civic Centre  
Howden South Road  
Livingston  
EH54 6FF

Tel: 01506 283275

E-mail: [Catherine.duffin@westlothian.gov.uk](mailto:Catherine.duffin@westlothian.gov.uk)

<b>Attachment checklist - as applicable</b>	<b>Please Indicate (x)</b>
Constitution or Articles and Memorandum	x
Committee Members or Directors List	x
Bank Statements - three statements	x
Annual accounts	x

## Appendix 2

### West Lothian Villages Improvement Fund

#### Application form

- Please refer to the guidance notes when completing this form
- Please complete in **BLOCK CAPITAL LETTERS** and use **black ink**
- No project should start or commit expenditure before receiving the approval of grant

#### 3. Applicant Organisation Details

<b>Organisation Name</b>	West Calder & Harburn Community Development Trust
<b>Project title</b>	Linking Harburn to West Calder – Paths Feasibility Study
<b>Contact person</b>	[REDACTED]
<b>Position</b>	Committee Member
<b>Address</b>	[REDACTED]
<b>Telephone number</b>	
<b>Email Address</b>	[REDACTED]
<b>Type of organisation</b>	Community Development Trust
<b>What date was your organisation formed?</b>	8 <sup>th</sup> April 2013
<b>Are you a charity, please quote your number</b>	SC043914
<b>What are the main activities of your organisation?</b>  <b>(please answer in no more than 100 words)</b>	Following consultation with residents of West Calder and Harburn, we aim to create: <ul style="list-style-type: none"><li>- A safe and welcoming place</li><li>- A superb range of social, educational, shopping and economic opportunities and facilities for recreation, sports and events for people of all ages</li><li>- A network of paths and trails connecting the village to towns and the countryside</li><li>- A bright, well kempt, colourful and cheerful natural environment</li><li>- A townscape that cherishes our fine architectural heritage and encourages first class new buildings</li><li>- Well connected modern transport</li><li>- A rural community with city-class IT communications</li></ul>

Do you have an equal opportunities policy or statement? If yes please provide a copy	<b>Yes / No</b>
Does your organisation take account of equality issues around age, disability, gender, race, religion or belief?	<b>Yes / No</b>

Are you applying for other funding, if so, please detail  N/A	<b>Approved</b>	<b>Anticipated</b>
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#### 4. Project details

<b>Council Ward</b>	Ward 6 Fauldhouse & Breich Valley
<b>Project location</b>	Path linking Harburn to West Calder
<b>Project start date</b>	June 2015
<b>Project finish date</b>	September 2015
<b>Estimated Outcome</b>	A technical feasibility study will be completed to inform the future development of a paths network linking West Calder to Harburn.

<b>Project description</b>
Describe fully the project for which grant is being sought (background and context of the project, description of works).
<p>In 2012 consultation was conducted which lead to West Calder and Harburn Community Action Plan 2013 to 2018; this research was supported by an Urban Realm Study completed in 2013. Ten projects were identified and the Community Development Trust has focused initially on five projects, including this project to improve links between Harburn and West Calder. The aim of this project is to "improve the connectivity and material quality of the surrounding path network" and to make the path network fit for purpose.</p> <p>A steering group will be formed to include local landowners affected by the existing right of way, Scottish Wildlife Trust, Paths for All and other key</p>

stakeholders who are being identified.

We are seeking funding to employ a specialist consultant to conduct a Feasibility Study which will:

- Review the existing right of way from West Calder and advise on how best to improve this making it fit for purpose
- Advise whether the existing right of way can be developed or improved to become a multi-use path enabling access by all including wheelchairs, buggies, and bikes
- Look at other options making use of the B7008 road running between West Calder and Harburn
- Advise on resources required to complete the path or paths, depending on outcome of Feasibility Study
- Advise on best use of materials, way-markers, styles, gates etc. ensuring access for all
- Advise on how best to integrate and accommodate local biodiversity and wildlife into the path network making it an enjoyable walk whilst also looking at how to make it an educational resource for local schools
- Advise on costs associated with the above
- Advise on how best to link to other path networks in the area, including that path network from Cobbinshaw and Pirriellaw which is being completed by the WatIf Project to link the villages of Tarbrax, Auchingray and Woolfords to West Calder.

The completed Feasibility Study will inform the Trust on what option to take, the timescales to complete the project and costs associated with the project. The Trust will then move on to secure funding to complete the path construction.

**Partners involved  
(other local  
organisations you  
are working with)**

Woolfords, Auchengray and Tarbrax Improvement Foundation; Parkhead Primary School, West Calder; St Marys RC Primary School, Polbeth; Paths for All; Polbeth and West Calder Community Gardens. We will also be approaching Scottish Wildlife Trust, West Lothian Access Forum and local landowners to be part of this Group.

**Evidence of need**

What evidence is there that your project is needed? It is vital that you show that you have identified the need for your project, eg letters of support, or local survey.

Consultation carried out in 2012 and 2013 to inform the Community Action Plan 2013 to 2018 identified five themes, one of which was "Roads, paths, traffic and transport". Main Priorities from this theme included "to develop a better path network for walking and cycling".

From research conducted, only 21% of those questioned stated they had good access to surrounding countryside and hills, whilst 28% said they didn't like the inconsiderate driving along rural roads, and "not being able to cycle safely with my children" and "the number of HGV vehicles and others not keeping to speed limits".



**Outcomes**

Describe what your project will deliver.

Village Improvements; e.g Number of sites improved  
Area of landscaping

This project will focus on completion of a technical feasibility study. This will include consultation with local residents and engagement with local groups and organisations that have already shown an interest in being part of this study and the development of the paths network which we hope will be started, based on the outcomes of the feasibility study.

One option may be to develop the existing right of way which runs from West Calder through farmland, over Harwood Water, runs past Hermand Birchwood Wildlife Reserve, terminating at Coalheughhead near Broadmeadow, leading to Harburn Golf Club.

The second option will focus on improving the B7008 between West Calder and Harburn.

Community Facilities: e.g number of facilities improved  
-Projected usage

A key part of the Feasibility Study will be to gauge expected usage of an improved path network and this will be done by speaking with local school children and families and residents of both West Calder and Harburn to see how many people would use such a path network and how they would use it – walking, cycling, running etc. In addition research will be done through the existing cycle groups (with membership around 300 local cyclists) which use West Calder as a departure point every Tuesday evening (weather permitting) to access cycling routes into the Pentlands and North Lanarkshire (organised through Pedal Power based in West Calder).

The feasibility study will advise the Community Development Trust on the best option to pursue, the costs that will be incurred as a result of this, what partners will bring to the development of the paths network project, other resources needed and the timescale for completion of the paths project.

**3.Project Costs**

<b>Amount of funding requested</b>	<b>£8117</b>
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<b>Item of expenditure</b>	<b>Cost</b>
Feasibility Study	£5913
Engineer	£1016
Topography Survey	£1188
<b>TOTAL (inc VAT)</b>	<b>£8117</b>

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### **Project management**

Describe how your project will be managed and administered including details of any:

- Design / plans
- Implementation arrangements e.g contract tenders
- Planning Approval

The project will be managed by a Steering Group which is being established at present, including landowners, Paths for All, Scottish Wildlife Trust and other local stakeholders who have expressed an interest in becoming involved in this project (previously mentioned).

A firm experienced in landscape feasibility projects will conduct the Study and will sub-contract engineering and topography surveys as required.

We will work with Paths for All throughout this Project, seeking their advice and guidance about the feasibility study, as well as then moving onto the clearing and construction of any new paths or improvement of the existing pathway and the tender stages for contractors as well as seeking funding.

We are keen to incorporate local school children already involved with Polbeth and West Calder Community Gardens Project, to engage with them about how they would like to use the paths around the theme of biodiversity and wildlife, and what educational elements could be included through use of way-markers, information boards and making use of hands-on educational resources.

## **5. Declaration**

We wish to apply for a Village Improvement Capital Grant. The above is an accurate outline of the proposed project. We have read and understood the guidance notes for applicants and agree to the conditions therein. We understand that the grant may be modified or withdrawn, if all the conditions are not adhered to. We are willing to co-operate in the monitoring of the grant scheme and to meet with their representatives if required to do so. We will acknowledge the support of the Fund in any related PR activities.

<b>Name</b>	
<b>Position</b>	Committee Member
<b>Organisation</b>	West Calder & Harburn Community Development Trust
<b>Date</b>	29 <sup>th</sup> April 2015

Please send your completed forms to:

Catherine Duffin  
Administration Assistant  
Regeneration & Employability  
Area Services  
West Lothian Council  
2nd Floor North  
West Lothian Civic Centre  
Howden South Road  
Livingston  
EH54 6FF

Tel: 01506 283275

E-mail: [Catherine.duffin@westlothian.gov.uk](mailto:Catherine.duffin@westlothian.gov.uk)

<b>Attachment checklist - as applicable</b>	<b>Please Indicate (x)</b>
Constitution or Articles and Memorandum	x
Committee Members or Directors List	x
Bank Statements - three statements	x
Annual accounts	x

## Appendix 3

### West Lothian Villages Improvement Fund

#### Application form

- Please refer to the guidance notes when completing this form
- Please complete in **BLOCK CAPITAL LETTERS** and use **black ink**
- No project should start or commit expenditure before receiving the approval of grant

#### 5. Applicant Organisation Details

<b>Organisation Name</b>	<b>Addiewell Community Action Team (ACAT)</b>
<b>Project title</b>	<b>Environmental Improvements</b>
<b>Contact person</b>	
<b>Position</b>	<b>Member of ACAT President of Addiewell Gala Committee</b>
<b>Address</b>	
<b>Telephone number</b>	
<b>Email Address</b>	
<b>Type of organisation</b>	<b>Community Group</b>
<b>What date was your organisation formed?</b>	<b>2013</b>
<b>Are you a charity, please quote your number</b>	<b>No</b>
<b>What are the main activities of your organisation?</b>  <b>(please answer in no more than 100 words)</b>	<b>ACAT is a partnership of local services/agencies, community groups and schools. Its purpose is to work for the benefit of the village of Addiewell. ACAT meetings are attended by reps from the community council, gala day committee, Pitstop, WLYAP, local primary schools, CLD and, Public Health and Community Regeneration officers.</b>

Do you have an equal opportunities policy or statement? If yes please provide a copy	<b>No</b>
Does your organisation take account of equality issues around age, disability, gender, race, religion or belief?	<b>Yes</b>

Are you applying for other funding, if so, please detail	<b>Approved</b>	<b>Anticipated</b>
NO		

## 6. Project details

<b>Council Ward</b>	<b>Fauldhouse and the Breich Valley</b>
<b>Project location</b>	<b>Addiewell</b>
<b>Project start date</b>	<b>July 2015</b>
<b>Project finish date</b>	<b>September 2015</b>
<b>Estimated Outcome</b>	<b>Improvement to the look of the village</b>

### Project description

Describe fully the project for which grant is being sought (background and context of the project, description of works).

At recent meetings of Addiewell Community Action Team (ACAT) the group discussed potential improvements which could be made to enhance the appearance of the village.

The group were approached by West Calder High School and offered a planter for the village to celebrate the schools 50<sup>th</sup> birthday. In addition to this the group decided it would enhance the village if additional planters and benches were positioned at key locations.

Funding is now sought from the Village Improvement Fund to allow us to purchase four benches and four planters. The planters and benches will bring immediate visual impact and brighten up the village.

### Partners involved (other local organisations you are working with)

- The Pitstop
- West Lothian Youth Action Project
- Addiewell Gala Day Committee
- Local Primary Schools
- West Lothian Council

### Evidence of need

What evidence is there that your project is needed? It is vital that you show that you have identified the need for your project, eg letters of support, or local survey.

The ACAT meeting, which is chaired by Angela Jenkins, Public Health Nurse within the WL Council Community Regeneration Team brings

together representatives from all of the local groups listed above. The Village Improvement Fund has been discussed at recent meetings of ACAT and it was at these meetings that the above project was suggested and agreed. The groups mentioned above are all supportive of this application.

### **Outcomes**

Describe what your project will deliver.

Village Improvements; e.g Number of sites improved  
Area of landscaping

The project will bring a noticeable, visible improvement to the village of Addiewell. It will be delivered in partnership with local community groups and the primary schools.

Community Facilities: e.g number of facilities improved  
-Projected usage

### **3.Project Costs**

<b>Amount of funding requested</b>	<b>£3300</b>
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<b>Item of expenditure</b>	<b>Cost</b>
<b>4 Anti Vandal Steel Benches</b>	<b>£1800</b>
<b>4 Planters</b>	<b>£600</b>
<b>Plants/Soil</b>	<b>£400</b>
<b>Installation</b>	<b>£500</b>

### **Project management**

Describe how your project will be managed and administered including details of any:

- Design / plans
- Implementation arrangements e.g contract tenders
- Planning Approval

The project will be managed and administered by ACAT. It is a small scale project which will require minimal input from our members but provide a valuable facility for the village.

Initial planting will be carried out by the schools and maintenance will be organised by ACAT. All groups are aware of the requirement to maintain the planters on an ongoing basis.

## 6. Declaration

We wish to apply for a Village Improvement Capital Grant. The above is an accurate outline of the proposed project. We have read and understood the guidance notes for applicants and agree to the conditions therein. We understand that the grant may be modified or withdrawn, if all the conditions are not adhered to. We are willing to co-operate in the monitoring of the grant scheme and to meet with their representatives if required to do so. We will acknowledge the support of the Fund in any related PR activities.

<b>Name</b>	
<b>Position</b>	Member
<b>Organisation</b>	Addiewell Community Action Team
<b>Date</b>	04/05/2015

Please send your completed forms to:

Catherine Duffin  
Administration Assistant  
Regeneration & Employability  
Area Services  
West Lothian Council  
2nd Floor North  
West Lothian Civic Centre  
Howden South Road  
Livingston  
EH54 6FF

Tel: 01506 283275

E-mail: [Catherine.duffin@westlothian.gov.uk](mailto:Catherine.duffin@westlothian.gov.uk)

<b>Attachment checklist - as applicable</b>	<b>Please Indicate (x)</b>
Constitution or Articles and Memorandum	x
Committee Members or Directors List	x
Bank Statements - three statements	x
Annual accounts	x







## **COUNCIL EXECUTIVE**

### **SUPPLEMENTARY PLANNING GUIDANCE: "PLANNING FOR NATURE - DEVELOPMENT MANAGEMENT & WILDLIFE"**

#### **REPORT BY HEAD OF PLANNING AND ECONOMIC DEVELOPMENT**

##### **A. PURPOSE OF REPORT**

The purpose of this report is to inform Council Executive of the contents and purpose of Supplementary Planning Guidance (SPG) on "*Planning for Nature: Development Management and Wildlife*", and to consider adoption of the SPG as council policy.

##### **B. RECOMMENDATION**

It is recommended that the Council Executive:

1. notes the contents of the SPG relating to "*Planning for Nature: Development Management and Wildlife*" (Appendix 1);
2. notes the minor comments received following consultation on the draft; and
3. agree to adopt the SPG as statutory guidance.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	<ul style="list-style-type: none"><li>• Focusing on our customers' needs;</li><li>• being honest, open and accountable;</li><li>• making best use of our resources; and</li><li>• working in partnership.</li></ul>
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	<p>The SPG accords with the adopted West Lothian Local Plan (WLLP) policies ENV 2, 3, 4 &amp; 5 which confirm the council's intention to protect natural heritage and wildlife features in West Lothian. Policy IMP 14 endorses planning policy guidance related to the local plan.</p> <p>No SEA, Equality, Health or Risk Assessment issues.</p>
<b>III Implications for scheme of delegation</b>	None.
<b>IV Impact on performance and performance indicators</b>	None.

<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	Outcome 8 – We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	Cost of consultants fully funded by SNH.
<b>VII</b>	<b>Consultations at PDSP</b>	The draft SPG was considered by Development & Transport PDSP on 3 April 2014.
<b>VIII</b>	<b>Other consultations</b>	Scottish Natural Heritage as part funders. The draft SPG was also the subject of public consultation.

## **D. TERMS OF REPORT**

### **D1 Background**

In autumn 2013, Scottish Natural Heritage (SNH) approached West Lothian Council to assist with a case study for the production of a best practice example of supplementary planning guidance (SPG) for developers relating to natural heritage issues and the planning process.

SNH wished to use this guidance to show other Scottish local authorities a simple, up-to-date template of how they could produce their own authority specific supplementary planning guidance.

Consultants, Natural Capital, were appointed and managed by SNH to produce the draft SPG over winter 2013 / spring 2014 with detailed input from the council's Planning Services section. The consultants reviewed existing relevant information from across the UK.

This resulting guidance (see Appendix 1) sets out how the biodiversity (wildlife and habitats) and geodiversity (rocks, soils and fossils) of the West Lothian area will be taken into account when considering all development proposals.

It aims to help developers fully consider the wildlife and habitat implications of proposals which need planning permission. When adopted, the guidance will be a material consideration in all planning applications.

The finalised guidance will be incorporated into the forthcoming West Lothian Local Development Plan.

### **D2 Structure and content of SPG “*Planning for Nature: Development Management and Wildlife*”**

The text is structured over the following seven sections to cover:

#### **1. Introduction:**

- Purpose of this Guidance
- How to use this Guidance
- Key to Text Boxes

## **2. Policy Context and Designated Sites:**

- International Sites
- National Sites
- Local Sites

## **3. Key Habitats and Protected Species in West Lothian:**

- Protected Species

## **4. Site Appraisal and Ecological Surveys:**

- Initial Site Appraisal
- Appropriate Timing of Surveys

## **5. Good Design and Mitigation:**

- Mitigation
- Enhancement
- Management

## **6. Assessment of Planning Applications:**

- Wildlife and Habitat considerations when determining Planning Applications

## **7. Licensing Requirements:**

- Licenses for Protected Species
- Invasive Non-Native Species

Finally, there are three appendices as follows:

A - Development and the role of Scottish Natural Heritage;

B - List of Relevant Legislation; and

C - Initial Site Audit Checklist.

The concise supplementary guidance provides web-links to key information sources on planning, development, habitats and wildlife. It is laid out with related colour photographs, diagrams and simple checklist charts which developers and agents can follow when preparing their planning applications.

Key text is also colour-coded to highlight:

- Green boxes: Legislation – these boxes set out key processes to follow with regard to wildlife and legislation;
- Red boxes: “Points to Remember”; and
- Blue boxes: Local Development Plan Policies.

In addition, 2 maps are provided showing all the international, national and local designated nature conservation sites in West Lothian.

## **D3 Consultation**

The draft SPG was sent out for consultation in Autumn 2014 for 8 weeks. Initially this gained no responses and the consultation period was extended further for another 6 weeks. There were 2 responses:

Scottish Government – raised several informal points to aid understanding of the SPG and also some other minor suggestions and clarifications.

The Coal Authority – had no major issues to raise.

## **E. CONCLUSION**

West Lothian has benefitted from being chosen by SNH to form the case example for new best practice supplementary planning guidance related to natural heritage, wildlife and the planning process. Using this guidance will help developers consider and address nature issues when submitting their planning applications.

## **F. BACKGROUND REFERENCES**

West Lothian Local Plan (2009)

West Lothian Local Biodiversity Action Plan (2005 – 09)

Appendices/Attachments - one:

Supplementary Planning Guidance on *“Planning for Nature: Development Management and Wildlife”*.

Contact Person: Chris Alcorn, Principal Planner, Development Planning: 01506 - 282 428.

Email: [chris.alcorn@westlothian.gov.uk](mailto:chris.alcorn@westlothian.gov.uk)

**Craig McCorriston**

**Head of Planning and Economic Development**

**26 May 2015**



# Planning for Nature: Development Management and Wildlife

Supplementary Guidance  
 Spring 2015

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## Introduction

### Purpose of this Guidance

This guidance sets out how the biodiversity (wildlife and habitats) and geodiversity (rocks, soils and fossils) of the West Lothian area will be taken into account when considering all development proposals. It aims to help **developers** fully consider the wildlife and habitat implications of proposals which need planning permission. The guidance will be a material consideration when local authority **development management officers** consider applications.

### How to Use this Guidance

Applicants are encouraged to refer to this guidance at the **earliest** opportunity since it contains important information on potential wildlife and habitats requirements, constraints and opportunities for new development. Where relevant, applicants should seek **pre-application** advice from the planning authority to identify potential wildlife and habitats issues and avoid unnecessary delays in the planning process.

Scottish Natural Heritage (SNH) is a statutory consultee for certain developments that affect wildlife. It focuses on proposals that require an Environmental Impact Assessment (EIA) and those that could affect sites with a statutory nature conservation designation. Annex A sets out in more detail SNH's role in the planning system.

### Key to Text Boxes:

#### Box 1: Habitats Regulations Appraisal (HRA)

When a developer considers...

#### Protected Species – Points to Remember:

- Consider as early as...

#### POLICY ENV 3

Development proposals within or affecting areas classified as existing...

**Green boxes: Legislation – these boxes set out key processes to follow with regard to wildlife and legislation**

**Red boxes: Points to Remember**

**Blue boxes: Local Development Plan Policies**

### Further Information

Further relevant information with regard to planning, development, habitats and wildlife can be found on the following web sites:



<http://www.snh.gov.uk>



<http://www.westlothian.gov.uk>



<http://www.scotland.gov.uk>

Further general information about enhancing habitats and wildlife can be found at:



<http://scottishwildlifetrust.org.uk>



<http://www.centralscotlandgreennetwork.org>



<http://www.rspb.org.uk>



# 2.

## POLICY CONTEXT AND DESIGNATED SITES

West Lothian Council encourages high quality development that contributes positively to the local environment. The council has a broad approach to conserving nature taking into account ecosystems and natural processes, as well as conserving designated or protected sites and species. There is a recognition of the importance of green networks, wetlands and areas of open space that help to maintain biodiversity and allow ecosystems and natural processes to provide multifunctional services such as flood control, pollution control and community wellbeing (e.g. amenity and recreation).

This chapter provides the policy context for decisions on developments that can affect wildlife and sets out key information about the designated sites in West Lothian.

There are a number of designated sites within West Lothian that carry statutory protection at the European, National (UK and Scottish) and West Lothian levels – these are referred to as international, national and local sites respectively. The West Lothian Local Plan 2009 policies ENV 3, ENV 4 and ENV 5 seek to ensure that protected habitats and species are considered appropriately when determining relevant planning decisions. Key legislation is summarised in Annex A.



### POLICY ENV 3

Development proposals within or affecting areas classified as existing or candidate sites of international importance, under European Directives (Special Areas of Conservation and Special Protection Areas), or affecting the habitats and species listed in Habitat Directives Annexes I and II and Birds Directive Annex I will not be permitted unless it can be ascertained that it will not adversely affect the integrity of a Natura 2000 site, or

- There are no alternative solutions; and
- There are imperative reasons of overriding national public interest, including those of social or economic nature, to allow development.

### International Sites

Internationally designated sites in West Lothian are shown in Figure 1. They have protection under European law and are commonly known as Natura 2000 sites (see Policy ENV 3). They comprise of:

- Special Areas of Conservation (SAC) – designated for their habitats and species under the EC Habitats Directive (92/43/EEC). In West Lothian we have Blawhorn Moss SAC north of Blackridge and Craigengar Moss SAC in the south west Pentlands; and
- Special Protection Areas (SPA) – designated for their birds under the EC Wild Birds Directive (2009/147/EC). Part of the Firth of Forth SPA is in West Lothian (Figure 1).



National Sites

Nationally designated sites in West Lothian are shown in Figure 1. They include Sites of Special Scientific Interest (SSSIs) which are notified for the special interest of their habitats, flora, fauna, geology or geomorphology. There are 16 SSSIs in West Lothian. There is also a National Nature Reserve (NNR) (Blawhorn Moss) which has habitats and species that are internationally important. Wildlife is managed very carefully consistent with encouraging public access and education.

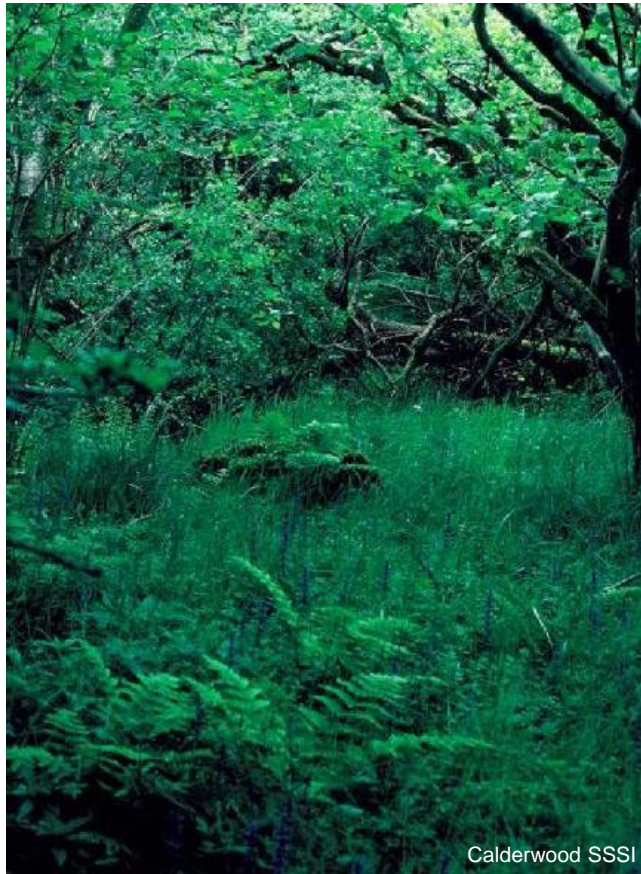
Development that affects a SSSI or NNR will only be permitted where:

- it will not adversely affect the integrity of the area or the qualities for which it has been designated, or
- any such adverse effects are clearly outweighed by social, environmental or economic benefits of national importance.

**POLICY ENV 4**

Development proposals within or affecting areas classified as sites of national importance, including National Nature Reserves and Sites of Special Scientific Interest, will not be permitted unless it can be demonstrated that:

- a) It will not compromise the objectives or integrity of the designation; or
- b) there is an overriding national public interest that outweighs the designation interest.



Statutory Designations	Non-Statutory Designations
<ul style="list-style-type: none"><li>• National Nature Reserves</li><li>• Sites of Special Scientific Interest</li></ul>	<ul style="list-style-type: none"><li>• Geological Conservation Review Sites</li></ul>

**Box 1: Habitats Regulations Appraisal (HRA)**

When a developer considers a particular site for development, there will be a need to establish early on whether any future development could impact on a Natura site. Proposals do not need to be within a Natura site to affect its conservation interests. Consideration must be given to any plan or project that has the potential to affect a Natura site, no matter how far away the site is from the proposed development.

An example is where a proposed development may affect birds that are part of the qualifying interest of a designated site, but can feed in areas several kilometres away. Therefore, the interest of the site could be affected even though the Natura site is outwith the development site or West Lothian Council area.

If a Natura site could be affected the applicant will need to provide sufficient information to allow West Lothian Council to determine whether there will be a Likely Significant Effect (LSE) on the qualifying interests of the Natura site. If there will be an LSE, then the applicant will need to provide West Lothian Council with the information to enable it to carry out an appropriate assessment.

LSE is any effect that may reasonably be predicted as a consequence of a plan or project that may affect the conservation objectives of the features for which the Natura site was designated, but excluding trivial or inconsequential effects. The word 'likely' should not be interpreted as 'more probable than not' but rather as a description of the existence of a risk of a significant effect.

The plan or project can then only be consented if it can be ascertained that it would not adversely affect the integrity of the site. The competent authority must ensure the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended are met before undertaking or permitting any project.

More information on HRA can be found at the following link:  
<http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/international-designations/natura-sites/habitats-regulations-appraisal/>

Local Sites

Statutory designations enjoy specific legal protection. Non-statutory designations are protected through the implementation of specific planning policies. The geological sites shown in Figure 2 are split into two categories based on a geodiversity review of West Lothian carried out by the British Geological Survey. These are those sites with geological features of great value considered worthy of interpretation and conservation and those with features of some value that may be worthy of interpretation and conservation. Locally designated sites in West Lothian are shown in Figure 2.



Cobbinshaw Moss SSSI and Cobbinshaw Reservoir Proposed Local Biodiversity Site

Statutory Designations	Non-Statutory Designations
<ul style="list-style-type: none"><li>Local Nature Reserves</li></ul>	<ul style="list-style-type: none"><li>Local Wildlife Sites</li><li>Country Parks</li><li>Regionally Important Geological Sites</li></ul>

POLICY ENV 5

There is a presumption against development affecting areas of regional or local importance, or their settings, unless it can be clearly shown that the objectives and integrity of the area will not be compromised or that the social or economic benefits to be gained from the development outweigh the conservation interest of the site. In addition, measures require to be included with such development to show that the conservation interest of a designated area has been safeguarded, enhanced and sustained, insofar as is possible. Designations are: Local Nature Reserves (LNR), Wildlife Sites (WS), peatland and Regionally Important Geological Sites (RIGS).

Designated Sites – Points to Remember:

- Take note of which designated sites may be affected by your proposals and how any effects may be avoided or mitigated
- Your site may not lie within an SPA or SAC but there may be functional connectivity. You will then need to consider whether effects might be generated on such sites even though they may be some distance from the proposed development

Further Information

More information on **international sites** can be found at the following links – <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/international-designations/>  
<http://jncc.defra.gov.uk/page-1527>

More information on **national sites** can be found at the following links – <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/national-designations/>  
<http://jncc.defra.gov.uk/page-1527>

More information on **local sites** can be found at the following link – <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/local-designations/>  
<http://jncc.defra.gov.uk/page-1527>

More information on **West Lothian Local Biodiversity Action Plan (LBAP)** can be found at the following link – <http://www.westlothian.gov.uk/media/2327/Planning-for-Biodiversity-Action-2005-2009/pdf/Planning-biodiversity-action2005-2009.pdf>

More information on **West Lothian geodiversity features** can be found at the following link – <http://nora.nerc.ac.uk/7429/1/CR06008N.pdf>



Figure 1: International and National Natural Heritage Designations in West Lothian

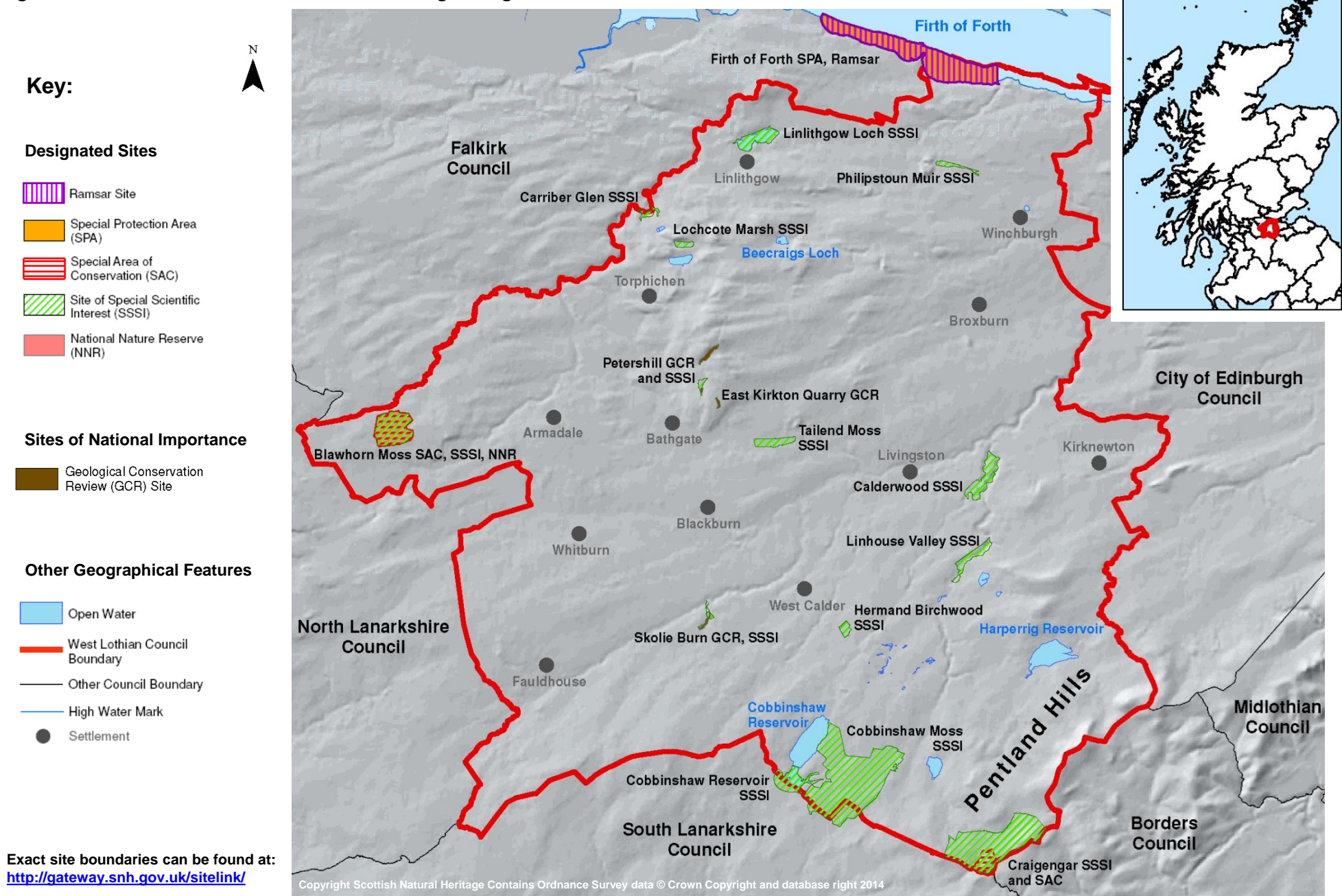
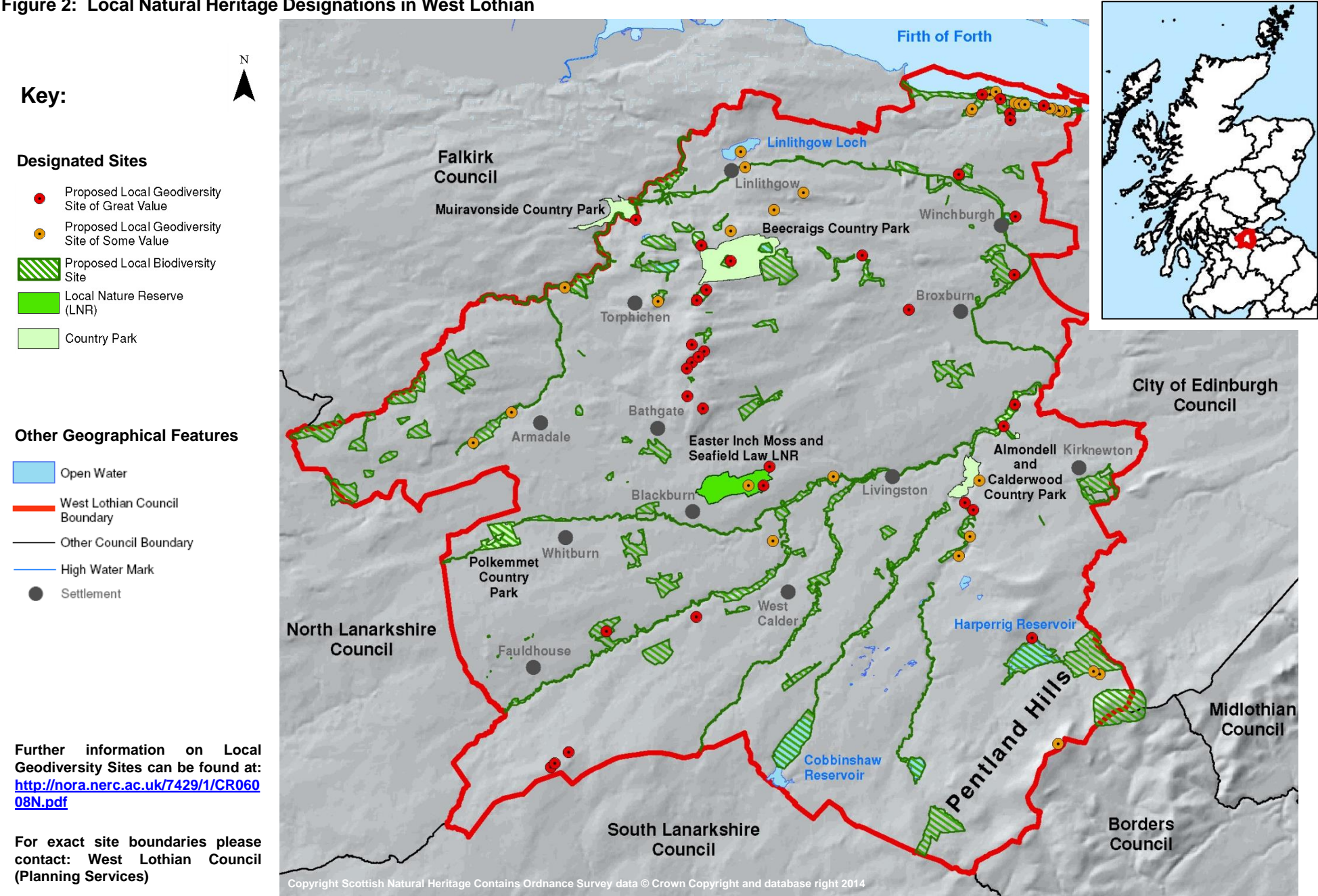




Figure 2: Local Natural Heritage Designations in West Lothian



### Protected Species

Most bird species and a wide range of wild animals and plants have general protection from deliberate damage or harm under the law. In addition to this, some species, such as otters and great crested newts have special protection from disturbance and harm under European legislation, and are known as European Protected Species (EPS).

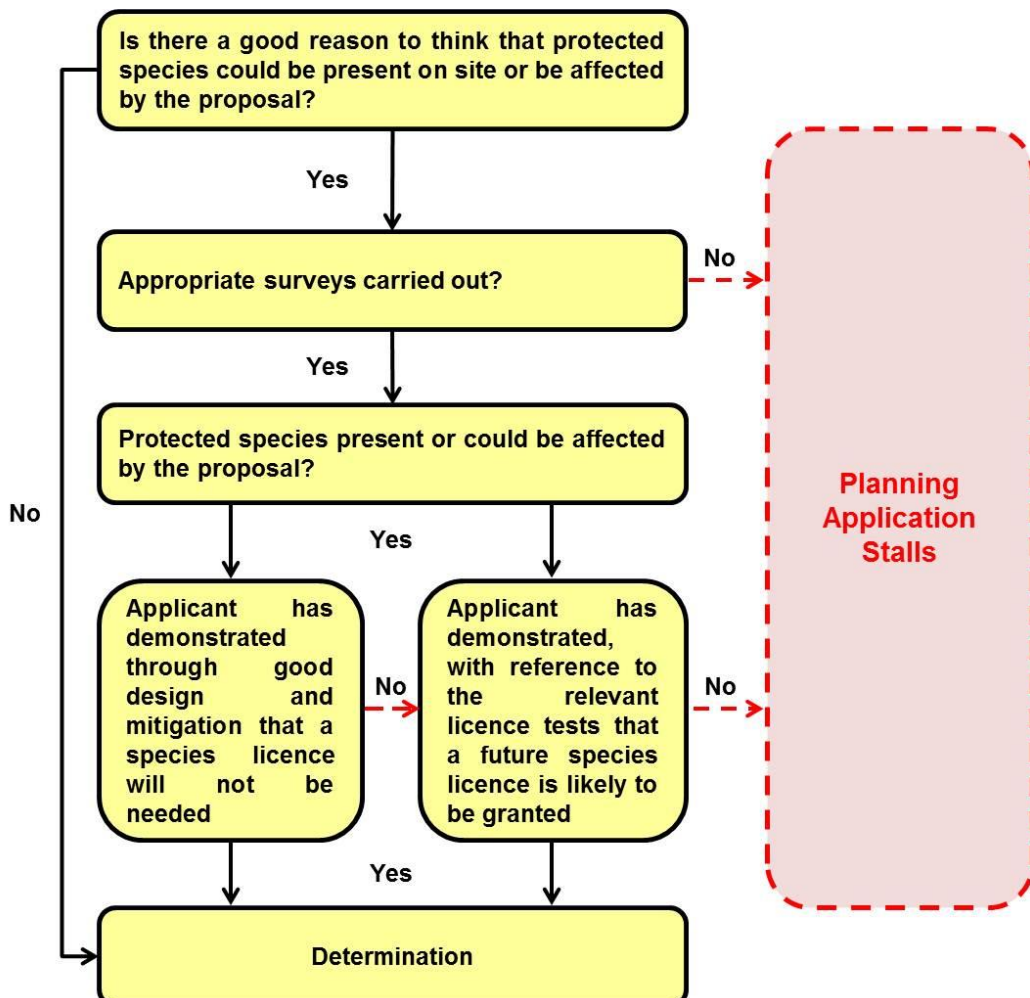
A number of species, such as red squirrel, water vole and badger are protected under domestic legislation.

The species referred to in this guidance as species with special protection are as follows:

- European Protected Species (protected under Schedule 2 (animals) and 4 (plants) of the Habitats Regulations 1994 (as amended)
- Birds, animals and plants listed on Schedules 1, 5 and 8 (respectively) of the Wildlife and Countryside Act 1981 (as amended)
- Badgers (protected by the Badgers Act 1992 (as amended))

Some of the protected species commonly found in West Lothian are shown in Table 1, overleaf.

**Figure 3: Protected Species – The Importance of Providing the Necessary Information**





**Table 1: Examples of Protected Species in West Lothian**

Species	Typical Type	Habitat	Protective Legislation	European Protected Species	UK Protected Species
<b>Animals</b>					
Natterer's bat ( <i>Myotis nattereri</i> )	Farmland, Woodland, old trees, old buildings	All protected by: <ul style="list-style-type: none"> <li>Habitats Directive 92/43/EEC</li> <li>Conservation (Natural Habitats &amp;c) Regulations 1994</li> <li>Conservation of Habitats and Species Regulations 2010</li> <li>Wildlife and Countryside Act 1981 (as amended)</li> </ul>		✓	
Daubenton's bat ( <i>Myotis daubentonii</i> )	Farmland, Wetlands, Woodland, old buildings, bridges, caves			✓	
Common Pipistrelle bat ( <i>Pipistrellus pipistrellus</i> )	Farmland, Woodland, old buildings, roofs, lofts			✓	
Soprano Pipistrelle bat ( <i>Pipistrellus pygmaeus</i> )	Farmland, Woodland, old buildings, roofs, lofts			✓	
Brown long-eared bat ( <i>Plecotus auritus</i> )	Farmland, Woodland, old trees and caves			✓	
Otter ( <i>Lutra lutra</i> )	Lochs, rivers and marshes			✓	
Great crested newt ( <i>Triturus cristatus</i> )	Wetlands			✓	
Badger ( <i>Meles meles</i> )	Woodland, Farmland	<ul style="list-style-type: none"> <li>Protection of Badgers Act 1992</li> </ul>			✓
Water vole ( <i>Arvicola terrestris</i> )	Wetlands	<ul style="list-style-type: none"> <li>Wildlife and Countryside Act 1981 (as amended)</li> </ul>			✓
Red squirrel ( <i>Sciurus vulgaris</i> )	Woodland				✓
<b>Birds</b>					
Breeding birds (such as: Kingfisher ( <i>Alcedo atthis</i> ), Barn owl ( <i>Tyto alba</i> ), Peregrine ( <i>Falco peregrinus</i> ) and Hen harrier ( <i>Circus cyaneus</i> ))	Full range of habitats (such as: wetlands, farmland, old farm buildings, steadings, moorland, open country)	<ul style="list-style-type: none"> <li>Wildlife and Countryside Act 1981 (as amended)</li> </ul>			✓










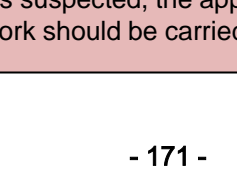
The presence on or near a site of species with special protection is a critical consideration in preparing development proposals and subsequent decisions on planning applications. Their presence rarely imposes an absolute block on development, however mitigation measures will often be necessary (see Section 5) and this can affect the design, layout and timing of the works.

A licence from SNH will be needed for works which would constitute an offence involving species with special protection (see Section 7 for more details on licensing). Remember, this may still be needed for works which do not need a planning application.

It is vital that adequate survey work is carried out in good time to understand the site and determine the presence or absence of these species (see Section 4 for more details on survey work requirements).

Applicants will usually need to seek expert ecological advice (see Page 11) at an early stage to determine the likely presence of protected species and the likely impact on them of any proposed development. Examples of development activities together with illustrative protected species that may be affected is provided in Table 2 below.

**Table 2: Development Activities that may Affect Protected Species**

Examples of Development Activities		European Protected Species	UK Protected Species
<ul style="list-style-type: none"> <li>Developments adjacent to or affecting ponds and other watercourses</li> </ul>		<ul style="list-style-type: none"> <li>Otter</li> <li>Great crested newt</li> </ul>	<ul style="list-style-type: none"> <li>Water vole</li> <li>Breeding birds (such as kingfisher)</li> </ul>
<ul style="list-style-type: none"> <li>Barn and rural building conversions (especially unoccupied, stone-built buildings)</li> </ul>		<ul style="list-style-type: none"> <li>Bats</li> </ul>	<ul style="list-style-type: none"> <li>Breeding birds (such as swallow, house martin and barn owl)</li> </ul>
<ul style="list-style-type: none"> <li>Alterations (or demolitions) to the roof spaces of buildings in particular churches/chapels, institutions, schools</li> <li>Development affecting caves, mines, tunnels, cellars and exposed rock faces, bridges, culverts, chimneys, kilns and ice houses and/or any other structures within 200m of water or woodland</li> </ul>		<ul style="list-style-type: none"> <li>Bats</li> </ul>	<ul style="list-style-type: none"> <li>Breeding birds (such as swift, swallow, house martin, starling, house sparrow and barn owl)</li> </ul>
<ul style="list-style-type: none"> <li>Developments affecting woodland, hedgerows, lines of trees and scrub</li> </ul>		<ul style="list-style-type: none"> <li>Otter</li> <li>Bats</li> </ul>	<ul style="list-style-type: none"> <li>Badger</li> <li>Red squirrel</li> <li>Breeding birds</li> </ul>
<ul style="list-style-type: none"> <li>Developments affecting old and veteran trees and trees with a girth over 1.5m, or containing obvious holes including any felling or lopping</li> </ul>		<ul style="list-style-type: none"> <li>Bats</li> </ul>	<ul style="list-style-type: none"> <li>Breeding birds (such as barn owl)</li> </ul>
<ul style="list-style-type: none"> <li>Developments affecting derelict land, brown-field sites, railways and land adjacent, grassland and allotments</li> </ul>		<ul style="list-style-type: none"> <li>Bats</li> </ul>	<ul style="list-style-type: none"> <li>Breeding birds (such as barn owl)</li> </ul>
<ul style="list-style-type: none"> <li>Developments affecting quarries, cliff faces and gravel pits</li> </ul>			<ul style="list-style-type: none"> <li>Breeding birds (such as peregrine falcon)</li> </ul>
<ul style="list-style-type: none"> <li>Developments (such as wind farms) affecting open farmland, moorland and forestry sites in hilly, upland, exposed areas</li> </ul>		<ul style="list-style-type: none"> <li>Bats</li> <li>Otter</li> </ul>	<ul style="list-style-type: none"> <li>Red squirrel</li> <li>Badger</li> <li>Breeding birds (such as hen harrier)</li> </ul>

Protected Species – Points to Remember:

- Consider as **early as possible** whether protected species are present on sites for development – ideally **before** the land is bought and the **planning application made**
- If the presence of a protected species is suspected, the applicant **must inform** the Council
- The supporting evidence and survey work should be carried out by a **suitably qualified ecologist**



### Initial Site Appraisal

Whatever development you are hoping to carry out you must ensure that you understand the characteristics of the site, including any possible wildlife and habitat significance. The extent to which ecological surveys and appraisals are required will depend on the scale, nature and location of the proposal. It may be that an initial site audit is sufficient but depending on the findings you may need to carry out further surveys for particular species or in relation to a particular habitat. For instance, if there is a watercourse on the site this could provide habitat for protected species and will need more detailed surveys.

A typical site audit should:

- highlight any designations in or near to the site;
- identify potential important habitats (mature trees, woodland, hedgerows, ponds or watercourses);
- identify if protected species are likely to be in or near the site;
- give an indication of the ecological data required for progressing a planning application; and
- recommend if more detailed surveys will be necessary.

A checklist guide of questions to consider and the next steps to take within a site audit is provided in Annex C.

Where an important species or habitat has been identified on site, planning applications must be supported by an appropriate level of information.

**At the time of submitting a planning application, applicants need to provide the following:**

1. As appropriate, information on specific habitats, plants, animals and geology and possibly the surrounding area, including its sensitivity, significance and value.
2. An assessment of any potential effect of the development on these features.
3. If adverse effects are expected, then details of proposed mitigation measures by the developer to avoid or minimise these effects.
4. If there is unavoidable damage or disturbance then proposals should be included to compensate for losses.
5. Identify if there may be licensing requirements and with reference to the relevant licence tests, demonstrate that a future species licence is likely to be granted.



Painted Lady butterfly



Preliminary site works in woodland



Badger exclusion works



It is essential to understand your site and consider the constraints and opportunities that wildlife and habitats may have on your development at an early stage. Helpful information including species records and habitat maps may be obtained from a number of sources including:

- Scottish Natural Heritage Information – [www.snh.gov.uk/snhi](http://www.snh.gov.uk/snhi)
- The Wildlife Information Centre for the Lothians and Borders – <http://www.wildlifeinformation.co.uk>
- The National Biodiversity Network Gateway – <http://data.nbn.org.uk>

Site surveys and assessments should be undertaken by a suitably qualified and experienced ecologist. A list of qualified ecologists can be found in the Chartered Institute of Ecological and Environmental Management (CIEEM) Professional Directory at: <http://www.cieem.net/members-directory>.

Good practice also indicates that for most significant developments (e.g. a development covering several hectares) an Ecological Impact Assessment (EclA) would be required. If necessary the EclA should adopt the methodology of (CIEEM). Surveys for other natural heritage interests such as geology, geomorphology and soils should also be undertaken by a suitably qualified and experienced person (see CIEEM Directory).



#### **Box 2: Environmental Impact Assessment (EIA)**

Environmental Impact Assessment (EIA) is a statutory process which identifies the environmental effects (both negative and positive) of certain development proposals. EIA only applies to those developments that are likely to have a significant environmental effect by virtue of factors such as its nature, scale or location. These are identified under Schedule 1 and Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. If in doubt about whether your development qualifies for EIA, contact the planning authority for a screening opinion.

More information on EIA can be found at the following links:

- <http://www.snh.gov.uk/planning-and-development/environmental-assessment/eia/>
- PAN1/2013 – <http://www.scotland.gov.uk/Resource/0043/00432581.pdf>



## Appropriate Timing of Surveys

The timing of any ecological surveys is important to consider at an early stage as they often need to be carried out at certain times of year. A survey calendar indicating the most appropriate time of year to undertake surveys for various species and habitats is provided in Table 3 overleaf.

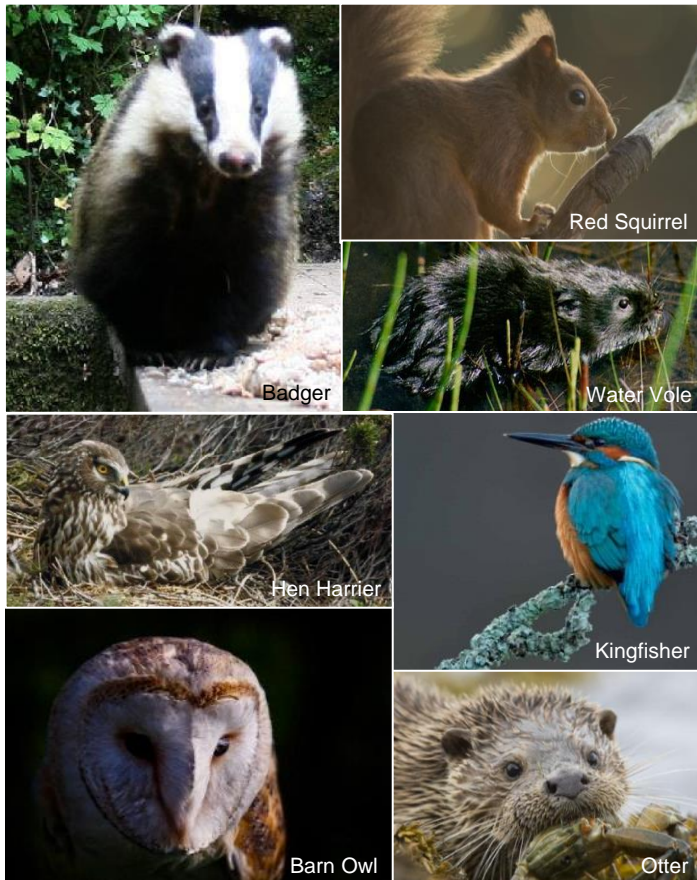
Species surveys are weather dependent so it may be necessary to delay a survey or to carry out more than one survey if the weather is not suitable. All constraints must be clearly reflected in the survey.

In some circumstances surveys for certain species and habitats may be required over more than one season, and possibly covering periods measured in years, for example developments potentially affecting Natura sites or bird flight patterns in relation to wind farm sites. If surveys have been carried out a significant amount of time before an application is made the council may require further surveys before the application can be determined or the development is started.

For mobile species that have the ability to expand their range and whose distribution may change over time pre-construction surveys may need to be done once consent is granted.



## Protected Species Found in West Lothian:



### Timing of Ecological Surveys – Points to Remember:











- Consider what surveys may need to be done as early as possible
- Discuss surveys with planning authority
- If you are dealing with a proposal that could affect a SSSI or a Natura site, then consult with SNH prior to submitting the planning application to the council
- Make sure species surveys are carried out at the optimum time of the year
- Ensure surveys are carried out in optimal weather conditions where possible
- Highlight survey limitations if necessary

### Further Information

Further details may be found on the following web sites:

- CIEEM Guidelines for Survey Methodology – <http://www.cieem.org.uk/Publications.htm>
- SNH – <http://www.snh.gov.uk/about-scotlands-nature/wildlife-and-you>

Table 3: Ecological Survey Calendar

Target	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Illustration	
Habitat and Vegetation	Phase 1 only			Phase 1 and NVC Detailed habitat assessment surveys				Phase 1 only (least suitable time) No other detailed plant surveys						
	Mosses and lichens No other detailed plant surveys			Mosses and lichens		No surveys for mosses and lichens		Mosses and lichens						
Badgers	Limited sett / bait surveys	Bait marking and sett surveys			Limited bait marking and sett surveys			Sett surveys					Limited sett / bait surveys	
Bats	Inspection of hibernation roosts (difficult)			Limited activity	Summer roost emergence surveys and activity surveys (internal inspection of roof-spaces possible throughout April-October)				Limited Activity		Inspections of hibernation roosts (difficult)			
Birds	Winter species		Breeding birds / migrant species		Breeding birds		Low activity		Migrant species		Winter species			
Great Crested Newts	Newts hibernating			Pond surveys for adults / terrestrial survey Egg surveys April-mid June Larvae surveys from mid-May					Habitat survey		Newts hibernating			
Reptiles	Reptiles Hibernating			Peak survey months are April and May			Reduced basking time lowers effectiveness of refugia surveys		Peak survey month		Limited activity	Reptiles hibernating		
Red Squirrel	Optimum time			Breeding Den Surveys		Optimum time			Surveys possible, weather permitting					
Otters	Limited by vegetation cover and weather conditions rather than seasons													
Water Voles	Low activity	Initial habitat survey	Habitat and field signs / activity surveys. May be limited by vegetation cover and weather									Initial habitat survey	Low activity	
Fish	For coastal, river and stream-dwelling species, the timing of surveys will depend on the migration pattern of the species concerned Where surveys require information on breeding, the survey timings will need to coincide with the breeding period which may be summer or winter months depending on the species													

Key











Recommended period for survey

Sub-optimal period for survey

Surveys not possible



**Table 4: Ecological Mitigation Calendar**

Species	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Illustration
Habitat and Vegetation	Planting and translocation		No mitigation for most species							Planting and translocation			
Badgers	Construction of artificial setts only (no disturbance of existing setts)							Exclusion from setts and destruction			Artificial sett construction only as per January		
Bats	Maternity roost works until mid-May				No maternity roost works				Maternity roost works from mid-September				
	Hibernation period		Hibernation roost works from mid-March							Hibernation period			
Birds	Clearance works		Nesting season (avoid ALL clearance works without a breeding bird survey)					Clearance works					
Great Crested Newts	Pond management only		Both terrestrial and aquatic trapping possible				Terrestrial trapping only				Pond management only		
Reptiles	Scrub clearance		Capture and translocation programmes and scrub clearance				Weather dependent, but likely to be sub-optimal due to temperatures		Capture and translocation	Scrub clearance			
Red Squirrel	Avoid all works in red squirrel habitat								Optimum time for works		Avoid all works in red squirrel habitat		
Otters	No seasonal constraints, however restrictions are likely during breeding season												
Water Voles	Avoid works in habitat		Trapping and exclusion		Avoid works (breeding season)				Trapping and exclusion		Avoid works in habitat		
Fish	Mitigation for the protection of watercourses is required at all times of year Mitigation for particular species will need to be timed so as to avoid their breeding season, this varies between species												

**Key**

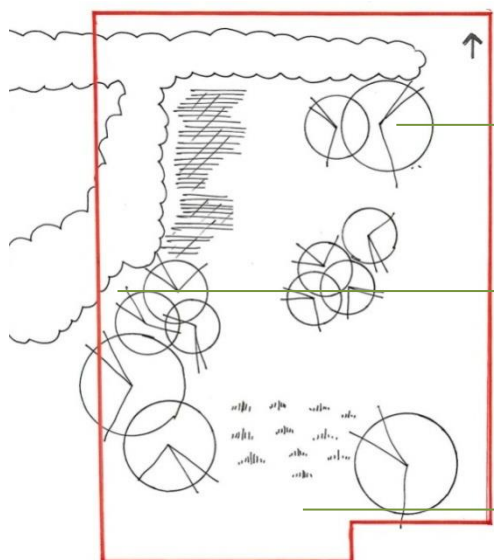
Recommended period for mitigation
  Sub-optimal period for mitigation
  Mitigation not possible

Opportunities for enhancing wildlife and habitats within a site must be considered as part of the overall design of the project. It is often possible to combine biodiversity benefits with other site requirements. For instance, a pond as part of the site's Sustainable Urban Drainage System (SUDS) can provide a great habitat for a number of species as well as contributing to attractive open space. Features and habitats on site and in the surrounding area should be considered (see Figure 4).

There may be an opportunity to enhance 'green networks', providing an attractive setting to new housing development whilst also benefiting West Lothian's wildlife and habitats. For more information on green infrastructure/networks, see Scottish Government's publication 'Green Infrastructure: Design and Placemaking' at: <http://www.scotland.gov.uk/Publications/2011/11/04140525/0>

**Figure 4: Utilising On-site Opportunities to Enhance Development Design**

### Site Appraisal



#### Retain trees and incorporate into design

These may have a tree preservation order or be the habitat for protected species like bats. Trees are unique features that can add to the attractiveness of your development



#### Retaining existing hedgerow

Connects to wider habitat networks and provides cover and feeding areas for birds and animals. Can create effective boundaries



**Retain marshy ground** where possible as these can be good locations for SUDS ponds which in turn can support protected species like newts and a variety of plants and insects

### Site Design

#### Hedgerow Embankment

Good habitat for badgers



#### Hedges

Good cover and feeding habitat for winter migrants and breeding birds



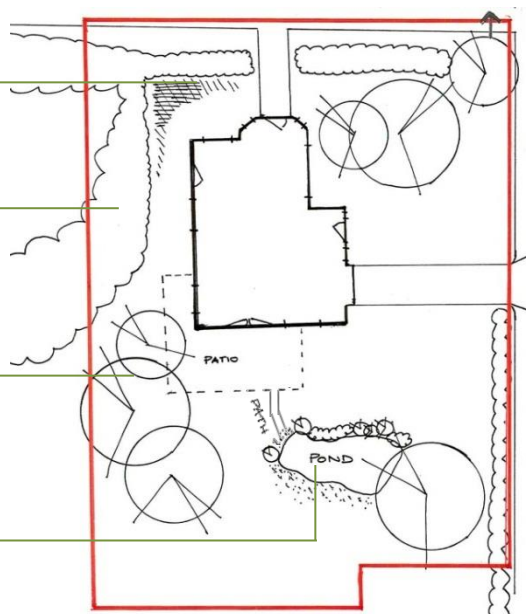
#### Mature Trees

Can be good for bat roosts or for attaching nest boxes



#### Ponds and Damp Areas

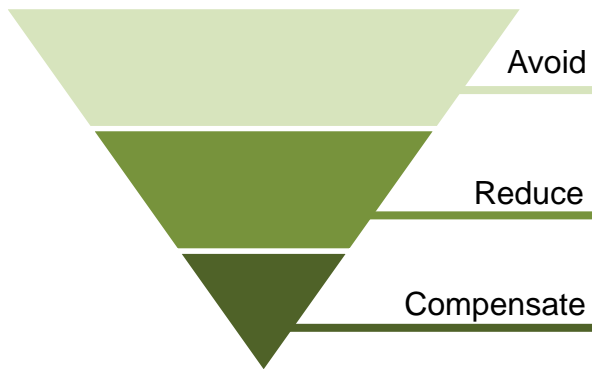
Good for amphibians like frogs and newts



Mitigation

The mitigation hierarchy should apply when considering how to manage the risks of adverse impacts on wildlife and habitats (see Figure 5 below). Depending on what type of mitigation is proposed, it may be that there are certain times of the year when mitigation activities are inappropriate. An ecological mitigation calendar is provided in Table 4 (Page 14). Efforts should first be proposed to prevent or avoid impacts, if this is not possible then measures should be made to minimise and reduce any unavoidable impacts. The last resort should be some sort of compensation planting or habitat provision.

Figure 5: The Mitigation Hierarchy



Enhancement

Most developments are suitable for the incorporation of a range of measures for positive effects on wildlife and habitats. The planning authority will expect such measures to be proposed and then implemented if consent is given. These can be discussed at the pre-application stage (see Table 5 overleaf for examples of enhancing biodiversity within certain developments).

Management

On sites where wildlife features are retained or new habitats and features are created, appropriate ongoing management must be put in place to ensure long lasting benefits. This is likely to be part of the planning conditions placed on an application and subject to enforcement if necessary.

In these cases a management plan would be expected to be produced and submitted as part of the planning application. It should identify specific actions required for good management and include details of the phasing of the works.



The inclusion of a green roof in urban developments can provide habitats (such as meadows) that are attractive to bees and a range of other insects and birds.



The simple addition of nest boxes for birds and roost boxes for bats attached to mature trees, or even a wall on site will be beneficial.



The inclusion of a swift nest box in appropriate locations provides safe and protected nesting opportunities.

Good Design and Mitigation – Points to Remember

- Avoid any detrimental impacts on biodiversity or species through good design
- Incorporate into the design features that will enhance biodiversity
- Follow the mitigation hierarchy
- If appropriate, include a management plan



**Table 5: Examples of Enhancing Biodiversity Within Different Developments**

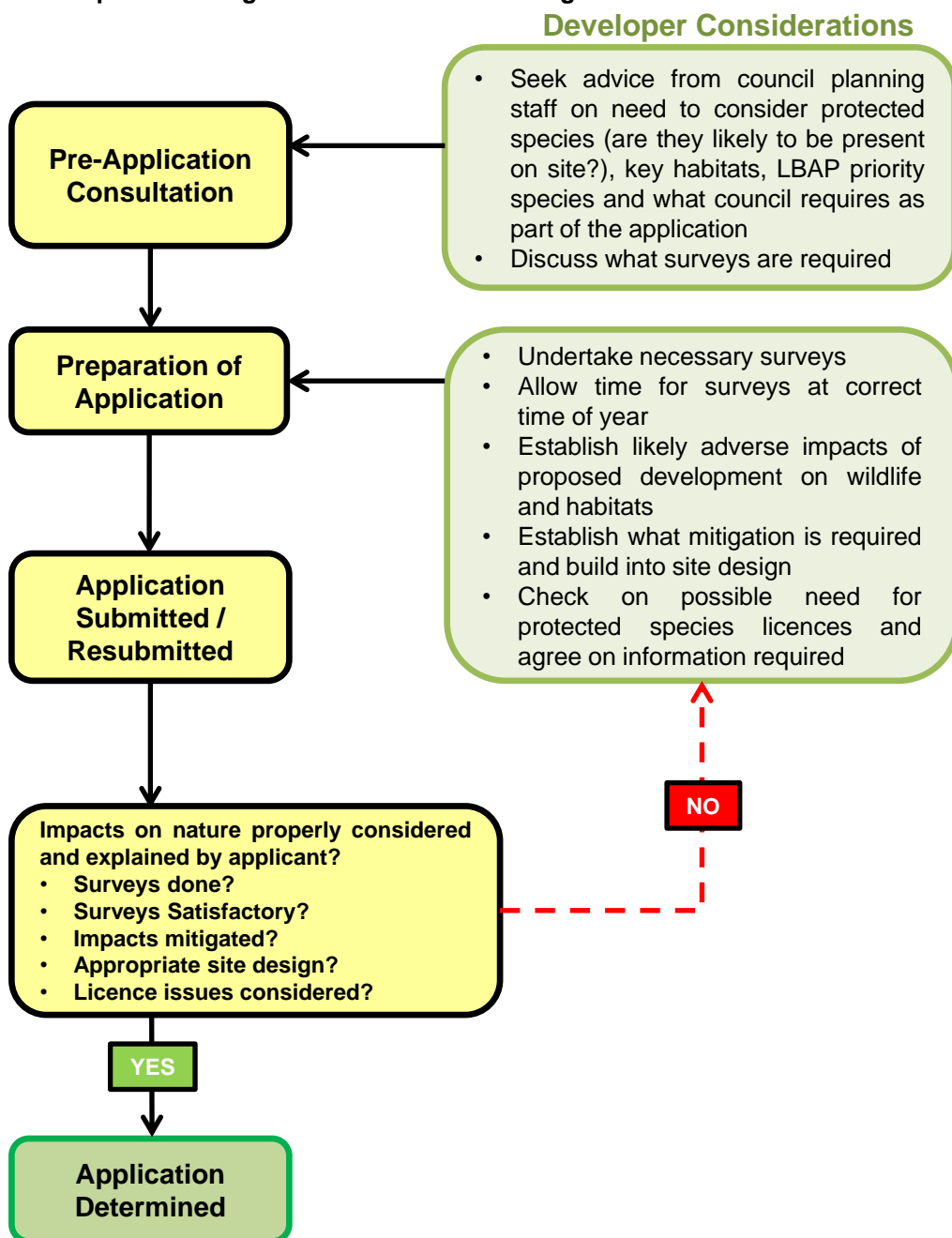
Development	Opportunities for Enhancing Habitat and Wildlife Interests	
<ul style="list-style-type: none"> <li>Residential and business development</li> </ul>	<ul style="list-style-type: none"> <li>Incorporate and manage existing habitat in green space requirement</li> <li>Create new features for wildlife in green spaces e.g. traditional orchards or woodland to meet LBAP targets, creation of wildlife pond and scrapes</li> <li>Create a network of green corridors e.g. plant hedges, long grass, wetland corridors, wildflower grasslands</li> <li>Design for sustainable drainage systems e.g. balancing ponds, reedbed systems</li> <li>Landscape with locally appropriate native species</li> <li>Incorporate bird and bat boxes in the design</li> <li>Consider green roofs</li> <li>Promote wildlife gardening amongst householders</li> <li>Investigate involving community groups and residents</li> </ul>	
<ul style="list-style-type: none"> <li>Public open space and recreational features</li> </ul>	<ul style="list-style-type: none"> <li>Create a network of green corridors</li> <li>Plant hedges</li> <li>Allow areas of grassland to grow long to encourage wildflowers</li> <li>Create wetland or pond areas</li> <li>Plant more trees</li> </ul>	
<ul style="list-style-type: none"> <li>Smaller road schemes</li> </ul>	<ul style="list-style-type: none"> <li>Mitigation measures to include under passes for otter, badger crossings etc.</li> <li>Create new habitats e.g. semi-natural grassland, woodland, and ponds</li> <li>Design for sustainable drainage systems e.g. swales, balancing ponds</li> <li>Creation of otter holt</li> <li>Conserve geological exposures</li> <li>Landscape and screen with locally appropriate native species</li> <li>Design in bat bricks, bird boxes etc. on bridges</li> </ul>	
<ul style="list-style-type: none"> <li>Conversions of rural buildings</li> </ul>	<ul style="list-style-type: none"> <li>Install barn owl box or provision of nest space</li> <li>Install swift box</li> <li>Incorporate other bird and bat boxes in the design</li> </ul>	
<ul style="list-style-type: none"> <li>Windfarms</li> </ul>	<ul style="list-style-type: none"> <li>Hydrological management for restoring or maintaining bogs (such as drain blocking)</li> <li>Restore appropriate habitats where possible</li> <li>Incorporate and manage existing habitat, species and geological exposures on unworked land</li> </ul>	

The design of any new any development should be based on a good knowledge of the site, including the habitats and species present on and adjacent to the site.

This understanding will help applicants to put forward development proposals that respond appropriately to the constraints and opportunities of a site, and to identify ways in which they can contribute to conserving and enhancing wildlife and habitats in addition to providing opportunities for people to experience nature close to where they live (see Section 5).

Key issues in the development management process with regard to wildlife and habitat considerations are summarised in Figure 6. Addressing the points raised in the chart below will help to ensure that the planning application process does not encounter unnecessary complications and delays.

**Figure 6: The Development Management Process and Ecological Considerations**





**Wildlife and Habitat Considerations When Determining Planning Applications**

As well as seeking to protect legally protected sites and species, the planning authority has a duty to protect, and where appropriate, enhance the wider biodiversity and geodiversity of West Lothian. Encouraging developers to maximise the opportunities for enhancing biodiversity are ways in which this duty can be delivered. This approach can also contribute to wider goals to improve green infrastructure and networks and encourage Local Biodiversity Action Plan priority species and enhance habitats and ancient woodland.



Swales, ponds, trees and permeable surfaces visually enhance hard surfaces and provide benefits to runoff and drainage

When considering planning applications the council will consider biodiversity and geodiversity in accordance with the following hierarchy of importance:

- International Sites and Protected Species;
- National Sites and Protected Species;
- Local Sites; and
- Other wider biodiversity and geodiversity interests including green networks.

**Wildlife and Habitat Considerations in determining a Planning Application – Points to Remember:**

- **Early design action:** ensure that wildlife and geological conservation forms a positive part of early development design rather than being an afterthought
- **Clarity of understanding:** ensure your development team have a clear understanding of the planning authority requirements concerning biodiversity and geological conservation
- **Provide sufficient information:** make sure your application does not get held up unnecessarily or refused because insufficient information on wildlife and habitats has been submitted

## Licences for Protected Species

If it is discovered that there are potential impacts on protected species that cannot be avoided through mitigation then a licence may be required before works can proceed. This is in order to prevent a possible offence being committed. Licences will only be granted if strict tests are met.

SNH is responsible for the administration of most protected species licences in Scotland (except most marine species where Marine Scotland is the licensing authority). For some species in specific circumstances (see Boxes 3 to 5) licences can be issued which allow:

- disturbance for the purpose of development; or
- disturbance for the purpose of survey and research.

After obtaining planning permission, the developer may need to apply for various types of licence regarding protected species before work can start on site.

It is important to remember that planning permission does not affect or replace any need to obtain licences or permits required by other environmental protection legislation. See Boxes 3, 4, 5 and 6 for more specific information on protected species and licensing. A licence may be required for works that do not require planning permission, for instance, internal works to a building or those carried out under permitted development.

### Box 3: European Protected Species (EPS) and Licensing Requirements

There are **three strict legal tests** which must all be passed before a licence can be granted.

In summary they are:

- **Test 1:** that there is a licensable purpose. SNH provides more detailed guidance on Test 1 at: <http://www.snh.gov.uk/docs/B896394.pdf>
- **Test 2:** that there is no satisfactory alternative; SNH provides more detailed guidance on Test 2 at: <http://www.snh.gov.uk/docs/B896418.pdf> and
- **Test 3:** that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range (the qualified ecologist should be able to provide advice on this or alternatively seek advice from SNH).

For more information on the three species licensing tests, the SNH website provides detailed explanatory text about these tests:

<http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/>

### Box 4: Water Voles and Red Squirrels

It is possible to licence activities that could affect water voles and red squirrels for social, economic or environmental reasons. This could cover a range of activities including development. However, it is important to note that licences may only be issued for this purpose provided that:

- the activity authorised by the licence will contribute to significant social, economic or environmental benefit; and
- there is no other satisfactory solution.

SNH provides more detailed guidance on how to interpret these tests at:

<http://www.snh.gov.uk/docs/B896429.pdf>

Red squirrel





### Box 5: Badgers

If you are planning any development works that could result in disturbance to badgers in their setts, or damage or obstruction to setts then you are likely to require a licence. Licences can be issued (for activities that would otherwise constitute an offence) under the Protection of Badgers Act 1992 (as amended) for the purpose of development. It is important to note that licences can only permit someone to 'interfere with a badger sett' for the purpose of development. It is not possible to licence removal, translocation or killing of badgers for the purpose of development.

SNH provides more detailed guidance on badgers, development and licensing:

<http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/mammal-licensing/badgers-and-licensing/dev>



Badger



Badger Sett



Barn Owl



Song Thrush nest

### Box 6: Birds

It is not possible to licence actions that would otherwise be an offence in relation to wild birds, for the purpose of development. Most developments are unlikely to result in the intentional or reckless killing of wild birds, but if they are carried out during the breeding season then there could be a risk of damage or destruction of nests or eggs, or disturbance to nesting birds. Because there is no development licensing purpose for wild birds, this means that any development that could result in these actions should not proceed until the breeding season is over for these species.

SNH provides more detailed guidance on birds and development at:

<http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/bird-licensing/development-houses/>

### Species Licensing – Points to Remember:

- Identify any needs for licensing as soon as possible
- Check out the SNH web site for all the information needed at:  
[www.snh.gov.uk/protecting-scotlands-nature/species-licensing](http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing)
- Make sure the relevant licensing tests can be met for any protected species present
- Allow enough time in the project programme for the issuing of licences

### Further Information

Access to species licence application forms can be found at:

[www.snh.gov.uk/protecting-scotlands-nature/species-licensing/formsandguidance/guidance/](http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/formsandguidance/guidance/)

## Invasive Non-Native Species

There are many species of non-native plants that have been introduced to Scotland over time which we enjoy in our gardens and countryside. However, a few are very invasive in the natural environment and cause serious problems. They out-compete our native plants for light, space and nutrients. The environmental damage caused by invasive non-native plants can be irreversible so it is important that they are controlled. The most common invasive species in West Lothian are:

- Japanese knotweed (*Fallopia japonica*)
- giant hogweed (*Heracleum mantegazzianum*); and
- Himalayan balsam (*Impatiens glandulifera*).



Japanese knotweed



Giant Hogweed



Himalayan Balsam

The Wildlife and Natural Environment (Scotland) Act 2011 (see Annex B) has introduced measures to deal with non-native species. If a survey shows these or other invasive non-native species are present on a site, the developers must remove them and ensure that they do not spread from the site. The most likely way in which invasive non-native species may be introduced to a development site is through soil contaminated with seed or root material.

If large volumes of soil are moved or introduced to a site, the planning authority will require a soil sustainability management plan. If a development is responsible for the introduction of an invasive non-native species, either within or outwith the site, then the developer will have to remove the species and dispose of material appropriately.

Japanese knotweed, giant hogweed and Himalayan balsam are regarded as controlled waste. Developers should seek advice on the disposal of these plants by referring to the Scottish Environment Protection Agency (SEPA) website, see [www.sepa.org.uk](http://www.sepa.org.uk) and [www.netregs.gov.uk](http://www.netregs.gov.uk)

The Scottish Government has produced a Non-Native Species Code of Practice that will help those developing land that contains these plants to understand their legal responsibilities. For more information see: [www.scotland.gov.uk/publications/2012/08/7367](http://www.scotland.gov.uk/publications/2012/08/7367)

**ANNEX A**  
**DEVELOPMENT AND THE ROLE OF**  
**SCOTTISH NATURAL HERITAGE**



## **When Scottish Natural Heritage (SNH) will be Consulted on Planning Proposals**

SNH's main focus is on proposals that require an Environmental Impact Assessment (EIA) and/ or could affect sites with a statutory nature conservation designation.

West Lothian Council must consult SNH in the following cases:

- Those affecting designated and proposed European sites (Special Protection Areas (SPAs) and Special Areas of Conservation (SACs)) collectively known as Natura sites, and Ramsar sites;
- EIA scoping requests and Environmental Statements related to development proposals (see discretionary consultations below);
- Development proposals affecting Sites of Special Scientific Interest (SSSIs);
- Cases that involve the winning and working of peat for commercial purposes; and
- Cases that could have significant repercussions on major accident hazards.

West Lothian will also consult SNH on all applications for developments that require an EIA.

## **Discretionary Consultations**

All other consultations are discretionary and West Lothian Council must choose whether or not to consult SNH. In the first instance, planning officers should talk through the case with SNH before sending a formal written consultation with regard to the following:

- Advice in relation to an EIA screening request;
- Where a recent survey (undertaken in relation to the proposal) shows that protected species could be affected, but the council is uncertain that the mitigation proposed by the applicant is sufficient to avoid an offence under relevant legislation; and
- Small scale renewables that meet the criteria for consultation with SNH, as set out in *Assessing small-scale wind energy proposals* <http://www.snh.gov.uk/docs/A669283.pdf>

## **SNH, Protected Species and Proposed Development**

SNH have two separate but related functions with regard to protected species and development:

- Advisory function - the provision of advice (in line with our Service Statement) about the impacts of certain development proposal on protected species; and
- Licensing function – dealing with applications for licences for actions to be undertaken affecting protected species that would otherwise be illegal (referred to in this document as 'species licence').

West Lothian Council will identify situations where it is appropriate to ask the developer to carry out a survey and (where relevant) submit a mitigation plan. Developers will be expected to demonstrate either that a species licence is not required or that one is likely to be able to be granted.

West Lothian Council will consult SNH where:

- It is uncertain that the mitigation proposed by an applicant will mean that a species licence is not required, or
- It does not consider it likely (with reference to the relevant licence tests) that a licence will be able to be granted by SNH to enable a planning permission to be used.

For further information on the service that planning authorities and other stakeholders can expect from SNH in relation to advice on planning and development proposals please see *A Service Statement for Planning and Development* (<http://www.snh.gov.uk/docs/A498949.pdf>).

**ANNEX B**  
**LIST OF RELEVANT LEGISLATION**

## List of Relevant Legislation

There are European Directives, UK implementing Regulations and Acts of Parliament and Scottish Regulations that need to be considered by councils for the protection and enhancement of wildlife and habitats. These obligations have a significant influence on shaping policy. The following is a list of the more relevant:

Legislation Name	Legislation Summary	Legislation Web-link
<b>European and International</b>		
Habitats Directive 92/43/EEC	Requires Special Areas of Conservation (SACs) to be designated for habitats and species listed on Annex I and II of the Directive and outlines the protection afforded to these sites. Outlines species protection provisions, including those for species commonly known as European Protected Species. Transposed into law in Scotland by the Conservation (Natural Habitats, &c.) Regulations 1994 as amended	<a href="http://ec.europa.eu/environment/nature/legislation/habitatsdirective/">http://ec.europa.eu/environment/nature/legislation/habitatsdirective/</a>
Birds Directive 2009/147/EC	Protects all wild birds, their nests, eggs and habitats within the European Community. It gives member states of the European Union the power and responsibility to classify Special Protection Areas (SPAs) to protect birds which are rare or vulnerable in Europe, as well as migratory birds which are regular visitors	<a href="http://ec.europa.eu/environment/nature/legislation/birdsdirective/">http://ec.europa.eu/environment/nature/legislation/birdsdirective/</a>
(Ramsar) Convention on Wetlands of International Importance	Outlines protection of internationally important wetland sites protecting wildfowl habitat	<a href="http://www.ramsar.org">http://www.ramsar.org</a>
<b>UK</b>		
Wildlife and Countryside Act 1981 (as amended)	Chief mechanism for providing legislative protection of wildlife in Great Britain. Transposes Birds Directive and 'Bern Convention' into national law	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
Protection of Badgers Act 1992	Makes it a serious offence to injure or take a badger, or to damage or interfere with a sett unless a licence is obtained from a statutory authority (SNH)	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
Conservation (Natural Habitats, &c.) Regulations 1994 as amended	Transposed the Habitats Directive into national law	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
Conservation of Habitats and Species Regulations 2010	Transposes the Habitats Directive into law in England and Wales. Also applies to reserved matters	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
<b>Scottish</b>		
Environmental Impact Assessment (Scotland) Regulations 1999	Outlines the instances where and protocol for carrying out an EIA	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
Nature Conservation (Scotland) Act 2004	Outlines measures designed to conserve biodiversity and protect and enhance the biological and geological natural heritage of Scotland	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>



Legislation Name	Legislation Summary	Legislation Web-link
Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011	Outlines compulsory conditions for supporting a planning application with an EIA report. Updates some, but not all, of the EIA (Scotland) Regulations 1999	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
The Wildlife and Natural Environment (Scotland) Act 2011	Creates a new regime for regulating invasive and non-native species	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>

**ANNEX C**  
**INITIAL SITE AUDIT CHECKLIST**

## Initial Site Audit Checklist

This checklist can help when undertaking a site audit. If you decide to use it, it will give an indication of the ecological data that will be required for a development site, as well as highlighting the important designations, habitats and species to be considered during the design and planning process.

Note: In some cases further survey requirements may be identified following consultations with Council staff and/or SNH.

Consideration	Tick if it applies	If Yes then:	Done	
Does the site include all or part of a statutorily designate site e.g. SPA, SAC, SSSI?	<input type="checkbox"/>	Consult Scottish Natural Heritage and Local Council for more information	<input type="checkbox"/>	
Is there a nearby statutorily designated site e.g. SPA, SAC, SSI nearby that may be impacted by the development?	<input type="checkbox"/>	Consult Scottish Natural Heritage and Local Council for more information	<input type="checkbox"/>	
Does the site include all, part of, or impact on, a nearby non-statutory designated site i.e. a Local Biodiversity Site?	<input type="checkbox"/>	Consult Local Council to determine under what circumstances, if any, development might be acceptable and the ecological data required	<input type="checkbox"/>	
Does all or part of the site form a wildlife corridor or 'stepping stone' linking two or more other areas of ecological value?	<input type="checkbox"/>	Assess ecological impact of development on the site and adjacent areas of habitat, and identify possible mitigation	<input type="checkbox"/>	
		<b>If No then:</b>	<b>Done</b>	
Has a Phase 1 Habitat Survey been undertaken in order to help define the key habitats on site?	<input type="checkbox"/>	Consider undertaking a Phase 1 Habitat Survey at the earliest opportunity	<input type="checkbox"/>	
<b>Does the site include any of the following habitats (based on Phase 1 Habitat Survey):</b>				
Mature trees (individuals or small stands)?	<input type="checkbox"/>	<b>Survey for:</b>	<ul style="list-style-type: none"> <li>Bats</li> <li>LBAP Species</li> </ul>	<input type="checkbox"/>
		<b>Check for:</b>	<ul style="list-style-type: none"> <li>Tree Preservation Orders</li> <li>Conservation Area designation</li> </ul>	
		<b>Undertake:</b>	<ul style="list-style-type: none"> <li>Tree survey (species, location, ground spread, age, height)</li> </ul>	
Woodland?	<input type="checkbox"/>	<b>Survey for:</b>	<ul style="list-style-type: none"> <li>Bats</li> <li>Breeding Birds</li> <li>Red Squirrels</li> <li>Badgers</li> <li>LBAP Species</li> </ul>	<input type="checkbox"/>
		<b>Undertake:</b>	<ul style="list-style-type: none"> <li>Phase II Habitat Survey</li> </ul>	
Hedges?	<input type="checkbox"/>	<b>Survey for:</b>	<ul style="list-style-type: none"> <li>Determine if the hedge is of particular ecological value i.e. species rich</li> <li>Breeding Birds</li> <li>LBAP Species</li> </ul>	<input type="checkbox"/>

Consideration	Tick if it applies	If Yes then:		Done
Rivers, streams or wet ditches?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• Otters</li> <li>• Water Voles</li> <li>• Salmon</li> <li>• LBAP Species</li> </ul>	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> <li>• Ecological Impact Assessment</li> </ul>	
Ponds, pools or lochs?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• Great Crested Newts</li> <li>• Water Voles</li> <li>• LBAP Species</li> </ul>	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> <li>• Ecological Impact Assessment</li> </ul>	
Wetland or bog?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• LBAP Species</li> </ul>	
		Undertake:	<ul style="list-style-type: none"> <li>• Phase II Habitat Survey on vegetated areas</li> <li>• Ecological Impact Assessment</li> </ul>	<input type="checkbox"/>
Long / rough grassland?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• LBAP Species</li> </ul>	
		Undertake:	<ul style="list-style-type: none"> <li>• Phase II Habitat Survey</li> <li>• Ecological Impact Assessment</li> </ul>	<input type="checkbox"/>
Bings / spoil tips / rock faces?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• Young's helleborine (on wooded bings)</li> <li>• LBAP Species</li> </ul>	
		Undertake:	<ul style="list-style-type: none"> <li>• Phase II Habitat Survey on vegetated areas</li> <li>• Ecological Impact Assessment</li> </ul>	<input type="checkbox"/>
Brownfield?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• Invertebrates</li> </ul>	<input type="checkbox"/>
Heath (heather)?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• LBAP Species</li> </ul>	
		Undertake:	<ul style="list-style-type: none"> <li>• Phase II Habitat Survey</li> <li>• Ecological Impact Assessment</li> </ul>	<input type="checkbox"/>
Buildings / barns?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• Bats</li> <li>• Barn Owls</li> <li>• Nesting Birds</li> <li>• LBAP Species</li> </ul>	<input type="checkbox"/>
Scrub?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• LBAP Species</li> </ul>	
		Undertake:	<ul style="list-style-type: none"> <li>• Phase II Habitat Survey</li> <li>• Ecological Impact Assessment</li> </ul>	<input type="checkbox"/>
Coastal sand, mudflat, lagoons or saltmarsh?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> <li>• LBAP Species</li> </ul>	
		Undertake:	<ul style="list-style-type: none"> <li>• Phase II Habitat Survey</li> <li>• Ecological Impact Assessment</li> </ul>	<input type="checkbox"/>

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## **COUNCIL EXECUTIVE**

### **ACCIDENT INVESTIGATION AND PREVENTION (AIP) CASUALTY REDUCTION PROGRAMME 2015/16**

### **REPORT BY HEAD OF OPERATIONAL SERVICES**

#### **A. PURPOSE OF REPORT**

The purpose of this report is to seek approval for the list of proposed prioritised casualty reduction schemes for the 2015/16 programme.

#### **B. RECOMMENDATION**

It is recommended that the Council Executive approves the list of prioritised casualty reduction schemes for implementation in 2015/16.

#### **C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Making best use of our resources and working in partnership
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	<b>Policy:</b> The Accident Investigation and Prevention (AIP) casualty reduction programme is identified in the Community Safety Strategy and in the Road Safety Plan. The council has a statutory responsibility for road safety under the Road Traffic Act 1988.  <b>Legal:</b> None
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	The AIP casualty reduction programme contributes to the casualty reduction performance indicators.
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	The AIP casualty reduction programme contributes to the outcome: "We live in resilient, cohesive and safe communities."
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	<b>Financial:</b> The proposed schemes will be funded from the council's road casualty reduction budget with £270,000 allocated in 2015/16.

Maintenance costs relating to the schemes will be accommodated in future Roads and Transportation revenue budgets.

Schemes will be designed to minimise these future revenue costs as far as is practicable.

**VII Consideration at PDSP**

The programme was considered by the Environment PDSP at its meeting on 23 April 2015. The Panel recommended that the Council Executive approve the prioritised schemes list.

**VIII Other consultations**

Consultation will be carried out with Police Scotland on the programme as a whole and with any frontagers directly affected by any of the proposed schemes.

Schemes which require a traffic regulation order will have additional statutory consultation and a period for objections. Further reports will be prepared for the council executive in these cases.

**D. TERMS OF REPORT**

**Background**

The council's Road Safety Plan and the Community Safety Strategy identify the need for a road casualty reduction programme utilising accident investigation and prevention (AIP) techniques.

Research for the Department for Transport has found that local safety schemes which tackle proven casualty problems represent very good value for money and make a significant contribution to casualty reduction.

**Progress to date**

The current casualty reduction programme commenced in 2007/08 and since then, a total of 64 schemes have been completed.

It is too early to assess fully the effects of all of these schemes on casualty reduction. However, full monitoring (more than 36 months of after data) has now been carried out for the schemes introduced in 2007/08, 2008/09 and 2009/10. Initial monitoring (less than 36 months of after data) has been carried out on schemes introduced in 2010/11, 2011/12 and 2012/13.

The results of the first six years are provided in Table 1.

The results of this monitoring continue to be very encouraging and indicate an overall reduction in accidents at treated sites of around 50% giving a first year rate of return of 430%. A full explanation of the first year rate of return calculation is given in Appendix 1.



<b>Year</b>	<b>Number of schemes</b>	<b>Accident reduction at schemes</b>	<b>First year rate of return</b>
2007/08 (full monitoring)	9	38%	863%
2008/09 (full monitoring)	12	54%	323%
2009/10 (full monitoring)	13	40%	468%
2010/11 (initial results)	11	38%	630%
2011/12 (initial results)	7	63%	263%
2012/13 (initial results)	5	66%	435%
<b>2007-2012 Overall</b>	<b>57</b>	<b>50%</b>	<b>430%</b>

**Table 1 – AIP programme monitoring results**

### **Prioritised schemes for 2015/16**

For the 2015/16 programme, officers identified so-called 'sites for concern' in four ways. Firstly, over 60 single sites where there were four or more accidents in a five year period were identified. Secondly, the accident rates on all rural class A and B class routes and on urban routes were analysed with the 10 urban and rural routes with the highest accident rates investigated in detail. Finally, all residential areas in West Lothian were mapped, the accident rates calculated and detailed investigations carried out on the top five areas.

The investigation / analysis work undertaken involved using the recorded injury accident data collected by the police to identify sites for concern and analyse crash patterns to develop remedial measures. The process is used nationally and is endorsed by The Royal Society for the Prevention of Accidents (RoSPA) through its Road Safety Engineering Manual.

The accident patterns at each of these sites for concern were investigated and a total of 13 sites taken forward for development of remedial measures. These remedial measures have been prioritised based upon value for money criteria. Appendix 1 shows the list of schemes taken forward and prioritised.

The available funding will allow the introduction of around 11 schemes in 2015/16, subject to final scheme costs. As the accident data is analysed on an annual basis, the programme will be re-ordered next year to take account of up-to-date accident problems.

It is anticipated that results from the 2014/15 programme will be available in early 2017.

## **E. CONCLUSION**

The AIP programme is the council's main opportunity to make a significant impact in meeting casualty reduction targets and this is backed up by national research and local results.

The schemes prioritised for this financial year maximise the council's investment through first year rate of return prioritisation and will deliver improvements across West Lothian.

## **F. BACKGROUND REFERENCES**

Department for Transport (2009). Road Safety Research Report No. 108 – Contribution of Local Safety Schemes to Casualty Reduction. DfT, London. Available from: <http://www.dft.gov.uk/pgr/roadsafety/research/rsrr/theme5/rsrr108.pdf>

Appendices/Attachments:

Appendix 1 – Casualty Reduction Schemes 2015/16 – Prioritised list

Contact Person: Adam Beattie Senior Engineer - Road Safety & Traffic Management, Operational Services, Whitehill House, Bathgate.

Tel: 01506 282340, e-mail: [adam.beattie@westlothian.gov.uk](mailto:adam.beattie@westlothian.gov.uk)

*Jim Jack, Head of Operational Services*

Date of meeting: 26 May 2015

## APPENDIX 1 – CASUALTY REDUCTION SCHEMES 2014/15 – PRIORITISED LIST

Schemes have been prioritised using an economic assessment method known as First Year Rate of Return (FYRR). It is a simple way of calculating whether a scheme can be justified in economic terms.

The FYRR is calculated using the formula:

$$\%FYRR = \frac{\text{Annual\_Accident\_Savings} \times 100}{\text{Scheme\_cost}}$$

The annual accident savings are calculated using accident costs from Road Accidents Scotland 2013 and are weighted based upon whether the site is in an urban or rural location. This mechanism reflects that the cost to society of road accidents is higher in rural areas. As a decreasing number of identified sites include fatal or serious accidents, the severity weighting applied in previous years has not been used.

An estimated FYRR of more than 100% indicates that the scheme benefits will outweigh the costs within the first year. An estimated FYRR of less than 100% indicates that the scheme is still beneficial but the benefits take more than a year to outweigh the costs.

Schemes will be implemented in priority order until the available funding is exhausted. It will not be possible to implement every scheme in 2015/16 due to budget constraints. It is anticipated that around 11 schemes will be implemented this year.

Rank	Ref	Location	Ward	Proposals	Estimated Scheme Cost	Estimated Annual Cost Saving to Society <sup>1</sup>	Estimated FYRR (%)
1	AIP/2015/071	B7015 from Stoneyburn to Westwood	6	Re-mark centre and edge markings, install verge marker posts. Erect warning signs.	£5,000	£45,115	902.3
2	AIP/2015/064	A706 approximately one mile north of the junction with the A801	1	Erect chevron signs. Cut channel to allow water to drain from road.	£5,000	£36,470	729.4
3	AIP/2015/029	A71 staggered junction with Kirknewton to East Calder road	5	Install additional pedestrian push button	£5,000	£27,015	540.3
4	AIP/2015/063	A704 from the A71 to the A706	6	Re-position signs, re-mark white lining, anti-skid surface on bend w/b. Bend warning signs, chevron signs, re-mark edge markings and centre line	£35,000	£135,075	385.9

<sup>1</sup> The cost savings identified are not directly recouped by the council but are savings to society as a whole. The costs include both human costs and direct economic costs.

Rank	Ref	Location	Ward	Proposals	Estimated Scheme Cost	Estimated Annual Cost Saving to Society <sup>2</sup>	Estimated FYRR (%)
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5	AIP/2015/004	A71 / A899 junction, Lizzie Brice's Roundabout, Livingston	4, 5	Replace eastbound antiskid surfacing.	£18,750	£36470	194.5
6	AIP/2015/038	A89 / Loaninghall Road junction, Uphall	2	Install high friction surfacing on w/b approach. Re-mark give way markings on 3 approaches.	£14,000	£27015	193
7	AIP/2015/032	A89 / A801 junction, Heatherfield Roundabout	8, 9	Replace westbound antiskid surfacing	£17,500	£14,292	81.7
8	AIP/2015/006	A803, West Port, Linlithgow	1	Remove the zebra crossing and replace with a puffin crossing	£35,000	£28,585	81.7
9	AIP/2015/023	Knightsridge East / Houston Road Junction, Livingston	3	Removal of left turn slip road.	£30,000	£23,582	78.6
10	AIP/2015/016	Deans North / Carmondean Centre Road roundabout	3	Increase the size of the centre island and reduce the number of approach lanes to encourage reduced entry speeds.	£25,000	£19,295	77.2
11	AIP/2015/030	A706, Longridge Road / Blaeberryhill Road junction, Whitburn	7	Remove southbound left turn lane	£40,000	£19,295	48.2
12	AIP/2015/007	A801 / A706 junction, Avon Gorge	9	Install traffic signals.	£220,000	98,605	44.8
13	AIP/2015/008	Houston Road / Grange Road junction, Livingston	5	Install traffic signals at the Houston Road / Grange Road / Nettles road junctions	£120,000	£42,877	35.7

<sup>1</sup> The cost savings identified are not directly recouped by the council but are savings to society as a whole. The costs include both human costs and direct economic costs.



## **COUNCIL EXECUTIVE**

### **SMARTER CHOICES PROGRAMME AND ACTIVE TRAVEL PROGRESS**

#### **REPORT BY HEAD OF OPERATIONAL SERVICES**

#### **A. PURPOSE OF REPORT**

The purpose of this report is to advise the Council Executive of West Lothian Council's Smarter Choices Smarter Places programme of activity in 2015/16.

#### **B. RECOMMENDATION**

It is recommended that the Council Executive:

1. notes the content of this report and the level of funding successfully accessed by West Lothian Council; and
2. approves West Lothian Council's Smarter Choices Smarter Places programme for 2015/16.

#### **C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>		Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities; developing employees; making best use of our resources; working in partnership
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>		Promoting sustainable transport choices is consistent with the Council's Local Transport Strategy, Local Plan and emerging Local Development Plan, emerging Climate Change Strategy and Carbon Management Plan. It is also consistent with Scottish Government policy as stated within the National Transport Strategy.
<b>III</b>	<b>Implications for Scheme Delegations to Officers</b>	<b>for of to</b>	None.
<b>IV</b>	<b>Impact performance performance Indicators</b>	<b>on and</b>	Delivery of behaviour change to more sustainable modes of travel could have a positive, direct impact on the West Lothian SOA indicators as follows: Tonnes of CO2 emissions per capita for the West Lothian district, % of primary school children travelling actively to school, % of secondary school children travelling actively to school, number of people killed or seriously injured in road

accidents, % of residents with access to an hourly or more frequent bus service. Supporting people to make journeys by affordable modes such as walking and cycling could also have indirect positive impacts on other SOA indicators including those pertaining to jobs and economic growth.

V	<b>Relevance to Single Outcome Agreement</b>	<p>Outcome 2: We are better educated and have access to increased and better quality learning and employment opportunities.</p> <p>Outcome 3: Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.</p> <p>Outcome 4: We live in resilient, cohesive and safe communities.</p> <p>Outcome 6: Older people are able to live independently in the community with an improved quality of life.</p> <p>Outcome 7: We live longer, healthier lives and have reduced health inequalities.</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	<b>Resources - (Financial, Staffing and Property)</b>	<p>The Programme is funded by a Scottish Government (Transport Scotland) grant over the 2015/16 financial year. Match funding has been demonstrated during the bid process, and includes expenditure by non-Council organisations such as the Scotrail operator, NHS funding to the Council as well as Council revenue funding and in-kind staff time. The Council's Finance team was consulted during the application process and continue to be involved in the financial planning of the project.</p>
VII	<b>Consideration at PDSP</b>	<p>This Report has not been taken to PDSP as it presents a programme of activity in line with Council policy on sustainable transport, as contained within the published Local Transport Strategy, Local Plan and emerging Local Development Plan. Moreover, the timescales for both the development and approval of this programme (set by Transport Scotland and Paths for All) have prohibited presentation at both PDSP and Council Executive. The proposals have been discussed with the Chair and Deputy Chair of the Development and Transport PDSP.</p>
VIII	<b>Other consultations</b>	<p>The Programme was developed in partnership by staff from Operational Services, Planning and Economic Development and Social Policy.</p>

## **D. TERMS OF REPORT**

### **Background**

In June 2014, the Minister for Transport and Veterans agreed £5m funding in 2015-16 for Smarter Choices, Smarter Places travel behaviour change projects. The Smarter Choices, Smarter Places (SCSP) programme specifically aims to support behaviour change initiative to increase active and sustainable travel modes. SCSP has run on a pilot basis in recent years in small number of project areas e.g. Dundee, Dumfries, Kirkintilloch.

For the 2015/16 SCSP programme, each local authority in Scotland was offered an indicative allocation based on a formula of population with a floor of £50,000. Each authority had to submit an application to gain access to their indicative allocation. They were required to develop suitable programmes or projects within this application, of which SCSP would fund a maximum of 50%. This therefore required match-funding or investment to be identified in support of the application. The key aim was to identify projects to achieve measurable behaviour change over the course of the 2015/16 financial year (1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016).

Transport Scotland has grant funded Paths for All to administer the programme and provide support for the projects, including the planning and implementation stages.

The timescales for the development of SCSP applications have been challenging. Transport Scotland issued a letter to Chief Executives of local authorities on 25th November, notifying them of the SCSP process for 2015/16. Paths for All held workshops on the programme on 8th and 10th of December. Each local authority was allocated a consultant to support the development of their bid, which had to be submitted by 30th January 2015. The consultant held a workshop with multi-disciplinary WLC teams on 12th January 2015, the earliest opportunity post-Christmas / New Year holidays, at which project proposals were generated.

The guidance on qualifying projects is specific and the purpose of the grant is to target initiatives and measures to distinct communities, to encourage, support and promote modal shift through behaviour change. The grant funding is not available to deliver new infrastructure.

In these circumstances Officers focussed on seeking to deliver initiatives and a programme of SCSP projects which built on proposals already identified within existing committed and approved Council expenditure. Furthermore, as encouraged by the SCSP guidance, Officers sought to build on committed investment by partners in West Lothian, specifically the new Scotrail operator. The initiatives are in line with Council policy on sustainable transport, as contained within the published Local Transport Strategy, Local Plan and emerging Local Development Plan. These projects are described later in the report.

### **The need for a SCSP programme**

Whilst the Council has made good progress on delivering sustainable transport infrastructure in recent years through successful applications to the Scottish Government's Community Links programme in particular, further work is required to promote behaviour change. Livingston is a particular focus of the SCSP programme. Despite the existence of over 140 miles of off-road cycling and walking networks, 2011 Census data suggests 69% of employed adults travel to work by car in Livingston, compared to a Scottish national average of 62%, whilst 8% travel to work on foot compared to a national average of 10%. Comparison of 2001 and 2011 Census data suggests that the proportion of journeys to work by car in West Lothian has increased.

Progress on supporting sustainable travel choices on the journey to school in West Lothian is mixed, with recent levels of active travel having fallen below their peak in 2009.

Demand is growing at West Lothian's rail stations. 2011 Census data shows that the use of rail for journeys to work outside of West Lothian by West Lothian residents is increasing. Estimates of station usage from the Office for Rail Regulation for 2013/2014 suggest Linlithgow, Bathgate and Livingston North now all exceed 1million exits and entries, with Bathgate and Livingston North on track to become West Lothian's busiest rail stations if current trends continue.

Health inequalities continue to be an issue in West Lothian, with a difference in male life expectancy of 9.2 years and female life expectancy of 8.7 years between communities within West Lothian.

### **West Lothian's SCSP programme - funding**

West Lothian Council submitted an application to gain access to the indicative allocation of £162,000. This application was successful, and the Council has been offered additional funding of £45,000, taking the total grant allocation to £207,765 for 2015/16.

The Council has worked across internal teams and with external partners to provide the minimum 50% match funding/investment required to gain access to the funding allocation. Moreover, applications were required to demonstrate evidence of partnership working. Internal match funding has been sourced from existing projects committed in the Council's capital and revenue budgets, an existing fund for a Travel Plan Co-ordinator and in-kind staff time contributions from various teams. Externally, the new Scotrail operator Abellio, has committed to invest in cycle parking and cycle hire facilities at several stations in West Lothian, and this has also been used in support of the West Lothian SCSP application.

The table below shows the match funding and investment sourced for the Programme, which has supported the release of £207,765 SCSP funding to West Lothian Council. The indicative distribution of the SCSP allocation is also shown.



SCSP Project	Description of match funding / investment	Match subtotal	Description of SCSP activity	SCSP funding distribution
<b>Project 1: Oakbank</b>	Capital works by WLC on bus layby & footways	£100,000	Travel planning with employees at Oakbank	Costs included under Project 4 below.
	Scotrail (Abellio) investment in Livingston South station	£12,000		
<b>Project 2 - Livingston</b>	In Kind Staff Time (Green Impact)	£3,600	Travel planning with employees. Promotion of Bike & Go. Review of signage and mapping of active travel network in Livingston. Supporting travel planning measures (e.g. cycle training courses). Promotional materials.	Travel planning costs included under Project 4 below
	Scotrail (Abellio) investment	£55,000		c£95,000
<b>Project 3 – All ability cycling &amp; Bike lending work package</b>	Put your West Foot Forward development budget	£15,000	Development of 3 further bike lending libraries. Permanent All Ability cycling scheme. Associated promotional materials.	c£51,000
	In Kind Staff Time (West Lothian on the Move)	£9,000		
<b>Project 4: Overarching delivery support &amp; evaluation</b>	Travel plan coordinator developer contribution fund	£45,242	Additional staff resources to help deliver the whole SCSP programme. Purchase of online myPTP credits (personalised travel planning). Monitoring and evaluation of all projects.	c£62,000
	<b>Total match funding</b>	<b>£239,842</b>	<b>Total SCSP allocation</b>	<b>£207,765</b>

### West Lothian's SCSP programme - content

West Lothian's SCSP programme consists of three area based projects (1 to 3 below), and one overarching delivery project (4). The detail of these projects will evolve during the project, and they are summarised in outline below.

1. A project to promote sustainable travel options to employees at the Oakbank employment park off the A71, south east of Livingston. This project seeks to build on a new bus layby and associated pedestrian facilities on the A71 to serve Oakbank (Council Executive Report on Active and Sustainable Travel Infrastructure Improvements Proposed Programme 2013/14 to 2014/15, 1<sup>st</sup> October 2013). These bus and pedestrian facilities, alongside new and enhanced cycle parking at Livingston South station and the existing off-road cycling and pedestrian network,

will be promoted to employees based at the Park through a package of travel planning measures including personalised travel planning.

2. A project to promote sustainable travel options to employees and communities within Livingston. This project seeks to promote a new Bike Hire facility and improved cycle storage at Livingston North railway station, to be provided by Abellio, the new Scotrail operator. The project also seeks to promote sustainable access to Livingston North railway station by commuters, and will seek to review and enhance mapping and signage to encourage use of the extensive off-road cycling and walking network in Livingston. This project will seek to deliver travel planning measures to employers in and around Livingston, and provide a package of support to encourage sustainable travel for the journey to work (including maps, access to cycle training courses and led rides, personalised journey planning service). The project aims to identify measures to increase the usage of the existing Livingston active travel network, and provide practical support to increase usage by communities.
3. A project to reduce barriers to active travel uptake by extending bike lending libraries in West Lothian and providing the All Ability Cycling project with a permanent footing in West Lothian. The Council has successfully delivered five bike lending libraries in West Lothian and this project will seek to deliver another three across the authority area. The Council has also been running a successful pilot of All Ability Cycling sessions on a weekly basis during selected periods. These sessions, which use adaptive bikes for use by children and adults with a range of disabilities, have proved extremely popular. Funding from the SCSP programme will support the lease of bikes to be made available within West Lothian seven days a week, which will also support use by community groups and families at the weekend.
4. This package focuses on mechanisms to support the delivery of the SCSP overall. It includes the delivery of SCSP programme coordinator support through consultancy, with a particular focus on travel planning. It is also proposed to include graduate / student placements to support the delivery of the SCSP programme, which will offer added value to other Council workstreams (e.g. monitoring of usage of the active travel network). This additional and temporary staff support will assist with the delivery and evaluation of the SCSP programme overall, as well as focusing on travel planning with employers in particular. In addition, this package includes the procurement and use of an online Personalised Travel Planning service which will support the efficient delivery of the programme.

## **E. CONCLUSION**

The opportunity to access this specifically targeted grant funding (SCSP) provides the opportunity to develop and build on behavioural change initiatives to encourage and promote the use of sustainable transport infrastructure and initiatives which the Council has delivered over recent years. It is also an example of successful partnership working across teams within West Lothian Council, and with external organisations.

In summary, West Lothian's SCSP programme seeks to deliver measurable behaviour change in 2015/16 as well as further contribute to the removal of barriers to active travel.

## **F. BACKGROUND REFERENCES**

Further information on previous Transport Scotland's Smarter Choices Smarter Places initiatives is available here - <http://www.transportscotland.gov.uk/environment/smarter-choices-smarter-places> . Information on the 2015/16 programme approach is available here <http://www.pathsforall.org.uk/pfa/get-involved/smarter-choices-smarter-places->

[fund.html](#).

Appendices/Attachments: n/a.

Contact Person: *Deborah Paton*, [Deborah.Paton@westlothian.gov.uk](mailto:Deborah.Paton@westlothian.gov.uk), 01506 282329.

Jim Jack, Head of Service, Corporate Operational and Housing Services.

Date of meeting: Council Executive 28<sup>th</sup> April 2015





## **COUNCIL EXECUTIVE**

### **CONSULTATION ON A PROPOSED BILL RELATING TO BURIAL AND CREMATION AND OTHER RELATED MATTERS IN SCOTLAND**

#### **REPORT BY HEAD OF OPERATIONAL SERVICES**

##### **A. PURPOSE OF REPORT**

The purpose of the report is to inform members of The Scottish Government's Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland.

##### **B. RECOMMENDATION**

It is recommended that the Council Executive :-

1. Notes the contents of the consultation; and
2. Approves this report and appendix one as West Lothian Council's response to the consultation to the Scottish Government.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs.
	Being honest, open and accountable.
	Providing equality of opportunities.
	Making best use of our resources.
	Working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Burial Grounds (Scotland) act 1855.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None.

<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	We make the most efficient and effective use of our resources by minimising our impact on the built and natural environment.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	None.
<b>VII</b>	<b>Consideration at PDSP</b>	The report was considered at the Environment PDSP on 23 April 2015. In accordance with item 006 of the action note from the meeting, an updated copy of the council's response to the consultation was circulated to the panel for comment. No additional comments were received.
<b>VIII</b>	<b>Other consultations</b>	Legal Services.

## **D. TERMS OF REPORT**

### **D1 Introduction and background**

A consultation document entitled "Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland" was issued by the Scottish Government on 26 January 2015. A copy of the document is attached as appendix 1.

The legislation relating to burial and cremation in Scotland requires to be modernised. For instance, the primary legislation that relates to burials, the Burial Grounds (Scotland) Act 1855 and the Burial Grounds (Scotland) Amendment Act 1886 ( which amended the 1855 Act) are no longer adequate and new powers that are fit for purpose are required to ensure that modern practices can be implemented.

The majority of the proposals which will form the proposed Bill are based on the recommendations of two groups, the Burial and Cremation Review Group and the Infant Crematorium Commission. In addition to the recommendations made by these groups the consultation also considers various other related proposals. Increasing numbers of people are finding that the cost of a funeral is too much to bear and the consultation paper considers ways of managing this area of concern.

As West Lothian Council does not operate a crematorium, questions that relate specifically to crematoria and cremation have not been responded to in the consultation.

### **D2 Issues considered in the consultation paper ( appendix 2)**

The Scottish Government consultation paper aims to address a diverse range of sensitive and emotive issues including :-

**The legislative framework** – the Bill seeks to ensure that the existing legal framework covering burial and cremation is comprehensively reviewed and updated.

**The right to instruct the disposal of human remains** – There is currently no legal provision regarding who has the right to instruct the disposal of human remains in Scotland, which normally involves arranging for the disposal of the body, including the method of disposal. In practice, this is commonly carried out by the nearest relative or next-of-kin of the deceased, although it may also be performed by the executor. This lack of legal clarity can lead to problems.

**The management of cemeteries** – One of the Burial and Cremation Review Group's key concerns was around the management of cemeteries, particularly those which had fallen into disrepair. The Group identified the lack of regulations governing the management of cemeteries in Scotland as a problem, leaving Burial authorities with limited power to take action to address unsafe or abandoned cemeteries, graves and headstones and other memorials.

**Burial & cremation records** – the Scottish Government is seeking views on whether all burial and cremation records should be retained for a minimum period of 50 years, whether in hard copy or electronically or retained indefinitely.

**Alleviating pressure on burial grounds** – The Burial and Cremation Review Group examined the increasing pressure in burial in Scotland. There are a number of reasons for this pressure, including high levels of development and subsequently higher land prices. The Group noted that this situation is prevalent across Scotland, but particularly in urban areas. The Group made several recommendations to reduce the pressure on burial land, including ending the sale of lairs in perpetuity, reuse of full lairs and use of partially-full and unused lairs.

**Exhumation** – The Burial and Cremation Review Group considered only practice and procedure to exhumations which do not involve the Procurator Fiscal or the police. The Group took the view that the current procedure, which requires an application to be made by the Sheriff by either the nearest relative or the local authority, is unnecessarily bureaucratic, lengthy and costly. The Group recommended a new streamlined approach.

**Funeral Poverty** – The Scottish Government believe that funerals are a vital public service and that no-one should be prevented from having a dignified because of cost. Similarly, no-one should be forced into debt by the cost of organising a funeral. The average cost of a burial in Scotland is £5,055. In response to these pressures, it is proposed to impose a legislative duty on Local Authorities to publish up-to-date burial and cremation costs on their websites.

## **E. CONCLUSION**

Existing legislation is in need of modernisation and there exists an opportunity to contribute to the consultation being carried out by the Scottish Government on a proposed Bill relating to burial and cremation and other related matters.

## **F. BACKGROUND REFERENCES**

The Scottish Government Consultation 2015 on a proposed Bill relating to burial and cremation and other related matters in Scotland.

Appendices/Attachments:

Appendix 1 - Consultation document.

Appendix 2 – Respondent information form.

Contact Person: Andy Johnston, NETs, Land and Countryside Manager, Whitehill House, Bathgate.  
Telephone: - 01506 776675. E-mail:- andy.johnston@westlothian.gov.uk

Date of meeting: - 26 May 2015.



## ANNEX C

### Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland



#### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

##### Organisation

West Lothian Council

**Title** Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ **Please tick as appropriate**

##### Surname

Johnston

##### Forename

Andy

#### 2. Postal Address

Whitehill House

7, Whitestone Place

Whitehill Industrial Estate

BATHGATE

**Postcode** EH48  
2HA

**Phone** 01506 776675

**Email**  
andy.johnston@westlothian.gov.uk

#### 3. Permissions - I am responding as...

**Individual**

☐

/

**Group/Organisation**

**Please tick as**

☒

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

**Please tick as appropriate**

☐ Yes ☐ No

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Are you content for your **response** to be made available?

**Please tick as appropriate**

☒ Yes ☐ No

Yes, make my response, name and address all available ☒

**or**

Yes, make my response available, but not my name and address ☐

**or**

Yes, make my response and name available, but not my address ☐

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

☒ Yes

## Annex D

### List of consultation questions and consultation response form

#### How to complete this response form

1 Each question in the consultation paper is listed below. Respondents are invited to answer as many questions as they wish to, and there is no requirement to answer every question. Completing this form as a Word document allows responses to be provided directly on to the form, although respondents may choose to respond in other ways.

2 Some questions provide a check box to provide a response - to mark a box, double-click it and then select 'Checked' from the menu. Where several questions are asked under the same number, the initial question is the one that should be answered using the check box. Further information can be provided by inserting free text under the heading 'Additional information'.

3 Where no check box is provided, responses are sought in the form of free text, which can be inserted under the heading 'Response'.

4 At the end of the questions consultees are invited to provide any other information which they feel is relevant.

5 Once completed this form can be emailed to [burialandcremationbill@scotland.gsi.gov.uk](mailto:burialandcremationbill@scotland.gsi.gov.uk) or posted to:

Burial and Cremation Consultation  
Scottish Government  
3E St Andrew's House  
Edinburgh  
EH1 3DG

6 When returning responses please also complete and return the Respondent Information Form at Annex C. **The closing date for responses is Friday 24 April 2015.**

### The legislative framework

Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q2 – Are there any particular powers that are required by Burial Authorities or Cremation Authorities that are not provided for by current legislation?

Response: No comment

Q3 - Do you agree that the proposed Burial and Cremation (Scotland) Bill should apply to all cemeteries and crematoria in Scotland, regardless of whether they are publically or privately operated? If not, please set out reasons why not.

Yes ☒ No ☐ Don't Know ☐

Additional information: No Comment

Q4 - Do you agree that the Bill should contain provisions which apply to all facilities where any new method of disposal which might be introduced in Scotland are carried out?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q5 - Do you agree that the Bill should contain provisions to regulate environmentally friendly methods of disposal that are already available in Scotland?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q6 – Should the Burial and Cremation (Scotland) Bill contain provisions pertaining to home burial?

Yes ☒ No ☐ Don't Know ☐

Additional information:

The inclusion of the provisions pertaining to home burial would ensure that the practice is regulated.

Q7 - In making legal provision for home burial, what factors should be considered?

Response: Clear guidance would be required to ensure that home burials are carried out in a safe, controlled and professional manner in accordance with the practice carried out by Burial Authorities.

Q8 - Are there any reasons why private cremation should not remain illegal?

Yes ☐ No ☒ Don't Know ☐

Additional information: Cremation should only be carried out by approved crematoria in strict compliance with SEPA regulations.

Q9 - Do you agree that alternative methods of disposing of the dead should be regulated for in this way? Are there any particular alternative methods that should be considered? Are there any particular methods which should be prevented from being used in Scotland?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q10 - Do you agree with this definition of ashes? If not, how should ashes be defined?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q11 - Do you agree that a minimum distance of 200 yards (182.9 metres) should be required between crematoria and housing? If not, please explain why not.

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q12 - What are your views on the use of enforcement powers or penalty powers in response to such a minimum distance being breached?

Response:

It is important that the minimum distance between crematoria and housing is complied with. The use of enforcement powers or penalty powers in response to such a minimum distance being breached is appropriate.

The right to instruct the disposal of human remains

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at

Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q14 - In the case of the death of a person under the age of 16 years, do you agree that the right to instruct the disposal of the body should follow the proposal at paragraph 43? If not, why not? In whom should this power be vested instead? How should this be defined in legislation?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q15 - Do you agree with the proposal for who should have the right to instruct the disposal of the body in the event of a stillbirth? If not, why not? Who should have the right to instruct the disposal of the body in the event that the mother or father are unable to do so? How should this right be defined in legislation?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q16 - Do you agree with the proposal of allowing someone not listed to instruct the disposal of human remains in the case of a stillborn baby, pregnancy loss and the death of a child only on cause shown? Is it appropriate that no similar provision is proposed for the death of an adult?

Yes ☒ No ☐ Don't Know ☐

Additional information: The responsibilities of the lair holder need to remain and be incorporated within the regulations.

#### The management of cemeteries

Q17 - Do you agree that Scottish Ministers should have the power to make regulations pertaining to the general management of cemeteries, including giving Burial Authorities the right to take action to address unsafe, damaged and abandoned lairs and memorials?

Yes ☒ No ☐ Don't Know ☐

Additional information:

Subject to: - 1 further consultation on the content and scope of the regulations being undertaken in advance of their proposed introduction. 2. the potential impact on Burial authorities being considered in a Business and a Regulatory Impact

Assessment being carried out. 3. Local Authorities should be entitled to determine their own local Cemetery Management Rules and Service Standards.

Q18 - Alternatively, would the introduction of non-statutory guidance provide a useful option between the current situation where no guidance exists and the introduction of regulations?

Yes ☐ No ☒ Don't Know ☐

Additional information:

The introduction of non-statutory guidance on the management of cemeteries would be an improvement on the current situation but the introduction of regulations similar to the Local Authorities Cemeteries Order 1977 which apply to England and Wales is the preferred option.

Q19 - Are there any reasons why a minimum burial depth of 3 feet from the surface to the top of the coffin should not be implemented? Should there be any exemptions?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

#### Burial and cremation records

Q20 – Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible? Should any exclusions apply? Should this be applied to all forms of disposing of human remains in Scotland?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q21 – Should records and forms relating to burial and cremation be kept for 50 years or is it better that they are kept indefinitely?

50 years ☐ Indefinitely ☒ Other period ☐

Additional information: No comment

#### Alleviating pressure on burial grounds

Q22 - Do you agree that the sale of lairs in perpetuity should be ended?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q23 - Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q24 - Should there be any restrictions about to whom the owner of a lair can transfer his or her interest? Should this be restricted to family members?

Response: In relation to cemeteries and churchyards managed by local authorities, lairholders should not be entitled to transfer any or all of their lairs without the consent of the Council. Lairholders should only be entitled to sell the right granted by a certificate to the Council for a price no greater than the original purchase price less an administration fee set from time to time by the Council. Transfer to non-family members would have to be regulated.



Q25 - Do you agree that Burial Authorities should no longer be able to sell multiple lairs or blocks of lairs to an individual?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q26 - The Burial and Cremation Review Group recommended that Burial Authorities may refuse to sell a lair if it believes that it is not for imminent use. How long should constitute 'imminent' in this situation? How could this be tested?

Response: West Lothian Council would not support this.

Q27 – Do you agree with the proposal that full lairs and partially-full and unused lairs should be considered for reuse in certain circumstances with appropriate safeguards in place?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q28 - Is a period of 75 years sufficient before reuse of a full lair can be considered?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q29 - Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted? Should any other specific organisations or groups be consulted at this stage?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q30 - Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse? Should any particular methods of notification be used in addition to those noted?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q31 – What can be done to make sure that there are no financial disincentives to opposing to the reuse of a grave?

Response: No comment

Q32 - Other than family members, who should be able to object to the proposed reuse of a lair?

Response: No comment

Q33 - What considerations should be made to determine whether an objection from a non-family member is legitimate?

Response: No comment

Q34 - If the Burial Authority decides not to reuse a lair on the basis of an objection from a non-family member, should that person become liable for the maintenance of the lair? If not, should the Burial Authority remain responsible?

Response: No comment

Q35 - Do you agree that the 'dig and deepen' method should be used to allow the reuse of full lairs?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q36 - Are any other techniques available that should be considered?

Response: No comment

Q37 - Do you agree that headstones and memorials may be reused if appropriate?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q38 - Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe? In this instance, what should happen to headstones and memorials that are removed?

Yes ☐ No ☒ Don't Know ☐

Additional information: West Lothian Council currently have a programme of making safe memorials and do not remove memorials.

Q39 - Are any other approaches for easing the pressure on burial land suitable for use in Scotland? For example, should above ground mausoleums, similar to those found in Europe, be considered?

Response: Given the growing pressure on land all approaches should be considered.

Q40 - Is a period of 25 years sufficient before the use of a partially-full or unused lair can be considered?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q41 - Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair? Where should the Burial Authority's intention be advertised?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q42 - Where a Burial Authority intends to reuse a lair having undertaken all appropriate consultations, should it be required to make clear to prospective purchasers that the lair is being reused or is part of a lair that is partly full?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q43 - Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately? Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q44 - Should certain categories of grave – such as Commonwealth War Graves – be automatically excluded from consideration for reuse?

Yes ☒ No ☐ Don't Know ☐

Additional information: The opinion of the Commonwealth War Graves Commission should be sought on this proposal before a final decision is made.

### Exhumation

Q45 - Do you agree with the proposals to streamline the process for authorising exhumations, including an additionally streamlined process for particular categories of exhumation?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q46 - Do you agree with the proposal to provide an alternative process where the purpose of the exhumation is to allow the reuse of a full lair, including that the Burial Authority need not seek specific authorisation once it has carried out specified notifications that it intends to reuse the grave?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q47 - Do you agree that authorisation for exhumations should be carried out by the inspector, rather than the Scottish Government?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q48 - Do you agree with the proposed approach for the exhumation of cremated remains?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

#### Pandemics and mass-fatality events

Q49 – Do you agree that the Bill should set out the process for applying for and authorising an exhumation for archaeological purposes? Should any particular issues be taken into account or conditions applied?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q50 - Do you agree that the same power to suspend regulations relating to cremation in response to pandemics or other similar incidents should be extended to any relevant burial regulations?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

#### Cremation forms and procedures

Q51 - Do you agree with the principle that a single form should be prescribed for applying for cremations or is it preferable that separate forms should be provided for applying for different categories of cremation? Please set out your reasons for your view.

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q52 - Do you agree that each of these categories should be provided for in cremation application forms?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q53 – Do you agree that Form A should contain these options for any ashes which are recovered?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q54 – Do you agree that no cremation which is applied for using Form A should be able to proceed unless the applicant has specified what should happen to the ashes? Do the categories above cover all relevant options or should other options be offered?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q55 – Do you agree that Form A should state that it may not be possible to recover ashes after the cremation of a very young child?

Yes ☐ No ☐ Don't Know ☐

No comment, West Lothian Council does not operate a crematorium.

Q56 – Is the process for enabling a person other than the applicant to collect any ashes recovered appropriate? Are the timings proposed suitable?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q57 - If ashes are left at the crematorium, how long should be required to elapse before the crematorium can make arrangements to dispose of the ashes?

Response: No comment, West Lothian Council does not operate a crematorium.

Q58 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q59 – Should application for other categories of cremation require a countersignature?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q60 - Given the similarities between the proposed forms, would a single application form applying to the cremation of people born alive and stillborn babies be appropriate, allowing for specific sections of the form to be completed depending on the kind of cremation? Would separate forms for each category be more appropriate?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q61 - What information should be considered essential for the cremation application?

Response: No comment, West Lothian Council does not operate a crematorium.

Q62 - What is the best way to enable Cremation Authorities to undertake this scrutiny? What level of seniority is appropriate for this role? Should the crematorium manager be legally responsible for this scrutiny, even if the actual scrutiny is delegated to a suitably senior member of staff? Should a senior Cremation Authority staff member be required to countersign the form to confirm that all legal requirements have been met?

Response: No comment, West Lothian Council does not operate a crematorium.

Q63 – Is there any need for the introduction of statutory forms for applying for a burial?

Yes ☒ No ☐ Don't Know ☐

Additional information:

Forms should be written and structured using the principles proposed for cremation ensuring simplicity, clarity and consistency.

#### Pregnancy loss

Q64 – Is a comparable process for the burial of a pregnancy loss of less than 24 weeks gestation required?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q65 - Is an alternative process required before the cremation of a pregnancy loss where there is no medical certificate?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q66 – Do you agree with these proposals for the form used to seek the mother's agreement to the hospital organising the cremation of a pregnancy loss of less than 24 weeks' notice?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q67 - Do you agree with the proposal for who should have the right to instruct the disposal of the remains in the event of a pregnancy loss of less than 24 weeks gestation? If not, in whom should this right be vested?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q68 - Do you agree with the proposal to provide a list of people who have the right to instruct the disposal of the remains in the event that the woman is unable to do so? If so, who should be included in this list?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q69 – Should there be a maximum time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation? How long should this be?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q70 – Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory? If not, why not?



Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q71 - Should the form used by the hospital to release a pregnancy loss to the mother be statutory?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q72 – Should there be a prescribed form for the application for cremation of a pregnancy loss of less than 24 weeks gestation where the cremation is organised by the mother?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q73 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

#### Cremation register

Q74 - Is this list comprehensive? Should any other information be required to be recorded in the Cremation Register?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q75 – Does this proposal provide sufficient confidentiality in the case of the cremation of a pregnancy loss?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q76 - Are there any reasons why the Cremation Register should not be a public document, assuming that appropriate data protection and confidentiality considerations are in place?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q77 - Do you agree that the Cremation Register should be retained indefinitely?

Yes ☐ No ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

#### Accreditation of Cremation Authority staff

Q78 - Should the accreditation requirements described in paragraph 176 be set out in a Code of Practice or in legislation?

Code of Practice ☐ Legislation ☐ Don't Know ☐

Additional information: No comment, West Lothian Council does not operate a crematorium.

Q79 - How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

Response: No comment, West Lothian Council does not operate a crematorium.

#### Inspector of crematoria

Q80 - Do you agree that the role of Inspector should be responsible for crematoria and cemeteries?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q81 – Do you agree that the Inspector should be responsible for particular additional functions, as described? Are there any other functions that the inspector should carry out?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q82 - Should there be a formal schedule of inspection to ensure that every Cremation Authority and Burial Authority is inspected at least once during a given period?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

### Regulation of the funeral industry

Q83 - Would regulation of the funeral industry be beneficial? What would regulating the industry achieve that cannot be achieved already? What are the disadvantages of regulating the funeral industry?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

Q84 - If the funeral industry were to be regulated, what approach would be most useful for Scotland? Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

Yes ☒ No ☐ Don't Know ☐

Q85 - Do you agree that an additional inspector role, separate from the Inspector of Crematoria, would be required to support a regulatory regime?

Yes ☒ No ☐ Don't Know ☐

Additional information: No comment

### Funeral poverty

Q86 - Do you agree with the proposal that Local Authorities should have a legal duty to ensure that their up-to-date burial and cremation costs are published on their website in clear and accessible way?

Yes ☒ No ☐ Don't Know ☐

Additional information: Local Authorities should have a legal obligation to clearly advertise up to date burial and cremation costs. However, where there are private burial grounds and crematoriums within council boundaries, the legal responsibility to publish costs for burials and cremations should remain with the private owners.

Q87 - Should Local Authorities be required by law to charge funeral costs on a cost-recovery basis only?

Yes ☐ No ☒ Don't Know ☐

Additional information: No comment

Q88 - What else could be done to reduce funeral costs and ensure that they remain affordable for everyone?

Response: It is important that current methods and procedures are constantly reviewed to ensure that they are efficient, effective and ethical. The Scottish Government, Local Authorities, private sector providers and the funeral industry should continue to work together to try and reduce funeral costs, increase choice and awareness so that funerals are affordable.

Any other relevant issues

Please use this space to provide information about relevant issues which are not covered in the consultation paper or any topic which you think should be considered:

No comment

# **Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland**



**This consultation paper considers a range of sensitive and emotive subjects. Some of the issues discussed take place at times of great distress and deal with difficult and harrowing experiences. The language of the consultation paper is necessarily legalistic and technical, and it is necessary to discuss the subject matter in an objective and dispassionate way. This approach is essential to ensuring that a legal framework is developed which ensures that appropriate dignity and respect is shown when carrying out burials and cremations. The use of such language should not be taken as being disrespectful to those who have experienced some of the circumstances considered in the consultation paper.**





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## Ministerial foreword



Death touches us all and there are few times more difficult than when a loved one dies. At such moments, the procedures required to ensure a respectful funeral for the deceased should be straightforward and clear. We should expect to be able to bid farewell in a dignified way that provides comfort to those left behind, and we should expect to know that the remains of our loved ones will be handled compassionately and appropriately.

When that does not happen, the weight of grief is compounded by anger at systematic failures at this most sensitive of times. No-one should be faced with this situation, and one way to reduce the likelihood of such occurrences is to modernise the legal framework for burial and cremation in Scotland. This consultation paper invites views on various proposals for a new Bill relating to burial and cremation and other related matters.

Many of the recommendations considered by the consultation paper were made by the Infant Cremation Commission chaired by Lord Bonomy. The Commission was convened to recommend improvements in the way that cremations of babies and infants are carried out, in response to historical poor practice at a number of crematoria across Scotland, details of which emerged in 2012. Families facing the unimaginable situation of the death of a baby or infant were given unclear or incorrect information about the cremation process, particularly about whether or not ashes would be recovered. My predecessor in this post, Michael Matheson, established the Commission to examine practice and recommend ways to ensure that this situation could not be repeated.

The Commission made sixty-four recommendations, many of which are already being taken forward by the newly established National Cremation Committee. Other recommendations require legislative change, and this consultation paper sets out proposals to give effect to those recommendations.

Several of the other recommendations in the consultation paper were made by the Burial and Cremation Review Group. The Group was convened in 2005 to consider ways to improve procedures following a death in Scotland. Several of the Group's recommendations have already been implemented in the Certification of Death (Scotland) Act 2011, but recommendations designed to improve practices relating to burial and cremation have not yet been taken forward. These remaining recommendations cover a wide range of issues, including the general management

of graveyards, proposals to ease pressure on burial land and modernising the legal framework for burial and cremation, as well considering new methods which involve neither cremation nor burial. Collectively, these recommendations represent the most radical overhaul of burial and cremation practices for well over 100 years, and will provide a legal process that is fit for 21st Century Scotland.

In addition to the recommendations from the Burial and Cremation Review Group and the Infant Cremation Commission, the consultation paper also considers various other related proposals. Increasing numbers of people are finding that the cost of a funeral is too much to bear, and at a time of grief many people are struggling to afford to provide a dignified funeral for their loved one. Funeral poverty is not something that that should happen in modern Scotland, and the consultation paper considers ways to end this situation.

The paper also makes proposals about the regulation of the funeral industry. While there are a number of professional bodies for the funeral industry, there is no formal regulatory system. I am keen to explore whether regulating the industry, including the appointment of inspectors, will bring improvements and benefits.

My intention is that the recommendations should be taken forward in new legislation, which will replace the existing legislation covering these issues. I believe that the proposals set out by this consultation paper will provide a legal framework for burial and cremation in Scotland that will meet the needs of 21<sup>st</sup> Century Scotland and afford due dignity during one of the most difficult times any of us will face.

A handwritten signature in black ink, reading "Maureen Watt". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

**Maureen Watt MSP**  
**Minister for Public Health**

## Introduction

### Overview

1 The legislation relating to burial and cremation in Scotland is in need of consolidation and modernisation. The main primary legislation is old and increasingly inadequate for the needs of 21<sup>st</sup> Century Scotland. Burial legislation is over 150 years old, while the legislation covering cremation is over 100 years old. In addition, recommendations made by various expert groups in recent years have further hastened the need for the legislative framework to be overhauled and updated.

2 Relatively few amendments have been made to the Burial Grounds (Scotland) Act 1855 since its introduction, and it is no longer sufficient for modern purposes. The Act places duties on administrative units which no longer exist, such as Parochial Boards, and does not give current Burial Authorities the power they require. New powers are needed to ensure that modern practices can be implemented so that burial remains an affordable and realistic option.

3 In contrast, the Cremation Act 1902 and the Cremation (Scotland) Regulations 1935 have been amended many times, with the effect that the legal framework for cremation can be confusing and difficult to follow. A series of amendments have sought to address various issues and maintain the currency of the legislation, but recent events have demonstrated that gaps remain. These require to be filled to provide a comprehensive legislative framework for cremation in Scotland.

4 The Scottish Government will bring forward new legislation to address these issues. The proposed Burial and Cremation (Scotland) Bill (this may not be the final title of the Bill) will provide a modern and comprehensive legal framework for burial and cremation in Scotland, including other methods of respectfully and sensitively disposing of human remains, as well as various related topics. The bulk of the proposals which will form the basis of the Bill are based on the recommendations of two groups.

### *Burial and Cremation Review Group*

5 In 2005 the then Minister for Health established the Burial and Cremation Review Group with the following terms of reference:

‘To review the Cremation Acts of 1902 and 1952 (and the Cremation (Scotland) Regulations 1935, as amended) and the Burial Grounds (Scotland) Act 1855 as amended, and to make recommendations on how the legislation could be changed in order to better serve the needs of the people of Scotland. This would, where appropriate, recognise the established role of the Procurator Fiscal Service, and take account of policy developments in England (specifically the Shipman Inquiry’s work on death certification) and international good practice.’<sup>1</sup>

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<sup>1</sup> <http://www.scotland.gov.uk/Resource/Doc/217184/0058192.pdf>.

6 The Group was chaired by Sheriff Robert Brodie, and included representatives from the Crown Office, the medical profession, the legal profession, the funeral industry and religious and faith groups, among others. The Group issued a report in October 2007, which contained 33 recommendations.<sup>2</sup> A consultation on the Group's recommendations took place in 2010.<sup>3</sup> The recommendations are listed at Annex A of this consultation paper.

7 Many of the recommendations concerned improvements to the certification of death in Scotland. Following consultation, these were implemented by the Certification of Death (Scotland) Act 2011.<sup>4</sup> Other recommendations relating to burial and cremation were not implemented. Although the 2010 consultation considered these issues, those recommendations not yet implemented are again being considered as part of this consultation.

8 The responses to the original consultation were published in September 2010.<sup>5</sup> These will be taken into account when developing policy, but the length of time since the issues were last considered, as well as the wider context of subsequent events, warrants a fresh examination. Accordingly views are again sought on several of the Group's recommendations with a view to implementing them in the proposed Bill.

#### *Infant Cremation Commission*

9 The other recommendations considered in the consultation paper are those made by the Infant Cremation Commission. In response to concerns about previous practices in the cremation of infants, in April 2013 the Minister for Public Health announced the creation of an independent Commission to examine the policies, practice and legislation related to the cremation of infants in Scotland. The Commission was chaired by the Rt Hon Lord Bonomy and considered a range of issues. It published its report in June 2014, making 64 recommendations, all of which were accepted by the Scottish Government.<sup>6</sup> It is intended to take many of these forward in the Burial and Cremation (Scotland) Bill, while others which do not require legislation are being taken forward under the remit of the National Cremation Committee, which was established recently in line with the Commission's recommendations.

10 A number of other issues have arisen separately from these reports, and these will also be considered in this consultation paper and, depending on the views expressed in the consultation, implemented through the Bill.

11 Broadly speaking, this consultation paper is divided into the recommendations from the Burial and Cremation Review Group and the Infant Cremation Commission. In general, the issues which each group considered lend themselves to a natural

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<sup>2</sup> <http://www.scotland.gov.uk/Topics/Health/Policy/BurialsCremation/BurialCremation>.

<sup>3</sup> <http://www.scotland.gov.uk/Publications/2010/01/26131024/0>.

<sup>4</sup> <http://www.legislation.gov.uk/asp/2012/8/contents>.

<sup>5</sup> <http://www.scotland.gov.uk/Publications/2010/09/29092728/0>.

<sup>6</sup> Report of the Infant Cremation Commission, <http://www.scotland.gov.uk/Publications/2014/06/8342>; Scottish Government response, <http://www.scotland.gov.uk/Publications/2014/06/6362>.

split. In particular, many of the recommendations from the Commission are self-contained and require detailed and specific examination, not least those which relate to pregnancy loss. In some areas – for example, the right to instruct the disposal of a body – both the Group and the Commission examined the same issue, although in different contexts, and the consultation paper considers such issues collectively.

### *The consultation process*

12 The consultation paper sets out a range of proposals and approaches in response to the recommendations of the Burial and Cremation Review Group and the Infant Cremation Commission. Throughout the consultation paper, views are sought on certain issues and specific questions are asked. Consultees are invited to provide as much information as they wish in answering questions. More general views are also welcome, and consultees are invited to express their views on any issues they feel should be considered but which are not discussed in the consultation paper.

13 All responses received to the consultation will be taken into consideration in developing the Burial and Cremation (Scotland) Bill. In line with standard Scottish Government practice, consultation responses will be published online where the consultee has given permission. A Respondent Information Form (RIF) is included in the consultation paper for that purpose.

## The legislative framework

### *Extant legislation*

14 The legislation covering burial and cremation in Scotland is old, dating back to 1855 and 1902 respectively. As a result of amendments over the years, particularly to cremation legislation – often because of more modern legislation being introduced on related topics or changes required to reflect practice – the legal framework is piecemeal, with various provisions having been added or repealed since the introduction of the primary legislation. There has never been a systematic review and overhaul of the legislation governing burial and cremation, and much of it is no longer sufficient for the needs of 21<sup>st</sup> Century Scotland.

15 There are several pieces of legislation covering this subject:

- Burial Grounds (Scotland) Act 1855<sup>7</sup>
- Burial Grounds (Scotland) Amendment Act 1886<sup>8</sup> (which amended the 1855 Act)
- Cremation Act 1902<sup>9</sup>
- Cremation (Scotland) Regulations 1935<sup>10</sup>
- Cremation Act 1952<sup>11</sup> (which amended the 1902 Act)
- Cremation (Scotland) Regulations 1952<sup>12</sup>
- Cremation (Scotland) Amendment Regulations 1967<sup>13</sup>
- Cremation (Scotland) Amendment Regulations 1985<sup>14</sup>
- Cremation (Scotland) Amendment Regulations 2003<sup>15</sup>

While this legislation has been amended substantially over the years, it has not been comprehensively updated or consolidated.

16 One of the Burial and Cremation Review Group's key recommendations was that the current legislative framework should be updated and modernised. This will require repealing existing primary and secondary legislation and replacing it with a single piece of primary legislation, which will contain regulation-making powers. New regulations will need to be introduced to replace existing regulations. As with the primary legislation, this will provide the opportunity to consolidate and modernise secondary legislation.

17 This approach will consolidate those parts of the existing framework which continue to be relevant, but will enable them to be modernised and considered afresh. It will also implement the recommendations of the Burial and Cremation Review Group and the Infant Cremation Commission. These recommendations

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<sup>7</sup> <http://www.legislation.gov.uk/ukpga/Vict/18-19/68/contents>.

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/Vict/18-19/68>.

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/Edw7/2/8/contents>.

<sup>10</sup> <http://www.iccm-uk.com/iccm/library/CremRegs1935Scotland.pdf>.

<sup>11</sup> <http://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/31/contents>.

<sup>12</sup> <http://www.iccm-uk.com/iccm/library/CremRegs1952Scotland.pdf>.

<sup>13</sup> <http://www.legislation.gov.uk/uksi/1967/398/contents/made>.

<sup>14</sup> <http://www.legislation.gov.uk/uksi/1985/820/contents/made>.

<sup>15</sup> <http://www.legislation.gov.uk/ssi/2003/301/contents/made>.



cover new provisions which will be introduced into legislation for the first time, as well as updating existing provisions to reflect modern needs and practices.

Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Q2 – Are there any particular powers that are required by Burial Authorities or Cremation Authorities that are not provided for by current legislation?

### *Extent of legislation*

#### Cemeteries

18 Scotland has both publicly and privately run cemeteries. Those which are publicly run are managed and operated by local authorities. Current legislation regarding the operation of cemeteries applies only to those which are operated by local authorities, which for this purpose are referred to as 'Burial Authorities'.

19 While the legislation relates only to publicly run cemeteries, most private operators tend to follow the legislation voluntarily.

#### Crematoria

20 There are 27 crematoria in Scotland, 14 of which are operated by local authorities, with 13 privately operated and one operated jointly by a local authority and a private company. A list of the crematoria in Scotland is at Annex B. Legislation which relates to cremation applies to all crematoria, regardless of whether they are publically or privately owned. The legislation refers to the operators as 'Cremation Authorities'.

21 The Burial and Review Group recommended that the new legal framework should apply to all cemeteries, regardless of whether they are publicly or privately run, and all crematoria. Overall responsibility for public burial grounds should remain with local authorities. This approach will provide a consistent legal framework governing all cemeteries and crematoria.

22 Given that all Cremation Authorities are required to comply with current legislation, this proposal should not place any particular new legislative burdens on crematorium operators. Similarly, although private operators of cemeteries are not required to comply with current legislation, the fact that the majority do so voluntarily should minimise any additional legislative burdens as a result of this proposal. Nonetheless, the Scottish Government will carry out a full Business and Regulatory Impact Assessment (BRIA) to assess the likely impact of this proposal.

Q3 - Do you agree that the proposed Burial and Cremation (Scotland) Bill should apply to all cemeteries and crematoria in Scotland, regardless of whether they are publically or privately operated? If not, please set out reasons why not.

### Places where other forms of disposal are carried out

23 The Burial and Cremation Review Group considered new techniques for disposing of human remains. Although many of these techniques are still being developed, it is likely that there will be demand for them in the future. None of these methods are yet in operation in Scotland, but they have the potential to become so – this is discussed in more detail at paragraphs 29-30. The Group recommended that new legislation should be made in such a way as to allow these techniques to be used in the future as appropriate.

24 It is not proposed to legislate for any specific alternative technique at the moment. However, it may be sensible to broaden the scope of the primary legislation to ensure that any new technology or method for disposing of human remains which is introduced in Scotland at a later date falls within the legal framework.

25 In view of the development of an increasing number of alternative techniques, it is proposed that legislation should apply to the places where such practices may be carried out.

Q4 - Do you agree that the Bill should contain provisions which apply to all facilities where any new method of disposal which might be introduced in Scotland are carried out?

26 Similarly, there is increasing demand for currently available environmentally friendly methods of disposing of human remains, such as natural burial. New legislation will allow such methods to be regulated appropriately.

Q5 - Do you agree that the Bill should contain provisions to regulate environmentally friendly methods of disposal that are already available in Scotland?

### *Private burial and cremation*

27 Home burial is not covered by legislation, but is not illegal in Scotland. The Burial and Cremation Review Group recommended legislating for home burial to remove any uncertainty and to ensure that the practice is in line with burials carried out by Burial Authorities. A home burial would require various authorisations, including permission from the Local Authority and consent from any other relevant organisation, such as SEPA. Each organisation would be required to maintain its own records of the burial, but the main record of the burial would be that kept by the local authority. It is proposed that the Burial and Cremation (Scotland) Bill will provide powers for Scottish Ministers to make regulations setting out the detail of home burial requirements.

Q6 – Should the Burial and Cremation (Scotland) Bill contain provisions pertaining to home burial?

Q7 - In making legal provision for home burial, what factors should be considered?

28 Unlike home burial, private cremation (ie, cremation which occurs outside a recognised crematorium) is illegal. To achieve absolute clarity, the Burial and Cremation Review Group recommended that legislation should state that private cremation is not legal. Regulation 3 of the Cremation (Scotland) Regulations 1935 states that ‘no cremation of human remains shall take place except in a crematorium of the opening of which notice been given to the Secretary of State and to the Department’. In repealing existing legislation to create a new, modernised legislative framework, it is proposed to retain this restriction that cremations may take place only in crematoria.

Q8 - Are there are any reasons why private cremation should not remain illegal?

#### *Alternative methods*

29 The Burial and Cremation Review Group considered various alternative means of disposing of human remains, including burial and cremation techniques which are considered more environmentally friendly than traditional methods, such as natural burial, which does not involve chemicals. The Group also considered new techniques which do not involve burial or cremation. For example, resomation involves placing the body in a chemical solution, which breaks down the body to leave bone ash and a sterile liquid. Other techniques include promession, which involves the body being freeze-dried and then vibrated into ashes, which are then buried. These and other techniques are currently in different stages of development, although some have been legislated for in various jurisdictions – for example, the Government of New South Wales has included resomation in its legal definition of cremation.<sup>16</sup>

30 Since many of the existing techniques are still in development, and as it is likely that more new techniques will be developed, it is proposed that the Burial and Cremation (Scotland) Bill should include a power for Scottish Ministers to make regulations in relation to specific techniques. This will allow particular techniques to be regulated when they are considered viable and acceptable for use in Scotland.

Q9 - Do you agree that alternative methods of disposing of the dead should be regulated for in this way? Are there any particular alternative methods that should be considered? Are there any particular methods which should be prevented from being used in Scotland?

#### *Definition of ‘ashes’*

31 There is no clear definition of ‘ashes’ in current legislation. In practice various different remains may be considered as ashes after a cremation, and in the past this has led to misunderstanding and confusion. The Infant Cremation Commission recommended that ‘ashes’ should be defined in legislation as ‘all that is left in the cremator at the end of the cremation process and following the removal of any

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<sup>16</sup> See section 49 of the Public Health Regulation 2012, <http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+311+2012+cd+0+N>.

metal'. This will provide a single definition which will ensure that any remains left after all cremations will be regarded as ashes.

Q10 - Do you agree with this definition of ashes? If not, how should ashes be defined?

*Minimum distance between crematoria and housing*

32 Section 5 of the 1902 Act states that 'no crematorium shall be constructed nearer to any dwelling house than two hundred yards, except with the consent, in writing, of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority'. The Burial and Cremation Review Group considered that such minimum distances should be maintained (converted to metric measurements) when modernising the legislation, and in the 2010 consultation, the majority of responses to this issue agreed.

33 Since then it has become apparent that in a small number of cases this minimum distance has not been complied with, resulting in legal disputes between homeowners and occupiers and developers. In such instances, it is likely that planning requirements have been met fully, since land use conditions imposed by other legislation are not necessarily material considerations when making planning decisions. It is the responsibility of developers or landowners to ensure that other legal requirements are met.

34 The requirements of section 5 of the 1902 Act help provide a secluded, private space for cremations as well as establishing a suitable distance between crematoria and housing. As such, it is the Scottish Government's view that a minimum distance should be maintained and that enforcement powers should be introduced to ensure that such requirements are not breached.

Q11 - Do you agree that a minimum distance of 200 yards (182.9 metres) should be required between crematoria and housing? If not, please explain why not.

Q12 - What are your views on the use of enforcement powers or penalty powers in response to such a minimum distance being breached?

## **The right to instruct the disposal of human remains**

### *Overview*

35 There is currently no legal provision regarding who has the right to instruct the disposal of human remains in Scotland, which normally involves arranging for the disposal of the body, including the method of disposal. In practice, this is commonly carried out by the nearest relative or next-of-kin of the deceased, although it may also be performed by the executor. This lack of legal clarity can cause problems. In particular, the potential use of the executor may be problematic: as the Burial and Cremation Review Group noted, there is no confirmed executor in around 60% of deaths in Scotland, and the executor may not be confirmed until after the funeral. Moreover, the executor's functions are primarily administrative and financial and do not extend to arranging the funeral.

36 The Burial and Cremation Review Group considered the issue and recommended that the right to instruct the disposal of a body should be vested in the nearest relative. Given the wider focus of this consultation, the issue being considered here is who should have the right to instruct the disposal of human remains – this will allow the issue to be considered in the context of stillborn babies and pregnancy loss. The Group's recommendation remains valid for this wider context.

37 The Infant Cremation Commission made recommendations designed to provide a robust framework for who is entitled to apply for the cremation of stillborn babies and pregnancy loss. The Commission recommended that in the case of stillborn babies and the individual cremation of pregnancy loss the person who is entitled to apply for cremation is the nearest relative as defined by Section 50 of the Human Tissue (Scotland) Act 2006. In the case of the shared cremation of pregnancy loss, the person entitled to apply for cremation is a person authorised by the Medical Director of a Health Board or other medical provider. This is discussed in more detail below.

### *Death of an adult*

38 The Group recommended that the definition of 'nearest relative' should be the same as in Section 50 of the Human Tissue (Scotland) Act 2006:

'the nearest relative is the person who immediately before the adult's death was –

- (a) the adult's spouse or civil partner;
- (b) living with the adult as husband or wife or in a relationship which had the characteristics of the relationship between civil partners and had been so living for a period of not less than 6 months (or if the adult was in hospital immediately before death had been so living for such a period when the adult was admitted to hospital);
- (c) the adult's child;
- (d) the adult's parent;
- (e) the adult's brother or sister;

- (f) the adult's grandparents;
- (g) the adult's grandchild;
- (h) the adult's uncle or aunt;
- (i) the adult's cousin;
- (j) the adult's niece or nephew;
- (k) a friend of longstanding of the adult'

39 This follows common practice in Scotland, which includes the next of kin or surviving spouse having rights to solatium (ie, damages for pain and suffering) for unauthorised interference with the dead body, and would avoid the potential problems caused by using the executor.

40 Where there was a dispute over who should have the right to instruct the disposal of a body, the Group recommended that this would be resolved by making a summary application to a sheriff.

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

#### *Death of a child*

41 The Infant Cremation Commission also recommended using this definition in particular circumstances, and cited the Burial and Cremation Review Group's recommendation. This definition should be unambiguously applicable in the case of the death of an adult, but is more problematic where a child (including a baby) has died, and also in the case of stillbirths and pregnancy loss. Nonetheless, alternative proposals for instructing the disposal of the body when a child dies, which reflect the spirit of the original recommendation and follow the same general approach as Section 50, should provide appropriate outcomes. Proposals for who should have the right to instruct the disposal of a pregnancy loss are considered at paragraphs 154-155.

42 In the case of the death of a child, the 2006 Act offers a useful alternative definition. Section 10 relates to a child who dies under 12 years of age, and allows decisions to be made by 'a person who immediately before the death of a child under 12 years of age had parental rights and parental responsibilities in relation to the child (but who is not a local authority)'. The 2006 Act makes a distinction between children over and under 12 years of age because children over 12 years of age can make decisions about the donation of their organs in the event of their death. This distinction does not need to apply for the circumstances of instructing the disposal of a body. Similarly the restriction relating to a local authority is not relevant in the case of the disposal of a body.

43 For the purposes of the Burial and Cremation (Scotland) Bill it is proposed that the person who has the right to instruct the disposal of the body where a child has died should be a person who immediately before the death of the child had parental rights and parental responsibilities in relation to the child. It is proposed that this should apply in the death of any person below the age of 16 years, which would

allow the definition at Section 50 of the 2006 Act to be used for any person aged 16 years or over. Where the person who had parental rights and parental responsibilities in relation to the child cannot make such a decision, the Bill should offer a range of other people in whom this power should be vested. This would be based on Section 50 and would represent a range of familial connections.

Q14 - In the case of the death of a person under the age of 16 years, do you agree that the right to instruct the disposal of the body should follow the proposal at paragraph 43? If not, why not? In whom should this power be vested instead? How should this be defined in legislation?

### *Stillborn babies*

44 A further definition is required for the purposes of stillborn babies. There are no directly comparable definitions in other legislation that can act as a model, but it is still possible to offer alternatives which capture the spirit of the recommendations. The nearest equivalent is in the language used by the Registration of Births, Deaths and Marriages (Scotland) Act 1965 for registering a stillbirth, in which 'mother' and 'father' are used.<sup>17</sup>

45 It is proposed that in the case of a stillbirth the right to instruct the disposal of the body should be vested in the 'mother' or 'father'. Where for any reason it is not possible for the mother or father to do this, a list of alternative people who have familial links to the mother and father should be used for the purposes of instructing the disposal of the body; this could be based on Section 50 of the 2006 Act.

Q15 - Do you agree with the proposal for who should have the right to instruct the disposal of the body in the event of a stillbirth? If not, why not? Who should have the right to instruct the disposal of the body in the event that the mother or father are unable to do so? How should this right be defined in legislation?

### *Additional requirements in the case of a stillborn baby, pregnancy loss and the death of a child*

46 The Infant Cremation Commission recommended that in cases relating to babies and stillbirths an application by a person other than those described at paragraphs 43 and 45 should be accepted only on cause shown (ie, where a valid reason can be demonstrated). Given the additional definitions proposed, it is suggested that this same requirement is also applied to the deaths of people under the age of 16 years. The use of the definition of 'nearest relative' at Section 50 of the 2006 Act for the death of people aged 16 years and over provides sufficient flexibility so that similar provisions are not required for instructing the disposal of the body in the death of an adult.

47 This approach provides a specified list of who may instruct the disposal of human remains, but allows for alternative arrangements where necessary. Where

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<sup>17</sup> <http://www.legislation.gov.uk/ukpga/1965/49/contents>.

such an application is accepted, the reason should be recorded in the Cremation Register (which is discussed in more detail at paragraphs 168-175).

Q16 - Do you agree with the proposal of allowing someone not listed to instruct the disposal of human remains in the case of a stillborn baby, pregnancy loss and the death of a child only on cause shown? Is it appropriate that no similar provision is proposed for the death of an adult?



## **The management of cemeteries**

48 One of the Burial and Cremation Review Group's key concerns was around the management of cemeteries, particularly those which had fallen into disrepair. The Group identified the lack of regulations governing the general management of cemeteries in Scotland as a problem, leaving Burial Authorities with limited power to take action to address unsafe or abandoned cemeteries, graves and headstones and other memorials. The Group suggested that the introduction of regulations similar to the Local Authorities' Cemeteries Order 1977 which apply to England and Wales might help address this situation.<sup>18</sup> The 1977 Order provides for the general management of cemeteries, including the care and maintenance of headstones and memorials, one of the Group's main concerns.

49 The Group made a number of specific suggestions that might be included in such regulations to enable better care of cemeteries in Scotland. These include requiring stonemasons working on memorials to be appropriately accredited; guarantees for masonry work carried out in cemeteries, and the ability for the Burial Authority to take action to ensure the continued safety and quality of memorials beyond that guarantee period; and encouraging the owners of memorials to take out insurance. Collectively, these steps should provide a comprehensive legal framework for the management of cemeteries and should enable Burial Authorities to provide better upkeep of cemeteries, including addressing unsafe or damaged memorials.

50 Similarly, while the Group did not make any other recommendations relating to the way in which coffins are buried apart from establishing a minimum burial depth (see paragraph 53), issues such as distances between adjacent lairs and the maximum number of coffins within a particular area are provided for in the 1977 Order. Issues like these could be addressed in any regulations that were introduced in Scotland to govern the general management of cemeteries.

51 While noting the potential value of introducing such regulations, the Group stopped short of recommending their introduction because of the potential financial burden that would be placed on Burial Authorities. Nonetheless, the Scottish Government is keen to explore whether such regulations would enable better management of cemeteries and is interested in views about providing a power for Scottish Ministers to make general regulations for the management of cemeteries. If the Bill did include the power for Scottish Ministers to make such regulations, further consultation on the content and scope of the regulations would be undertaken ahead of their proposed introduction. The potential impact on Burial Authorities would also be considered in a Business and Regulatory Impact Assessment (BRIA).

52 An alternative option would be for the Scottish Government to introduce guidance on the management of cemeteries. This would not be statutory, so Burial Authorities would not be required to follow the guidance, but would be encouraged to do so. Guidance would at least provide a framework for the consistent management of cemeteries, something that is currently absent.

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<sup>18</sup> <http://www.legislation.gov.uk/uksi/1977/204/contents/made>.

Q17 - Do you agree that Scottish Ministers should have the power to make regulations pertaining to the general management of cemeteries, including giving Burial Authorities the right to take action to address unsafe, damaged and abandoned lairs and memorials?

Q18 - Alternatively, would the introduction of non-statutory guidance provide a useful option between the current situation where no guidance exists and the introduction of regulations?

*Minimum burial depth*

53 There is currently no legal minimum depth of burial in Scotland. In England, the Local Authorities' Cemeteries Order 1977 provides for a statutory minimum burial depth of 3 feet, and most Burial Authorities in Scotland choose to follow this. The Burial and Review Group recommended that a minimum burial depth of 3 feet from the surface to the top of the coffin should be implemented by the Burial and Cremation (Scotland) Bill.

Q19 - Are there any reasons why a minimum burial depth of 3 feet from the surface to the top of the coffin should not be implemented? Should there be any exemptions?

## Burial and cremation records

54 The Burial and Cremation Review Group recommended that all records and forms pertaining to burial and cremation in Scotland should be maintained electronically wherever possible, and should be transferable electronically.

55 The Group made no mention of how long such records should be kept. The Scottish Government has published a Code of Practice for records management in NHS Scotland, and this provides some useful models for records retention.<sup>19</sup> NHS records relating to the disposal of fetal remains should be kept for 30 years, as should records which relate to blood and tissue donation and forensic medicine, as well as mortuary records. However, CMO guidance on the disposal of pregnancy losses up to and including 23 weeks and 6 days gestation issued in July 2012 recommended that records relating to the disposal should be retained for a minimum of 30 years, but 50 years as good practice.<sup>20</sup> The Infant Cremation Commission subsequently recommended that records relating to the cremation of any baby should be retained for a minimum of 50 years. However, the Cremation Register is to be kept in perpetuity (see paragraph 175), meaning that it may not be possible to create a permanent link between cremation records kept by Health Boards and the Cremation Register.

56 As such, the Scottish Government is seeking views on whether all burial and cremation records should be retained for a minimum of 50 years, whether in hard copy or electronically, as advised by the CMO guidance, or whether they should be stored indefinitely. Apart from the Cremation Register, the majority of such forms will be those kept by Health Boards.

57 The Commission also recommended that a working group should be established to consider the development of greater consistency, security and best practice in the electronic processing and storage of cremation records. Given the wider context of this consultation, it is proposed that this group should also consider burial records, as well as any other methods of disposing of human remains that might be introduced in Scotland.

Q20 – Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible? Should any exclusions apply? Should this be applied to all forms of disposing of human remains in Scotland?

Q21 – Should records and forms relating to burial and cremation be kept for 50 years or is it better that they are kept indefinitely?

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<sup>19</sup> Scottish Government Records Management: NHS Code of Practice (Scotland) Version 2.1 (January 2012), <http://www.scotland.gov.uk/Resource/Doc/366562/0124804.pdf>.

<sup>20</sup> Scottish Government, “Disposal of pregnancy losses up to and including 23 weeks and 6 days gestation” (July 2012), [http://www.sehd.scot.nhs.uk/cmo/CMO\(2012\)07.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2012)07.pdf).

## **Alleviating pressure on burial grounds**

### *Overview*

58 The Burial and Cremation Review Group examined the increasing pressure on burial land in Scotland. There are a number of reasons for this pressure, including high levels of development and subsequently higher land prices. The Group noted that this situation is prevalent across Scotland, but particularly in urban areas. There is considerable pressure on land in Edinburgh, for example, and scoping work undertaken by the City of Edinburgh Council at the time of the Burial and Cremation Review Group had not identified any potential land for future use.<sup>21</sup>

59 This situation has had a number of consequences, including contributing to the rising cost of burial and leading to new cemeteries being sited increasingly far from communities. Some cemeteries have also closed because no more space is available. The Group suggested that this had the potential to cause various problems, including reducing the number of visitors to burial grounds which in turn might increase the likelihood of vandalism and gravestones and memorials falling into disrepair, as well as generally reducing the availability of burial as an option. The Group made several recommendations to reduce the current pressure on burial land.

### *End of sale of lairs in perpetuity*

60 Key to these recommendations is the reuse of burial lairs in given circumstances, as well as bringing back into use some lairs which are sold but which have unused space. The sale of burial lairs in perpetuity has been allowed in Scotland for many years – this means that the descendants of those people who bought the lair originally still have exclusive rights of use, but are also responsible for the upkeep and maintenance of the lair, including any headstones or other memorials. In practice, it can be difficult to trace the owners of such lairs after the first two generations. As such, burial lairs may remain unused or fall into disrepair while the care of the lair defaults to the local authority.

61 The Group recommended that the sale of burial lairs in perpetuity should end and be replaced by a limited tenure of 25 years in the first instance, which could be extended in 10-year periods for as long as interest in the lair remained, either through the original purchaser or someone else to whom the interest passed. This would still allow a person to purchase a lair and have exclusive rights to bury in that lair for a given period of time, but would require that interest to be maintained and renewed in 10-year periods to ensure that a current link was maintained between the lair and its owner.

62 In order to maintain his or her interest at the end of the initial 25-year period, it is proposed that the owner of the lair (or his or her representative) would have to contact the Burial Authority to extend his or her ownership. The Burial Authority would be required to maintain an up-to-date register of lairs and their owners, but the responsibility for taking action to extend ownership at the end of either the initial 25-

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<sup>21</sup> Burial and Cremation Review Group, *Report and Recommendations*, paragraph 53.

year period or any subsequent 10-year period would fall to the owner or the owner's representative. If the original ownership is not extended at the end of the period, ownership would revert to the Burial Authority. The cost of both the original purchase and any subsequent extension of the interest would be set by the Burial Authority.

63 This proposal would reduce the current risk that the Burial Authority loses contact with the owner of a lair, and would place the responsibility of maintaining an interest in the lair on the owner, whether the original owner or someone to whom ownership has passed. This should help ensure that an active interest in a lair was maintained, helping to prevent lairs falling into disrepair.

64 During these periods of tenure, the owner of the lair would have the sole right to apply for the erection of a headstone or memorial on the lair, and would also be responsible for the upkeep of the lair. The Burial Authority would be able to place restrictions and conditions on the size and type of headstone or memorial.

65 The sale of burial lairs is currently undertaken by Burial Authorities, and no change to this situation is proposed. However, the Group recommended that it should no longer be possible to sell blocks of lairs or multiple lairs to an individual. It also recommended that the Burial Authority should have the right to refuse a sale if it believes that it will not be used imminently, although the Group did not specify what was meant by 'imminently'. As such, views are sought on what period should constitute 'imminent' in this context. The Scottish Government's view is that no lairs should be sold if it is unlikely that they will be used within the initial 25 year period.

Q22 - Do you agree that the sale of lairs in perpetuity should be ended?

Q23 - Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Q24 - Should there be any restrictions about to whom the owner of a lair can transfer his or her interest? Should this be restricted to family members?

Q25 - Do you agree that Burial Authorities should no longer be able to sell multiple lairs or blocks of lairs to an individual?

Q26 - The Burial and Cremation Review Group recommended that Burial Authorities may refuse to sell a lair if it believes that it is not for imminent use. How long should constitute 'imminent' in this situation? How could this be tested?

#### *Reuse of full lairs and use of partially-full and unused lairs*

66 In conjunction with the recommended end to the sale of burial lairs in perpetuity, the Group also considered the reuse of full lairs and the use of lairs which have unused space, and recommended both as ways to further reduce pressure on burial grounds. This is something that may already happen in family lairs, and is a practice that is becoming increasingly prevalent elsewhere beyond family plots.

Shortage of burial land in London has led to the introduction of legislation which allows the reuse of graves in particular circumstances (see case study), and in 2004 the UK Government consulted on this issue as it pertains to England and Wales generally.<sup>22</sup> In other countries it is common practice - Germany and Sweden both reuse graves after between 20 and 30 years, and several other European countries also routinely reuse graves after a given period of time, including Italy and Greece.

67 It is not proposed that graves in Scotland would automatically be reused after a given period of time; rather that certain graves may be considered for reuse where appropriate to help alleviate pressure on burial land. If this proposal were to be accepted and implemented in legislation, strict safeguards would exist to ensure that any such use was done appropriately and sensitively.

Q27 – Do you agree with the proposal that full lairs and partially-full and unused lairs should be considered for reuse in certain circumstances with appropriate safeguards in place?

#### *Full lairs*

68 In the case of full lairs, only those where the last burial took place at least 75 years ago and where the Burial Authority has taken ownership of the lair or intends to do so (because the owner cannot be traced) would be considered for reuse. Having identified potentially suitable lairs, the Burial Authority would be expected to undertake various consultations to ensure that there were no reasons why the lair could not be reused.

Q28 - Is a period of 75 years sufficient before reuse of a full lair can be considered?

69 The initial consultation would be to ensure that the potential reuse of a lair took account of relevant heritage and planning matters. As such, relevant authorities (for example, Historic Scotland) would require to be consulted and the Burial Authority would be required to obtain appropriate legal permits where a lair was scheduled under the terms of the Ancient Monuments and Archaeological Areas Act 1979; listed under the terms of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; included in a Conservation Area under the terms of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; or included in the Inventory of Gardens and Designed Landscapes in Scotland.

70 Where it is proposed to reuse lairs in cemeteries which are used for particular religious and faith groups or where a given lair is in a section of a cemetery used by a particular religious or faith group, the Burial Authority must specifically consult with that community. If the community objected to the proposal, reuse could not take place.

71 Only if no objections are received from relevant authorities and any religious or faith groups with a specific interest in given lairs will Burial Authorities be able to proceed to publically advertising its intention to reuse the lair.

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<sup>22</sup> [http://www.dca.gov.uk/consult/buriallaw/buriallaw\\_cp0105.htm#conspaper](http://www.dca.gov.uk/consult/buriallaw/buriallaw_cp0105.htm#conspaper).

72 The Burial Authority would be required to advertise its intention to reuse the lair for a period of at least 12 months; this would allow anyone with an interest in the lair, including family members, to object to the proposed reuse. The Burial Authority would be required to place notices in the cemetery and use a variety of other means to advertise its intentions, including for example the local press and the internet. If any surviving relative came forward to object to the reuse of the lair, then reuse would not be permitted.

73 A key aim of the Burial and Cremation Review Group is to find ways to stop lairs falling into disuse and disrepair. Advertising its intention to reuse a lair may help to identify someone who has rights in relation to the lair – for example, a descendent of the original owner. As such, ordinarily the objector would then become responsible for upkeep and maintenance of the lair and any memorials. However, the requirement to become responsible for the lair should not be a disincentive to objecting to the potential reuse of a lair.

74 If someone who is not a surviving relative objected to the proposed reuse of the lair, the Burial Authority should consider whether that objection should prevent the lair being reused. If the Burial Authority decided to continue with the reuse, it would be required to state publically their reasons for rejecting the objection. Where such an objection stopped the proposed reuse, the objector should not become responsible for the lair. Instead, the Burial Authority should remain responsible.

Q29 - Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted? Should any other specific organisations or groups be consulted at this stage?

Q30 - Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse? Should any particular methods of notification be used in addition to those noted?

Q31 – What can be done to make sure that there are no financial disincentives to opposing to the reuse of a grave?

Q32 - Other than family members, who should be able to object to the proposed reuse of a lair?

Q33 - What considerations should be made to determine whether an objection from a non-family member is legitimate?

Q34 - If the Burial Authority decides not to reuse a lair on the basis of an objection from a non-family member, should that person become liable for the maintenance of the lair? If not, should the Burial Authority remain responsible?

75 If, having undertaken relevant consultations, there are no objections to the reuse of the lair, the Burial Authority may reuse the lair for burial.

76 Where a lair is reused, the Burial Authority will be responsible for the upkeep of the original headstones and memorials that remain *in situ*, while the new owner of the lair will be responsible for the upkeep of any new headstones and memorials that he or she erects on the lair.

#### *Unused lairs*

77 In some cases lairs may have unused space or be unused entirely; for example, where a lair has been purchased in perpetuity but has either not been used to its full capacity or has not been used at all. It is proposed that in such instances, Burial Authorities should be able to take similar steps to enable the use of these lairs. Lairs in this category which have not been used for 25 years could be considered for use, rather than the 75 years required for the reuse of full lairs. Additionally, potential reuse could be considered only where the Burial Authority has taken ownership of the lair because the owner cannot be traced. All other safeguards would remain the same, including the need for the Burial Authority to consult with any relevant religious and faith groups or authorities such as Historic Scotland and to advertise the proposed use for a period of at least 12 months. As with the proposed reuse of lairs, any objection from a surviving relative would prevent the use of an unused or partially full lair by the Burial Authority. The surviving relative would then assume ownership of the lair, including becoming responsible for its maintenance and upkeep.

78 Where a non-family member objects to the potential reuse of a lair which is not full, the Burial Authority should consider whether the objection should prevent the lair being reused. Where it agrees that the lair should not be reused, the Burial Authority will need to consider whether the objector should become responsible for the upkeep of the lair. If not, the Burial Authority would remain responsible for the lair's maintenance.

79 It is important that the potential to become responsible for the upkeep of a lair does not act as a disincentive to someone objecting to its potential reuse.

80 If, having undertaken relevant consultations, there are no objections to the use of an unused or partially full lair, the Burial Authority may reuse the lair for burial. The upkeep of any memorials or headstones associated with a new burial will be the responsible of the new owner of the lair. Any other memorials or headstones associated with previous burials on the lair will be the responsibility of the Burial Authority.

#### *Techniques involved in reusing lairs*

81 The Burial and Cremation Review Group recommended the use of the 'dig and deepen' technique where lairs are to be reused. This involves temporarily exhuming the original remains from a lair, placing them into a new container and reburying them in the same lair at a greater depth. A new interment can then take place at a shallower depth within the lair. This is a technique that is used elsewhere, including London (see case study). This process has the advantage of enabling a lair to be reused while allowing the original remains to stay in the same lair.



82 If accepted, it is proposed that the Burial and Cremation (Scotland) Bill would permit the use of 'dig and deepen' in the circumstances described above and would enable Scottish Ministers to make regulations to provide detail on how 'dig and deepen' would be carried out.

Q35 - Do you agree that the 'dig and deepen' method should be used to allow the reuse of full lairs?

Q36 - Are any other techniques available that should be considered?

83 Where lairs are reused, it would ordinarily be expected that original headstones and memorials would be retained *in situ*, or as close as possible to their original site. One of the Burial and Cremation Review Group's central concerns was to prevent burial sites and individual lairs falling into disrepair, and so in reusing a lair it would be expected that the Burial Authority would seek to make any original headstones or memorials safe where necessary.

84 Headstones may be reused – again, this is something that is common elsewhere, including London (see Case Study), where the back of the headstone is often used, allowing for a new inscription while preserving the original. The reuse of original headstones or monuments could take place only where there are no objections from conservation authorities, the Local Authority or any surviving relatives or other interested parties.

85 Where it is not possible to make headstones and memorials safe, the Burial Authority would be expected to remove them. As with the initial proposal to reuse a lair, the removal of headstones and memorials should be done in consultation with appropriate conservation authorities.

86 The Burial and Cremation Review Group recommended that any reuse of lairs, including moving or removing monuments and headstones, should be recorded to provide a full record of the activity that has taken place, and that such records should be electronic. Such records should be permanent as part of the genealogical, historical and archaeological record of the country. It is proposed that this will be provided for in the proposed Burial and Cremation (Scotland) Act.

Q37 - Do you agree that headstones and memorials may be reused if appropriate?

Q38 - Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe? In this instance, what should happen to headstones and memorials that are removed?

Q39 - Are any other approaches for easing the pressure on burial land suitable for use in Scotland? For example, should above ground mausoleums, similar to those found in Europe, be considered?

87 It is intended that if these proposals are accepted and implemented in legislation, they would have retrospective effect. This would enable Burial Authorities to consider the reuse of lairs as soon as the legislation was implemented.

This would be an important way for Burial Authorities to being to tackle the pressure on burial grounds. It would also help to improve the general upkeep of burial grounds, particularly those which are in disrepair.

Q40 - Is a period of 25 years sufficient before the use of a partially-full or unused lair can be considered?

Q41 - Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair? Where should the Burial Authority's intention be advertised?

Q42 - Where a Burial Authority intends to reuse a lair having undertaken all appropriate consultations, should it be required to make clear to prospective purchasers that the lair is being reused or is part of a lair that is partly full?

Q43 - Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately? Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?

#### *Exclusion of certain categories of grave*

88 The only lairs which will be considered for reuse are those which have not been used for 75 or 25 years, depending on the circumstances, and where ownership cannot be traced. For certain categories of lairs – Commonwealth War Graves, for example – these two criteria are unlikely to be met. Nonetheless, it may be worth establishing categories of graves which will not be considered for reuse.

Q44 - Should certain categories of grave – such as Commonwealth War Graves – be automatically excluded from consideration for reuse?

### **Case study: London**

#### *Legislative framework*

The shortage of burial land in London has led to the introduction of legislation to address this pressure.<sup>23</sup> Particular Burial Authorities in London have the power to take ownership of a plot which has not been used for 75 years or more and use that plot for new burials. Legislation allows some Burial Authorities, depending on under which Act the cemetery was opened, to reuse graves by exhuming the human remains in a given plot, reburying them deeper in the original plot and then using that plot for a new burial. It is also possible to carry out a new interment without disturbing the original interment, so long as sufficient burial depth remains.

Strict safeguards exist around the use of these powers. In both cases, the Burial Authority can act only where the plot has been unused for at least 75 years. The Burial Authority must also extinguish the right of interment or burial which exists in

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<sup>23</sup> The City of London (Various Powers) Act 1969; the London Local Authority Act 2007.

relation to a given plot – this can happen generally only where the person who holds the lease for the right to bury in the grave cannot be traced. These powers also allow the Burial Authority to move, remove and reuse any memorials which exist at the plot being considered.

The Burial Authority is required to give notice of its intentions. This must include notice in a local newspaper on two consecutive weeks and public notices posted at every entrance to the cemetery. Public notices must be displayed for at least 6 months. If no objection is lodged the Burial Authority may reuse the grave.

The legislation also prevents the sale of a grave for longer than 100 years, ending the previous practice which allowed graves to be sold in perpetuity.

### *City of London Cemetery and Crematorium*

The City of London Cemetery and Crematorium is one of the largest municipal crematoria in Europe, and uses this legislation to both enable the ongoing availability of burial space and to preserve monuments. Using the original burial records, the Burial Authority identifies graves which are suitable for reuse. The Burial Authority tends to identify graves in groups of 200 (although the 200 graves are not necessarily located next to each other). Notices are then posted in various locations around the cemetery, as well as in local newspapers and on the cemetery website, for six months, during which time anyone with an interest in a given grave can object to its proposed reuse.

Reclaimed graves are made available for new use with a lease of 50 years. Such graves are referred to as Heritage Graves, and help to support the sustainability of the cemetery.<sup>24</sup> Additionally, the Burial Authority operates a Heritage Programme which encourages the leasing of existing graves where the original rights of burial have been extinguished and the reuse of existing monuments by using the back of the original monument for the new interment.<sup>25</sup> This enables the Burial Authority to maintain plots which might otherwise have fallen into disrepair, as well as making available additional burial space.

Where it is not possible to reuse the original memorial it may be removed and broken up, with the debris used elsewhere in the cemetery, for example as marble chips in footpaths. Previous preservation work undertaken in the mid-20<sup>th</sup> Century means that many of the remaining memorials are less than 65 years old, which in turn means that many of the graves identified for reuse do not have the original memorial in place.

The Burial Authority has developed various local protocols which it applies in identifying graves for potential reuse, including not using any graves where the coffin is intact or where the original remains have not fully decomposed. Similarly, the Burial Authority tries to respond sensitively to any objection that might be raised to a grave being proposed for reuse, and tends to accept an objection without opposition.

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<sup>24</sup> <http://www.cityoflondon.gov.uk/things-to-do/green-spaces/cemetery-and-crematorium/conservation-and-heritage/Pages/Grave-reuse.aspx>.

<sup>25</sup> <http://www.cityoflondon.gov.uk/things-to-do/green-spaces/cemetery-and-crematorium/conservation-and-heritage/Pages/Grave-reuse.aspx>.

Since 2009, around 1000 graves have been reused in this way. The Burial Authority makes various efforts to track the owner of the grave, and in only a small number of cases has there been an objection to the reuse of a particular grave. In such instances, the family of the original owner has taken ownership of the grave and become responsible for its maintenance. Generally, there has been widespread acceptance of the reuse of graves in this way, and the Burial Authority has a well-managed programme of reusing graves, allowing the sensitive sustainability of the cemetery.

## Exhumation

89 The Burial and Cremation Review Group considered only practice and procedure relating to exhumations which do not involve the Procurator Fiscal or the police. The Group took the view that the current procedure, which requires an application to be made to the Sheriff by either the nearest relative or the local authority, is unnecessarily bureaucratic, lengthy and costly. Based on practice elsewhere, including in England, the Group recommended a new streamlined process.

90 The proposed process would require the family to complete an application for exhumation, detailing the reason for exhumation, information about the deceased and other information about the location of the grave and the site for interment. The relevant local authority would be required to confirm these details. The Group recommended that the completed application would then be submitted to the Scottish Government for authority to exhume.

91 Since the Scottish Government would have no particular expertise or knowledge of the reason for exhumation beyond what was set out in the application form, it is instead proposed that the submitted application should be sent for authorisation to the inspector that is discussed at paragraphs 178-181. This should allow for more expert scrutiny of the application.

92 While this process should allow applications to be dealt with quickly, the process should contain a facility to enable certain sensitive applications to be dealt with even more speedily, for example where the remains of a child required to be exhumed. If these proposals are accepted, the Burial and Cremation (Scotland) Bill would give Scottish Ministers power to make regulations for the exhumation process. A full consultation on this process would take place when the regulation-making power was exercised.

### *Exhumation for reuse of full lairs*

93 A different process is proposed for exhumation for the purpose of reusing full lairs. In this instance, the Burial and Cremation Review Group recommended that Burial Authorities should be permitted to carry out exhumations without the need to seek authority from the Scottish Government (or the inspector, as per the alternative proposal at paragraph 91). Instead, Burial Authorities would have the authority to carry out such exhumations on the completion of the consultative process described at paragraphs 69-75 as long as no objections had been lodged. It is considered that the statutory notice and consultation process would provide sufficient safeguards to ensure that Burial Authorities can carry out exhumations for this purpose only when appropriate to do so. This process would also enable large numbers of exhumations where it would be impractical or resource intensive to require an individual authorisation for each exhumation – for example, where a full or closed cemetery (or a section of a cemetery) was being brought back into use by reusing full lairs.

94 If this proposal is accepted, the Burial and Cremation (Scotland) Bill would give Scottish Ministers the power to make regulations for this purpose, including

specifying which Burial Authority officials would have the power to authorise exhumations for the purpose of reusing full lairs.

#### *Exhumation of cremated remains*

95 There is no legal framework covering the exhumation of cremated remains (ie, those which have been placed in a container for interment). The Group recommended that this should be addressed, following a similar procedure for that proposed for the exhumation of buried remains whereby an application would be made to the Scottish Government, although, in line with the alternative proposal for the authorisation of exhumations, this could be done by the inspector.

Q45 - Do you agree with the proposals to streamline the process for authorising exhumations, including an additionally streamlined process for particular categories of exhumation?

Q46 - Do you agree with the proposal to provide an alternative process where the purpose of the exhumation is to allow the reuse of a full lair, including that the Burial Authority need not seek specific authorisation once it has carried out specified notifications that it intends to reuse the grave?

Q47 - Do you agree that authorisation for exhumations should be carried out by the inspector, rather than the Scottish Government?

Q48 - Do you agree with the proposed approach for the exhumation of cremated remains?

#### *Exhumation for archaeological purposes*

96 There is some uncertainty about who may authorise an exhumation for archaeological purposes, including what responsibilities lie with the Burial Authority. There is a lack of legal clarity about the legal powers to carry out such an exhumation. While the need to undertake an exhumation for this purpose will be relatively uncommon, it is proposed that the Burial and Cremation (Scotland) Bill should set out a clear process for such circumstances.

Q49 – Do you agree that the Bill should set out the process for applying for and authorising an exhumation for archaeological purposes? Should any particular issues be taken into account or conditions applied?

## **Pandemics and mass-fatality events**

97 The Cremation (Scotland) Regulations 1935 allow for the suspension of regulations governing cremation in the event of an epidemic or other similar reason. The Burial and Cremation Review Group recommended that the same power should be extended to cover any relevant regulations governing burial. Accordingly, the Burial and Cremation (Scotland) Bill will contain provision to enable any relevant burial regulations to be suspended in particular situations, such as pandemics and mass-fatality events. Such a suspension may apply to the whole of Scotland or to specific areas, depending on the nature of the incident which has given rise to the need for the regulations to be suspended.

98 It will be necessary to ensure that new legislation relating to cremation continues to allow for the suspension of cremation regulations in the event of an epidemic or other similar reason. This suspension would apply to all categories of cremation.

Q50 - Do you agree that the same power to suspend regulations relating to cremation in response to pandemics or other similar incidents should be extended to any relevant burial regulations?

## **Informing staff of particular causes of death**

99 The Burial and Cremation Review Group recommended that professionals who are required to handle the bodies of people who have died because of an infectious disease which continues to pose a threat after death should be informed of the cause of death before they handle the body so that any necessary precautions can be taken. The Group proposed to make it a statutory obligation for the relevant NHS Board or other relevant body to inform staff as necessary.

100 Under section 91 of the Public Health (Scotland) Act 2008, health boards are already under a duty to inform certain people when a person dies of an infectious disease, had an infectious disease before they died of another cause or was contaminated before they died (even if the contamination did not cause the death).<sup>26</sup>

101 In such circumstances, the health board is required to inform 'any person who appears to the board to be responsible for the disposal of the person's body'. The health board must tell such people the nature of any risk to public health as a result of the disease or contamination. The health board must also provide advice on any precautions which it thinks should be taken. This requirement satisfies the Group's recommendation and no further action is proposed.

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<sup>26</sup> <http://www.legislation.gov.uk/asp/2008/5/contents>.



## **Cremation forms and procedures**

### *Power for Scottish Ministers to prescribe cremation forms*

102 Section 7 of the Cremation Act 1902 provides the regulation-making power which allows Scottish Ministers to prescribe forms for authorising cremations. The current Form A (used to apply for a cremation) is prescribed by the Cremation (Scotland) Regulations 1935, as amended by the Cremation (Scotland) Regulations 1952, the Cremation (Scotland) Amendment Regulations 1967, the Cremation (Scotland) Amendment Regulations 1935 and the Cremation (Scotland) Amendment Regulations 2003. As discussed at paragraphs 16 and 17 it is intended to repeal the existing legal framework to provide a consolidated and modernised legislation. This regulation-making power will be preserved in the new framework.

103 The Commission noted a lack of certainty about whether the current Regulation 17, which relates to the return of the ashes to the applicant, applies to the cremation of stillborn children. Regulation 17 relates specifically to 'the cremation of a deceased person'. While the Commission argued that this Regulation applies to a stillborn child, it acknowledged that the interpretation is open to challenge, and recommended amending the Regulation so that it applies clearly and unambiguously to stillborn children.

104 Similarly, the Commission noted that the Mortonhall Investigation Report raised concerns about whether Regulation 15A, which relates to the cremation of body parts, applied to stillborn children. The Regulations define 'body parts' to mean 'any organs and tissue removed from a deceased person during the course of a post-mortem examination'. The Commission recommended amending this so that stillborn children are covered by this Regulation. There may also be questions over the extent to which regulations apply to pregnancy loss.

105 The new legislative framework will be constructed to apply unambiguously to the categories considered by the Commission, so that there is both legal clarity and a straightforward process for applying for a cremation.

### *Current procedures*

106 The Infant Cremation Commission considered the current procedures for the cremation of babies, stillborn babies and pregnancy loss and identified a number of weaknesses in the system. In particular, a single form prescribed by the Cremations (Scotland) Regulations 1935 (Form A) is used to authorise all cremations which are prescribed currently by legislation. However, this is not adequate for every situation and does not provide a means for clearly and unambiguously recording appropriate information, including what should be done with cremation ashes. The Commission also noted that there are no statutory provisions covering the cremation of pregnancy loss and considered this to be problematic.

107 The Commission made a number of recommendations to address this situation, with particular focus on improving the forms used to authorise cremation. Some of the recommendations are specific to particular circumstances, while others apply to all the circumstances considered by the Commission. The Scottish

Government accepted all the Commission's recommendations. Those which require legislative change will be considered in this consultation paper, with a view to implementing them in the proposed Burial and Cremation (Scotland) Bill.

108 The absence of cremation forms suitable for certain situations, as well as the lack of a formal process for pregnancy loss, has led to the development of practice whereby Cremation Authorities often adapt or supplement Form A with non-statutory forms in order to capture particular information for a given circumstance. This has led to the development of inconsistent practices.

109 To enable consistency and clarity, the Commission has recommended the introduction of specific cremation forms for particular circumstances:

- Stillborn children
- The shared cremation of pregnancy loss
- The individual cremation of pregnancy loss

110 There are a number of options to achieve this. The Certification of Death (Scotland) Act 2011 inserts a new section into the Registration of Births, Deaths and Marriages (Scotland) Act 1965 which allows Scottish Ministers to make regulations prescribing forms for the cremation of a deceased person or stillborn child. The section is constructed so that references to 'body' also relate to body parts. It is not planned to commence this section until March 2015. However, this does not cover the cremation of a pregnancy loss.

111 As such, it is proposed that the Burial and Cremation (Scotland) Bill should contain powers for Scottish Ministers to make regulations covering all categories of cremation, including the power to prescribe cremation authorisation forms. This approach will allow each form to be prescribed specifically and will enable further changes to be made to forms where required. The general approach being proposed by the Scottish Government is to give Scottish Ministers the power to make regulations to prescribe forms. That regulation-making power would be in primary legislation. This approach would enable regulations to be made as required using a relatively quick and straightforward parliamentary process. This approach means that the consultation paper is seeking views on general principles involved in forms, leaving the detail and wording of forms to be consulted on separately when those regulations require to be made.

112 In addition, the existing Form A will continue – in revised form – to be used for any deceased person who was born alive (including babies and infants).

113 The Commission has recommended that there should be statutory forms for several different categories of cremation. However, several of the recommendations apply to multiple forms – for example, statements about the recovery of ashes and what should be done with ashes, as well as the general approach of making forms as simple and easy to complete as possible. As such, it may be possible to prescribe a single application form for all categories of cremation, rather than having specific but similar forms for each category. The form would require certain sections to be completed in all cases – for example, the applicant should be required to make certain decisions about ashes – but particular sections could be left blank if they

were not relevant to the cremation for which the application was being made. The form would still be set out in a clear and easy-to-understand way.

Q51 - Do you agree with the principle that a single form should be prescribed for applying for cremations or is it preferable that separate forms should be provided for applying for different categories of cremation? Please set out your reasons for your view.

114 There are currently 12 different forms used for cremations in Scotland, although they are not all relevant in every application. The provision of a single form would help simplify the process of applying for a cremation and would reduce the bureaucracy involved in the process.

Q52 - Do you agree that each of these categories should be provided for in cremation application forms?

115 This consultation paper covers the broad principles of improving the burial and cremation regime. More detailed consultation will be undertaken when regulations are being drafted, including the content and design of any cremation authorisation forms. The Commission has suggested the form used for authorising the cremation of stillborn babies in England and Wales under the Cremation (England and Wales) Regulations 2008 as a useful model.<sup>27</sup> This will be considered when any forms are being designed.

*Any deceased person who was born alive (including babies and infants)*

116 The current form used to authorise cremations is Form A, prescribed by regulations made under Regulation 7 of the Cremation Act 1902, which have been amended on a number of occasions. The Commission recognised that Form A is used currently for all cremations and so was beyond its remit. Nonetheless, it felt that changes should be made to Form A. In particular, the Commission considered that Form A will continue to be relevant for the cremation of babies, but recommended a number of improvements to the form. Many of the recommendations for Form A would also be relevant for other categories of cremation.

117 The Commission suggested that these could be done as part of the changes which would be implemented as part of the Certification of Death (Scotland) Act 2011. The 2011 Act amends the 1902 Act by inserting new sections which allow Scottish Ministers to make regulations to prescribe cremation forms. It also inserts a new section into the 1965 Act which allows Scottish Ministers to make regulations about 'the certificates or other documentation required for the interment, cremation of other disposal of the body of a still-born child or deceased person'. These new sections are not yet in force.

118 The biggest challenge to making the proposed changes to Form A under the powers inserted by the 2011 Act is that neither fully covers all categories which require to be included. The changes to the 1902 Act refer to 'human remains', while

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<sup>27</sup> <http://www.legislation.gov.uk/uksi/2008/2841/contents/made>.

the changes to the 1965 Act refer to a 'still-born child or a deceased person'. As such, neither option fully and unambiguously applies to all categories of cremation under consideration.

119 It is therefore the Scottish Government's intention to use the proposed Burial and Cremation (Scotland) Bill to give Scottish Ministers the power to prescribe cremation forms which will apply to all relevant categories of cremation.

*Statement of what should happen to any ashes recovered*

120 A key recommendation to improve Form A (and indeed all other cremation application forms which will require to be implemented in response to the recommendations of the Commission and other legislative changes) is to include a mandatory section requiring the applicant to specify what should happen to the ashes.

121 The Commission recommended that a revised Form A should set out four potential options for ashes:

- (a) scattered or interred at/by the crematorium with the family in attendance, noting the date and time;
- (b) scattered or interred at/by the crematorium without the family in attendance, noting the appointed date, up to 7 days after the cremation;
- (c) collection by the applicant or the applicant's appointed representative;
- (d) retention at the crematorium for up to 8 weeks, awaiting collection or further instruction by the applicant or the applicant's representative.

122 If either of options (c) or (d) is selected, the applicant must sign an additional declaration:

- (e) I understand that if after 8 weeks the ashes have not been collected or no instruction given as to their disposal or further retention, the ashes will be scattered or interred at/by the crematorium.

123 The cremation will not be able to proceed if this proposed mandatory section of the revised Form A is not complete.

Q53 – Do you agree that Form A should contain these options for any ashes which are recovered?

Q54 – Do you agree that no cremation which is applied for using Form A should be able to proceed unless the applicant has specified what should happen to the ashes? Do the categories above cover all relevant options or should other options be offered?

*Statement that ashes may not be recovered*

124 The revised Form A should also make clear that in the case of the cremation of a very young child, it may not be possible to recover ashes. The applicant must

also sign the form to acknowledge that he or she has read and understood this information. The cremation will not be able to proceed if this declaration has not been made by the applicant.

Q55 – Do you agree that Form A should state that it may not be possible to recover ashes after the cremation of a very young child?

### *Collection of ashes*

125 The Commission recommended that the revised Form A should enable the applicant to authorise someone else to collect any ashes which are recovered, including the Funeral Director. If the Funeral Director is authorised to collect the ashes, the form should also enable the applicant to authorise the Funeral Director to return the ashes to the crematorium if the applicant does not collect them or instruct the Funeral Director as to their disposal within two years. When that two-year period has elapsed, the Funeral Director may return the ashes to the crematorium. The crematorium will be required to record this information in the cremation register.

126 Where ashes have been left with the crematorium awaiting collection or awaiting further instructions within a defined period, and that period has elapsed, the Cremation Authority may not scatter or inter the ashes unless 14 days' notice of the intention to do so has been given to the applicant.

127 This process for allowing someone else to collect any ashes that are recovered will also apply to the cremation of stillborn babies and the individual cremation of a pregnancy loss.

Q56 – Is the process for enabling a person other than the applicant to collect any ashes recovered appropriate? Are the timings proposed suitable?

Q57 - If ashes are left at the crematorium, how long should be required to elapse before the crematorium can make arrangements to dispose of the ashes?

128 Some of the Commission's recommendations for a revised Form A are also relevant for the other recommended forms. These are covered at paragraphs 136 and 137.

### *Stillborn children*

129 There is currently no specific application form for the cremation of a stillborn baby. Cremation Authorities tend to amend Form A, a practice which the Infant Cremation Commission described as unsatisfactory. The Commission made a number of recommendations to address this, including the introduction of a separate application form for the cremation of a stillborn baby. Accordingly, the proposed Burial and Cremation (Scotland) Bill will give Scottish Ministers a power to make regulations relating to the cremation of stillborn children, including prescribing cremation application forms (although Scottish Ministers have this power through the

amendments made to the Registration of Births, Deaths and Marriages (Scotland) Act 1965 by the Certification of Death (Scotland) Act 2011).

130 The Commission noted a number of key issues which require to be addressed. There is some ambiguity as to whether the current legislation concerning ashes being given to the applicant applies to the cremation of a stillborn baby, because Regulation 17 of the 1935 Regulations refers to 'the remains of a deceased person'. While the Commission was of the view that this did extend to stillborn babies, this will be put beyond doubt in the course of repealing the existing legislation to be modernised and consolidated in a new legal framework as per the recommendations of the Burial and Cremation Review Group. The definition of 'ashes' which is discussed at paragraph 31 will also make this clear.

131 Similarly, there is uncertainty about whether the current definition of 'body parts' for the purposes of cremation applies to stillborn babies. To remove this uncertainty the new legal framework will define 'body parts' so that stillborn babies are included for the purposes of cremation.

132 In line with the recommendations of the Infant Cremation Commission, the form for applying for the cremation of a stillborn baby will note that ashes may not be recovered, but will require the applicant to state what should be done with any ashes which are recovered. The options offered in Form A, as described at paragraphs 121 and 122 should be offered in this circumstance.

133 The cremation will not be able to proceed if the applicant has not specified how any ashes recovered are to be managed.

134 The applicant should have the option of the ashes being retained for a defined period pending a final decision, and of extending the period of retention if necessary. If the Funeral Director is authorised to collect the ashes, the form should also enable the applicant to authorise the Funeral Director to return the ashes to the crematorium if the applicant does not collect them or instruct the Funeral Director as to their disposal within two years. When that two-year period has elapsed, the Funeral Director must provide the applicant with 14 days' notice that they intend to return the ashes to the crematorium. If no response to this notice is received, the Funeral Director may return the ashes to the crematorium. The crematorium will be required to record this information in the cremation register. This is the same process proposed for the revised Form A.

135 The Commission recommended that the form used to authorise the cremation of stillborn babies must be completed and signed by the applicant. The applicant's signature must be witnessed by a person who is not a member of the applicant's family and who is not involved in the arrangements for the cremation.

Q58 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Q59 – Should application for other categories of cremation require a countersignature?

Q60 - Given the similarities between the proposed forms, would a single application form applying to the cremation of people born alive and stillborn babies be appropriate, allowing for specific sections of the form to be completed depending on the kind of cremation? Would separate forms for each category be more appropriate?

### *Forms – general*

136 In addition to its recommendations about particular categories of cremations, the Infant Cremation Commission made a number of recommendations which cover all forms, and these will be reflected in revised and new forms.

137 Certain principles will be followed in the design of each of these forms:

- All forms will be written and structured to ensure simplicity, clarity and consistency.
- Only information essential to the cremation will be sought.
- All Cremation Authorities will be required to use the correct forms provided for in legislation for each particular category of cremation as appropriate, without alteration.
- The cremation will not be able to proceed if mandatory sections of the revised Form A, or any other cremation application form, are not complete.

Q61 - What information should be considered essential for the cremation application?

### *Cremation Authority approval of cremation forms*

138 The Commission recommended that in all cases, senior Cremation Authority staff should be responsible for scrutinising cremation authorisation forms to ensure that all legal requirements have been met, including that the applicant is entitled to make an application; that they have acknowledged that no ashes may be recovered; and that they have clearly indicated what should happen to any ashes which are recovered. If the Cremation Authority is not satisfied that these or any other legal requirements have been met, the cremation cannot proceed.

Q62 - What is the best way to enable Cremation Authorities to undertake this scrutiny? What level of seniority is appropriate for this role? Should the crematorium manager be legally responsible for this scrutiny, even if the actual scrutiny is delegated to a suitably senior member of staff? Should a senior Cremation Authority staff member be required to countersign the form to confirm that all legal requirements have been met?

### *Forms for burial*

139 There is currently no equivalent process for arranging a burial, and there are no statutory forms (although Burial Authorities may use forms which they have developed themselves). There are no particular issues with the process of arranging a burial (notwithstanding the lack of available space), and neither the Burial and Cremation Review Group nor the Infant Cremation Commission made any recommendations about the introduction of forms for applying for a burial.

140 Nonetheless, it may be worth considering whether it would be beneficial to introduce statutory forms for applying for burial. This would provide a parallel process to that which exists for cremation, including the potential for greater scrutiny of practices. Given the proposals to introduce new inspector roles, one function of an inspector could be to inspect burial forms to ensure compliance. There are clear benefits to introducing burial forms, but doing so would also introduce additional bureaucracy, which may add to the cost of a burial and which may also increase the length of time required to arrange a burial.

Q63 – Is there any need for the introduction of statutory forms for applying for a burial?



## Pregnancy loss

141 The Infant Cremation Commission made a number of recommendations relating to the cremation of a pregnancy loss of less than 24 weeks gestation. While many of the considerations are the same as for other categories – for example, clear statements about what should happen to ashes – the complexities of this particular situation require a different approach. The only pregnancy losses considered in this section are those which occur before 24 weeks gestation.

142 The Commission noted the lack of regulation for the cremation of pregnancy losses of less than 24 weeks gestation and reflected on the difficulty and distress this could cause people dealing with this situation. The Commission recommended that the cremation of such pregnancy losses should be the subject of legislative regulation, and the proposed new legislative framework will ensure that there are equivalent procedures and forms for the cremation of pregnancy losses of less than 24 weeks gestation as for infant cremations and the cremation of stillborn babies.

143 The Commission considered the current practices relating to the cremation of pregnancy losses of less than 24 weeks gestation. In particular, it debated the shared cremation of such pregnancy losses and agreed that this practice should continue to be offered as an option. The Commission made various recommendations designed to improve processes generally. The recommendations are a mixture of improvements to practice and guidance, as well as suggested legislative changes.

144 The key guidance to Health Boards on the disposal of pregnancy losses up to and including 23 weeks and 6 days gestation was published by the Scottish Government in April 2012 through CMO guidance.<sup>28</sup> This substantially modernised and improved previous guidance, and was in part a response to concerns about inconsistent practices. The guidance will be updated again in response to recommendations made by the Infant Cremation Commission, and this will be done under the remit of the National Cremation Commission. As well as providing advice on the sensitive disposal of the remains of pregnancy loss of this gestation, the guidance includes various non-statutory forms to be used in the process of authorising and applying for the cremation of a pregnancy loss.

145 In line with the Infant Cremation Commission's recommendations, this section focuses on the cremation of pregnancy losses of less than 24 weeks gestation. Burial of such a pregnancy loss is an option, but was beyond the scope of the Commission's remit. Nonetheless, the Scottish Government is interested in views on whether a comparable process for burial is required.

Q64 – Is a comparable process for the burial of a pregnancy loss of less than 24 weeks gestation required?

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<sup>28</sup> Scottish Government, "Disposal of pregnancy losses up to and including 23 weeks and 6 days gestation" (July 2012), [http://www.sehd.scot.nhs.uk/cmo/CMO\(2012\)07.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2012)07.pdf).

### *Cremation of pregnancy loss of less than 24 weeks gestation by hospital*

146 The Commission made several recommendations to improve the process involved in authorising the cremation of a pregnancy loss which occurred before 24 weeks gestation, particularly the forms used, and many of those recommendations are within the scope of this consultation. In many cases, the cremation or burial of such a pregnancy loss will be organised by a Health Board (for example, where the pregnancy loss occurred in a hospital) with the agreement of the mother, although the mother may wish to make her own arrangements.

147 The Commission noted that some pregnancy losses of less than 24 weeks gestation do not occur within a hospital or other healthcare setting, and recognised that this might cause difficulties if applying for cremation, particularly given the recommendation that cremation of such a pregnancy loss cannot proceed without a medical certificate that states that the pregnancy loss occurred before 24 weeks and showed no signs of life. The Scottish Government is therefore seeking views on whether an alternative process is required in this situation – for example, agreement from the Procurator Fiscal that the cremation can proceed.

Q65 - Is an alternative process required before the cremation of a pregnancy loss where there is no medical certificate?

148 Where a Health Board organises the cremation of a pregnancy loss of less than 24 weeks gestation, the legal application for cremation is made by a person authorised to do so by the Medical Director of a Health Board (or other healthcare provider if that is the case). Where the hospital is applying for the cremation this is true for both individual cremations and shared cremations. The Commission did not recommend any changes to this procedure, but suggested improvements to the process by which the mother agrees to the Health Board making arrangements for the disposal of a pregnancy loss.

### *Mother's agreement to cremation*

149 Before the Health Board can organise the cremation of a pregnancy loss of less than 24 weeks gestation, it must discuss the options with the mother and secure her consent to proceed. The form used currently to record the mother's wishes and consent is set out at Annex C of the CMO guidance. This allows the mother to declare that the cremation options have been explained to her and states that the pregnancy loss will be disposed of by the hospital in accordance with the procedures outlined. The Commission recommended that the options for disposal should be set out clearly on the form, which is not the case currently. The options should include shared cremation and individual cremation, as well as shared burial and individual burial, with an explanation of what each involves.

150 The Commission also recommended that the same form should state that it may not be possible to recover ashes, but should set out options for what should happen to any ashes which are recovered. In the case of shared cremations, the form should state that any ashes which are recovered will be interred or scattered at the crematorium and should state which action will occur. For individual cremation, the form should provide the following options for any ashes which are recovered:

- (a) scattered or interred at/by the crematorium with the family in attendance, noting the date and time;
- (b) scattered or interred at/by the crematorium without the family in attendance, noting the appointed date, up to 7 days after the cremation;
- (c) collection by the applicant or the applicant's appointed representative;
- (d) retention at the crematorium for up to 8 weeks, awaiting collection or further instruction by the applicant or the applicant's representative.

151 If either of options (c) or (d) is selected, the applicant must sign an additional declaration:

- (e) I understand that if after 8 weeks the ashes have not been collected or no instruction given as to their disposal or further retention, the ashes will be scattered or interred at/by the crematorium.

152 These are the same options which are proposed for other cremation forms.

Q66 – Do you agree with these proposals for the form used to seek the mother's agreement to the hospital organising the cremation of a pregnancy loss of less than 24 weeks' notice?

*Mother declines to discuss options*

153 Where the mother declines to discuss disposal, the current form allows her to declare that she has declined to discuss the matter and that she understands that the hospital will proceed according to their standard procedure, without setting out the details of that procedure. The Commission has recommended that the form should state clearly what procedure will be followed in these circumstances.

*Right to instruct the disposal of a pregnancy loss of less than 24 weeks gestation*

154 In the case of the individual cremation of a pregnancy loss of less than 24 weeks gestation, the Commission recommended the use of Section 50 of the 2006 Act for the right to instruct the disposal of the remains. As discussed at paragraphs 35-47, this is not wholly suitable and an alternative definition is required which reflects the spirit of the recommendation and is modelled closely on Section 50.

155 In keeping with the language of the Scottish Government guidance on the disposal of such pregnancy losses, it is proposed that the right should be vested in 'the woman who has experienced the pregnancy loss'. A list of other people who may instruct the disposal of the body if for any reason the woman is unable to make such an instruction should be provided. This list would be based on the list proposed at paragraph 38.

Q67 - Do you agree with the proposal for who should have the right to instruct the disposal of the remains in the event of a pregnancy loss of less than 24 weeks gestation? If not, in whom should this right be vested?

Q68 - Do you agree with the proposal to provide a list of people who have the right to instruct the disposal of the remains in the event that the woman is unable to do so? If so, who should be included in this list?

#### *Hospital's application for cremation*

156 Once a decision has been made and the mother's consent obtained, the Health Board is required to complete an application for cremation. The applicant is a person authorised by the Medical Director of the Health Board to make an application for cremation. The form for this purpose is currently provided at Annex F of the CMO guidance, and is not statutory. The Commission recommended that an application for the cremation of such a pregnancy loss must be accompanied by a medical certificate that states that the pregnancy loss occurred before 24 weeks gestation and showed no signs of life. The form enables the person authorised by the Medical Director to declare that relevant medical certificates pertaining to the pregnancy loss (or in the case of shared cremation to each pregnancy loss) are held by the Health Board. The current form is structured for shared cremations (although theoretically could be used for individual cremations), and there is no specific form for individual cremations.

157 The Commission recommended that the form should expressly state that the mother (or in the case of shared cremations, each mother) has agreed to the hospital applying for the particular kind of cremation. For individual cremations, the form should require the applicant to declare that the mother has agreed what should happen to any ashes which are recovered, and that this is recorded in the appropriate authorisation form.

158 The CMO guidance sets out some timescales for carrying out cremations. Where the mother has authorised the hospital to carry out the cremation, the hospital is required to do so 'as soon as practicable' after authorisation is received. No specific timescale is given. The CMO guidance advises that if the mother has not authorised the hospital to carry out the cremation or has not notified the hospital that she wishes to make her own arrangements within six weeks of the date of the pregnancy loss occurring, the hospital should make arrangements for disposal. The Scottish Government is seeking views on whether there should be a maximum length of time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation. The form to be used to apply for a shared cremation could be used to record the date on which the shared cremation will take place.

Q69 – Should there be a maximum time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation? How long should this be?

159 These forms are not statutory. While the Commission suggested that the introduction of the CMO guidance has improved practice, prescribing these forms through legislation would ensure consistency in all cases, and would place the cremation of pregnancy losses of less than 24 weeks gestation on the same legislative footing as other kinds of cremations. It is proposed that the Burial and

Cremation (Scotland) Bill will contain a power for Scottish Ministers to make regulations pertaining to the application for cremation of pregnancy losses of less than 24 weeks gestation. In the meantime, the forms provided in the CMO guidance – as revised by the National Cremation Commission where appropriate – should continue to be used.

Q70 – Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory? If not, why not?

*Private cremation of a pregnancy loss of less than 24 weeks gestation*

160 A mother may choose to organise a cremation herself, without the involvement of a Health Board. Where the pregnancy loss has occurred at a hospital, the Scottish Government guidance provides a form for the hospital to release the pregnancy loss to the mother so that she can make her own arrangements for cremation. This form is provided by the CMO guidance and is not statutory. The hospital should keep this form along with other forms relating to the pregnancy loss.

Q71 - Should the form used by the hospital to release a pregnancy loss to the mother be statutory?

161 Currently there is no form for application for the cremation of a pregnancy loss, but the Commission found that all crematoria in Scotland will carry out such a cremation. Nonetheless, it is appropriate that a statutory form is provided for this purpose. It is proposed that the Bill will contain a provision enabling Scottish Ministers to make regulation which prescribe the form to be used for the application for the cremation of a pregnancy loss.

Q72 – Should there be a prescribed form for the application for cremation of a pregnancy loss of less than 24 weeks gestation where the cremation is organised by the mother?

162 In such cases, the applicant should be the mother, and her signature must be witnessed by someone who is not a member of the applicant's family and who is not involved in the arrangements for the funeral. The purpose of this recommendation is to ensure that the applicant is fully aware of the implications of the cremation, including that it may not be possible to recover ashes. However, the Committee's recommendation about who should witness the application may prove to be impractical, and views are sought on who should be able to witness the application for cremation of pregnancy loss of less than 24 weeks gestation.

Q73 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

163 As with other cremation forms, the form should state that it may not be possible to recover ashes, but should set out the options for any ashes which are recovered. These should be:

- (a) scattered or interred at/by the crematorium with the family in attendance, noting the date and time;
- (b) scattered or interred at/by the crematorium without the family in attendance, noting the appointed date, up to 7 days after the cremation;
- (c) collection by the applicant or the applicant's appointed representative;
- (d) retention at the crematorium for up to 8 weeks, awaiting collection or further instruction by the applicant or the applicant's representative.

164 If either of options (c) or (d) is selected, the applicant must sign an additional declaration:

- (e) I understand that if after 8 weeks the ashes have not been collected or no instruction given as to their disposal or further retention, the ashes will be scattered or interred at/by the crematorium.

165 These are the same options for other categories of cremation. It will not be possible for a cremation to proceed if the application does not state clearly how any ashes recovered are to be dealt with.

166 An application for the cremation of such a pregnancy loss must be accompanied by a medical certificate that states that the pregnancy loss occurred before 24 weeks and showed no signs of life. The potential difficulty of this recommendation where the pregnancy loss did not occur in a healthcare setting is noted at paragraph 147.

167 As with other cremation application forms, the form for authorising the individual cremation of a pregnancy loss of less than 24 weeks gestation should enable the applicant to authorise someone else to collect any ashes which are recovered, including the Funeral Director. If the Funeral Director is authorised to collect the ashes, the form should also enable the applicant to authorise the Funeral Director to return the ashes to the crematorium if the applicant does not collect them or instruct the Funeral Director as to their disposal within two years. When that two-year period has elapsed, the Funeral Director must provide the applicant with 14 days' notice that they intend to return the ashes to the crematorium. If no response to this notice is received, the Funeral Director may return the ashes to the crematorium. The crematorium will be required to record this information in the cremation register.

## Cremation register

168 Regulation 18 of the 1935 Regulations currently provides for a cremation register, which each Cremation Authority is required to keep. Cremation Authorities must record details of 'all cremations carried out', which existing legislation means applies to deceased infants and adults, as well as the cremation of body parts. The wording of the legislation means that there is some uncertainty as to whether the requirements to register cremation details extends to stillborn children – this is the same issue as discussed at paragraph 103. In practice, Cremation Authorities do register the details of cremations of stillborn children. The cremation of pregnancy loss tends not to be recorded on the cremation register, but all crematoria keep a non-statutory register of pregnancy loss cremations.

169 The Infant Cremation Commission recommended that a statutory cremation register should be maintained by all Cremation Authorities and that all cremations, including those of stillborn children, the individual cremation of a pregnancy loss and the shared cremation of pregnancy losses, must be recorded.

170 The register should contain the following columns, which should be completed as relevant for each cremation:

- Any number assigned to the cremation by the Cremation Authority
- The date of the cremation
- The name and gender of the person or stillborn child cremated
- The address, occupation and age of the person cremated
- Whether the person cremated was married or a civil partner, a widow, widower or surviving civil partner, or single
- The date on which the person cremated died or the stillbirth occurred
- In the case of the cremation of a pregnancy loss, the hospital where the record of the mother's authorisation for cremation is stored
- In relation to the cremation of body parts, the date and place of the burial or cremation of the body of the deceased person or stillborn child from whom the body parts came
- The body part(s) cremated
- The name and address of the applicant
- Whether any ashes recovered were collected by the applicant or his or her representative
- The date on which any ashes were collected
- If the ashes were not collected, whether they were interred or scattered
- If the ashes were not collected, the date on which they were interred or scattered

171 This list is based on the register prescribed by the Cremation (England and Wales) Regulations 2008.

Q74 - Is this list comprehensive? Should any other information be required to be recorded in the Cremation Register?

172 Records pertaining to the cremation of a pregnancy loss should not identify the mother. Instead, the cremation should be recorded using a unique numerical identifier, which should be linked to the relevant hospital record.

Q75 – Does this proposal provide sufficient confidentiality in the case of the cremation of a pregnancy loss?

173 The Cremation Register should be a public document, with relevant safeguards and data protection considerations applied. Currently, only the applicant is able to view the register. The Infant Cremation Commission noted that this had on occasion prevented family members, including parents, being able to see the register. The Commission considered the issue and did not identify any reasons why the Cremation Register should not be a public document, as long as relevant steps were taken to protect personal data accordingly.

Q76 - Are there any reasons why the Cremation Register should not be a public document, assuming that appropriate data protection and confidentiality considerations are in place?

174 The Commission was of the view that the Cremation Register may be kept electronically. The Commission also recommended that the Scottish Government should establish a working group to review the available technology for electronic record storage. This will be taken forward separately, as discussed at paragraph 57.

175 The Commission recommended that the Cremation Register should be retained indefinitely. This is in line with the Cremation (England and Wales) Regulations 2008, which refers to the register as 'permanent'.

Q77 - Do you agree that the Cremation Register should be retained indefinitely?



## **Accreditation of Cremation Authority staff**

176 The Infant Cremation Commission recommended that the individual with direct management responsibility for the operation of a crematorium should be appropriately accredited. This includes either a qualification in crematorium management; the Federation of Burial Cremation Authorities' certification of competence to operate cremators; or the Institute of Cemetery and Crematorium Management's intermediate certificate for crematorium technical operations. Options for checking a person's accreditation would need to be considered. One option is to place this responsibility with the proposed Inspector of Crematoria, which is discussed at paragraphs 178-181.

177 The Scottish Government initially agreed that this would be reflected in the Code of Practice recommended by the Commission. However, there may be value in providing for this in legislation.

Q78 - Should the accreditation requirements described in paragraph 176 be set out in a Code of Practice or in legislation?

Q79 - How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

## **Inspector of crematoria**

178 The Infant Cremation Commission recommended that Scottish Ministers should appoint an independent inspector to monitor working practices and standards at crematoria and give feedback to crematoria about their performance, including advice on matters where improvement is required. The inspector would also have a duty to report to Scottish Ministers. The role would include the power to investigate complaints made by members of the public about practices and standards at crematoria. The Commission also recommended that the role should be extended to cover the funeral industry generally – this is discussed in more detail at paragraphs 182-190.

179 There is provision in existing legislation to appoint an inspector of crematoria. Regulation 2 of the 1935 Regulations states that ‘Every crematorium shall be open to inspection at any reasonable time by the person appointed for that purpose by the Secretary of State or by the Department’ but says nothing about how that appointment should be made, its role or arrangements for reporting to Scottish Ministers. The Scottish Government has already taken steps to appoint an Inspector of Crematoria under existing legislation, and will set out the details of the role in the job description, including its scope and reporting arrangements to Scottish Ministers.

180 Given the lack of detail in current legislation, and the proposed repeal of the existing legislative framework, it is proposed to bring forward new legislation to enable Scottish Minister to appoint an Inspector of Crematoria, and to set out in legislation the extent of the role and its powers. The consultation paper notes various additional functions which could be undertaken by the Inspector, including approving exhumation applications (see paragraphs 89-96) and checking the accreditation of cremation staff (see paragraph 176).

181 Although it has not been proposed by either the Infant Cremation Commission or the Burial and Cremation Review Group, there may be value in broadening the Inspector of Crematoria role to include the inspection of cemeteries and Burial Authorities. The range of proposals relating to cemeteries and Burial Authorities increases the importance of a formal inspection regime which could ensure that appropriate standards and practices are maintained. The inspector could also play a role in ensuring that Burial Authorities follow correct procedures when planning to reuse lairs, and could additionally be responsible for authorising requests to exhume remains.

Q80 - Do you agree that the role of Inspector should be responsible for crematoria and cemeteries?

Q81 – Do you agree that the Inspector should be responsible for particular additional functions, as described? Are there any other functions that the inspector should carry out?

Q82 - Should there be a formal schedule of inspection to ensure that every Cremation Authority and Burial Authority is inspected at least once during a given period?

## Regulation of the funeral industry

182 The Infant Cremation Commission noted concerns raised during its deliberations about the lack of regulation of the funeral industry. As the Commission's remit was to consider improvements required in procedures relating to the cremation of babies, stillborn babies and pregnancy losses, it felt that this was beyond its scope. Nonetheless, the Commission recommended that the Scottish Government should consider whether regulation of the funeral industry was required. Any proposals to regulate the funeral industry would need to be consulted on in detail, but general principles can be considered here.

183 Regulation of the funeral industry in other countries is not widespread, but has been implemented in various jurisdictions, either in whole or part. In Ontario, Canada, for example, people acting as funeral directors or operating funeral establishments are required to be licensed, with licensing requirements set out in legislation. The initial requirements for licensing include the need for individuals to have successfully undertaken relevant training; to have passed professional exams set by the Board established to manage the funeral industry; and to participate in regular inspection. Legislation also sets out the requirements for the renewal of licences.<sup>29</sup>

184 In Australia, the Government of New South Wales has used legislation to prescribe a range of funeral processes, particularly in relation to the handling of bodies. The legislation also requires the keeping of a register of people who operate mortuaries and crematoria, and includes provisions for the inspection of mortuaries, crematoria and cemeteries. However, the industry has not been regulated as far as requiring particular qualifications for people who are acting as funeral directors.<sup>30</sup>

185 In the USA, the Federal Trade Commission (FTC) Funeral Industry Practices Rule (which applies to all states) offers financial protection to people when making funeral arrangements.<sup>31</sup> This includes requiring funeral directors to provide a full itemised list of costs for each funeral. Additionally, the FTC provides general advice on funeral arrangements to help people be better informed when planning a funeral and purchasing particular services. Individual states have also established regulatory regimes which govern the practices and standards of the funeral industry in those particular states. In the UK, people arranging funerals are offered some financial protection through the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, although this is limited.<sup>32</sup>

186 Although regulation of the funeral industry is still relatively uncommon, an increasing number of jurisdictions have recently considered regulating the funeral industry, including Ireland<sup>33</sup> and New Zealand.<sup>34</sup> The Scottish Government will

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<sup>29</sup> Funeral, Burial and Cremation Services Act 2002, [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_02f33\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_02f33_e.htm).

<sup>30</sup> Public Health Act 2010, <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+127+2010+cd+0+N>; Public Health Regulation 2012,

<http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+311+2012+cd+0+N>.

<sup>31</sup> <http://www.consumer.ftc.gov/articles/0300-ftc-funeral-rule>.

<sup>32</sup> <http://www.legislation.gov.uk/uksi/2001/544/contents/made>.

<sup>33</sup> <http://hospicefoundation.ie/wp-content/uploads/2013/11/Funeral-industry.pdf>.

continue to monitor developments in these countries to inform the potential regulation of the Scottish funeral industry.

187 Were regulation to be considered desirable, there are numerous possible models for regulating the funeral industry based on the examples of other jurisdictions. Requiring those acting as funeral directors to be licenced would establish consistent minimum standards of training across the industry. Such a system could be supported by an inspector, and a range of sanctions – including the suspension or removal of a funeral director’s licence to practice – could be introduced in response to poor performance or failure to meet standards. A licensing regime could also be used to help support sound businesses by placing particular financial requirements on those applying for a licence. In Ontario, for example, a licence will not be granted where the applicant is not considered to be financially responsible. Any proposal to licence the funeral industry would be accompanied by a Business Regulatory Impact Assessment and full consultation.

188 A licensing scheme supported by an inspection regime would provide a comprehensive way to ensure minimum standards in the funeral industry. While this would bring benefits, it would also be a large and costly process, both to establish and run. There are a number of other regulatory models which could provide assurance about industry standards and practice. As a minimum, the funeral industry could be required to be self-regulating. This would be similar to the existing model, but the Scottish Government could provide clear guidance on what was expected of funeral directors. This would also require some system of sanction if any funeral director did not meet guidance standards, and it is not clear what sanctions could exist in a system of self-regulation.

189 Before any final decisions are made, the Scottish Government is keen to hear views about the desirability of regulating the industry. While regulation would ensure minimum standards and allow for greater scrutiny of the industry, including the ability to prevent people who do not adhere to standards from practising, it may also add to the financial and administrative burden of funeral directors. Such additional costs may in turn be passed on to bereaved families.

Q83 - Would regulation of the funeral industry be beneficial? What would regulating the industry achieve that cannot be achieved already? What are the disadvantages of regulating the funeral industry?

Q84 - If the funeral industry were to be regulated, what approach would be most useful for Scotland? Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

Q85 - Do you agree that an additional inspector role, separate from the Inspector of Crematoria, would be required to support a regulatory regime?

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<sup>34</sup> <http://www.lawcom.govt.nz/project/review-burial-and-cremation-act-1964/issues-paper/34>.

190 Depending on views expressed in this consultation, the Scottish Government may undertake a more detailed consultation on the proposed regulation of the funeral industry, including requirements for licensing and relicensing.

## Funeral poverty

191 A further issue which requires to be considered in Scotland is funeral poverty. The Scottish Government believes that funerals are a vital public service and that no-one should be prevented a dignified funeral because of cost. Similarly, no-one should be forced into debt by the cost of organising a funeral for their loved one. Recent research by Citizens Advice Scotland (CAS) suggests that basic funeral costs in the UK have risen on average by 7% each year since 2004. In Scotland, the average basic cost of a burial (ie, funeral director's costs; burial lair and interment fee; and minister/celebrant/officiant fee) is £3,240. The average basic cost of a cremation is £2,610. These basic costs do not include items such as flowers, a wake and a memorial, which can add an average additional cost of £1815. When such items are included, the average cost of a burial in Scotland is £5055 and the average cost of a cremation in Scotland is £4425.<sup>35</sup>

192 While this is the average cost, funeral costs vary significantly across Scotland. CAS research found that local authority burial costs (the combined cost of interment and the lair) range from £680 to £2,716.50. The average cost of a local authority burial in Scotland is £1,181.77, against the UK average of £1,500. Local authority cremation costs range from £485 to £730, with the average being £569.50. Private cremations cost between £585 to £830.

193 CAS research suggests that some local authorities are increasing funeral costs to reduce overall budget pressures, rather than charging on a cost-recovery basis. Funeral costs are not consistently published on local authority websites (CAS found that some local authorities did not publish this information at all), making it difficult to know in advance how much a funeral might cost, and how much each individual element will cost.

194 There are few financial support mechanisms available to those who are struggling to afford the cost of a funeral. The UK Department of Work and Pensions operates a social fund which provides a financial contribution to funeral costs for those on low incomes. There is a range of qualifying conditions for access to the fund, and any money provided must be paid back, often from the deceased person's estate – this can add additional financial burdens to people who are already struggling to afford the cost of a funeral. Research by the University of Bath found that during 2012-13 only 53% of 66,000 applications to the fund were successful, with an average payment of £1,225, significantly below the average basic funeral costs in Scotland. Grants made from the fund can be used only for particular elements of the funeral cost. Applicants to the fund are required to provide details of the funeral plan, meaning that they must agree to particular funeral costs without necessarily having the means to pay for them.<sup>36</sup> The Smith Commission report on the further devolution of powers to the Scottish Parliament proposes that responsibility for funeral payments, currently part of the regulated Social Fund operated by the Department for Work and Pensions, be transferred to the Scottish Parliament.

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<sup>35</sup> Citizens Advice Scotland, 'The Real Deal: Funeral Costs', June 2014, <http://www.cas.org.uk/system/files/Real%20Deal%20-%20Funeral%20Costs.pdf>.

<sup>36</sup> University of Bath, 'Funeral poverty in the UK: issues for policy', January 2014, <http://www.bath.ac.uk/ipr/pdf/policy-briefs/affording-a-funeral.pdf>.

195 In response to these pressures, it is proposed to impose a legislative duty on Local Authorities to publish up-to-date burial and cremation costs on their websites in a clear and easily accessible way. Another option which may help to reduce funeral poverty is to require Local Authorities to charge on a cost-recovery basis. If responsibility for the benefit currently paid from the DWP Social Fund is transferred to the Scottish Parliament, this will provide further options for tackling funeral poverty. This will be the subject of a separate consultation.

Q86 - Do you agree with the proposal that Local Authorities should have a legal duty to ensure that their up-to-date burial and cremation costs are published on their website in clear and accessible way?

Q87 - Should Local Authorities be required by law to charge funeral costs on a cost-recovery basis only?

Q88 - What else could be done to reduce funeral costs and ensure that they remain affordable for everyone?

## Annex A

### List of cremation forms under the existing legislative framework

Form	Title	Purpose	Regulations (all made under the Cremation Act 1902)	Applies to
A	Application for Cremation	Formal application for cremation for any cremation which falls within the scope of the 1902 Act and 1935 Regulations	Cremation (Scotland) Regulations 1935 (amended by Cremation (Scotland) Regulations 1952)	All cremations under 1902 Act and 1935 Regulations
AA	Application for cremation of body parts	Formal application for the cremation of body parts for any cremation which falls within the scope of the 1902 Act and 1935 Regulations	Cremation (Scotland) Amendment Regulations 2003	Any cremation of body parts which meet the definition of 'body parts' in the 1935 Regulations, as amended by the 2003 Regulations.
B	Certificate of Medical Attendant	Signed by the medical practitioner who cared for the deceased at death to certify cause of death; may also be signed by the deceased's regular medical practitioner if he or she can identify the cause of death	Cremation (Scotland) Regulations 1935 (amended by Cremation (Scotland) Amendment Regulations 1985)	All cremations under 1902 Act and 1935 Regulations
C	Confirmatory Medical Certificate	Signed by another medical practitioner in addition to the person who signs Form B – this is to confirm the cause of death independently.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations
D	Certificate after Post Mortem Examination	Signed by the person who carried out a post mortem. Where a post mortem is carried out, Forms B and C are not required.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations where a post mortem has been carried out



DD	Certificate on release of body parts	Used to confirm that the body parts were removed during the course of a post mortem on the deceased.	Cremation (Scotland) Amendment Regulations 2003	Any cremation of body parts which meet the definition of 'body parts' in the 1935 Regulations, as amended by the 2003 Regulations.
E(1)	Procurator Fiscal's Certificate	Used by the Procurator Fiscal to declare that the cause of death would not require further medical examination. Where a PF is involved Forms B and C are not required.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations where a PF is involved.
E(2)	Coroner's Certificate	Used by the Coroner to declare that the cause of death would not require further medical examination where death occurred in England or Wales and cremation is to take place in Scotland.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations where a coroner in England or Wales has been involved.
F	Authority to Cremate	Used by Medical Referee to confirm that all legal requirements have been satisfied – authorises the Superintendent of the Crematorium to carry out the cremation.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations
FF	Authority to cremate body parts	Used by Medical Referee to confirm that all legal requirements have been satisfied – authorises the Superintendent of the Crematorium to carry out the cremation of body parts.	Cremation (Scotland) Amendment Regulations 2003	Any cremation of body parts which meet the definition of 'body parts' in the 1935 Regulations, as amended by the 2003 Regulations.

G	Register of Cremations	Used by the Registrar appointed by each Cremation Authority to register each cremation.	Cremation (Scotland) Regulations 1935	All cremations under 1902 Act and 1935 Regulations
GG	Register of Cremations of Body Parts	Used by the Registrar appointed by each Cremation Authority to register each cremation of body parts.	Cremation (Scotland) Amendment Regulations 2003	Any cremation of body parts which meet the definition of 'body parts' in the 1935 Regulations, as amended by the 2003 Regulations.
H	Certificate of Anatomical Examination	Used where the body to be cremated has undergone anatomical examination as per the Anatomy Act 1832 – mainly for the purposes of education and training	Cremation (Scotland) Amendment Regulations 1967	Cremation where the body has been examined as per the Anatomy Act 1832.

### Stillborn children

Regulation 16 of the 1935 Regulations (as amended by the 1967 Regulations) covers the cremation of stillborn children. Under current cremation legislation there is no form prescribed specifically for the application for cremation of a stillborn child made under cremation legislation. However, before authorising the cremation of a stillborn child, the Medical Referee must see a certificate of registration and a certificate that the child was stillborn signed by the relevant medical practitioner. The certificate of registration is prescribed by the Registration of Births, Still-births, Deaths and Marriages (Prescription of Forms) (Scotland) Amendment Regulations 2009, made under the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

## Annex B

### List of crematoria in Scotland

<b>Crematorium</b>	<b>Operator</b>
Hazlehead Crematorium	Aberdeen City Council
Parkgrove Crematorium	Parkgrove Crematorium Ltd
Cardross Crematorium	Argyll & Bute Council
Borders Crematorium	Westerleigh Group
Roucan Loch Crematorium	Roucan Loch Crematorium Company
Dundee Crematorium	Dignity Crematoria
Mortonhall Crematorium	City of Edinburgh Council
Seafield Crematorium	Edinburgh Crematorium Ltd
Warriston Crematorium	Edinburgh Crematorium Ltd
Falkirk Crematorium	Falkirk Council
Dunfermline Crematorium	Fife Council
Kirkcaldy Crematorium	Fife Council
Craigton Crematorium	Glenhaven Funeral Services Ltd
Daldowie Crematorium	Glasgow City Council
Linn Crematorium	Glasgow City Council
Maryhill Crematorium	Scottish Cremation Society Ltd
Inverness Crematorium	Highland Council
Greenock Crematorium	Inverclyde Council
Moray Crematorium	Dignity Crematoria
Holmsford Bridge Crematorium	Dignity Crematoria
Holytown Crematorium	North Lanarkshire Council and Dignity Crematoria
Perth Crematorium	Perth & Kinross Council
Paisley Crematorium	Paisley Cemetery Company Ltd
Masonhill Crematorium	South Ayrshire Council
South Lanarkshire Crematorium	South Lanarkshire Council
Clydebank Crematorium	West Dunbartonshire Council
West Lothian Crematorium	Westerleigh Group



## ANNEX C

### Consultation on a proposed Bill relating to burial and cremation and other related matters in Scotland



#### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

Organisation

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Forename

#### 2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

#### 3. Permissions - I am responding as...

Individual / Group/Organisation

☐

Please tick as

☐

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

☐ Yes ☐ No

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Are you content for your **response** to be made available?

**Please tick as appropriate**

☐ Yes ☐ No

Yes, make my response, ☐  
name and address all  
available

**or**

Yes, make my response ☐  
available, but not my  
name and address

**or**

Yes, make my response ☐  
and name available, but  
not my address

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

☐ Yes

## Annex D

### List of consultation questions and consultation response form

#### How to complete this response form

1 Each question in the consultation paper is listed below. Respondents are invited to answer as many questions as they wish to, and there is no requirement to answer every question. Completing this form as a Word document allows responses to be provided directly on to the form, although respondents may choose to respond in other ways.

2 Some questions provide a check box to provide a response - to mark a box, double-click it and then select 'Checked' from the menu. Where several questions are asked under the same number, the initial question is the one that should be answered using the check box. Further information can be provided by inserting free text under the heading 'Additional information'.

3 Where no check box is provided, responses are sought in the form of free text, which can be inserted under the heading 'Response'.

4 At the end of the questions consultees are invited to provide any other information which they feel is relevant.

5 Once completed this form can be emailed to [burialandcremationbill@scotland.gsi.gov.uk](mailto:burialandcremationbill@scotland.gsi.gov.uk) or posted to:

Burial and Cremation Consultation  
Scottish Government  
3E St Andrew's House  
Edinburgh  
EH1 3DG

6 When returning responses please also complete and return the Respondent Information Form at Annex C. **The closing date for responses is Friday 24 April 2015.**

### The legislative framework

Q1 – Do you agree that existing legislation relating to burial and cremation should be repealed and replaced by a new legislative framework?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q2 – Are there any particular powers that are required by Burial Authorities or Cremation Authorities that are not provided for by current legislation?

Response:

Q3 - Do you agree that the proposed Burial and Cremation (Scotland) Bill should apply to all cemeteries and crematoria in Scotland, regardless of whether they are publically or privately operated? If not, please set out reasons why not.

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q4 - Do you agree that the Bill should contain provisions which apply to all facilities where any new method of disposal which might be introduced in Scotland are carried out?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q5 - Do you agree that the Bill should contain provisions to regulate environmentally friendly methods of disposal that are already available in Scotland?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q6 – Should the Burial and Cremation (Scotland) Bill contain provisions pertaining to home burial?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q7 - In making legal provision for home burial, what factors should be considered?

Response:



Q8 - Are there any reasons why private cremation should not remain illegal?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q9 - Do you agree that alternative methods of disposing of the dead should be regulated for in this way? Are there any particular alternative methods that should be considered? Are there any particular methods which should be prevented from being used in Scotland?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q10 - Do you agree with this definition of ashes? If not, how should ashes be defined?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q11 - Do you agree that a minimum distance of 200 yards (182.9 metres) should be required between crematoria and housing? If not, please explain why not.

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q12 - What are your views on the use of enforcement powers or penalty powers in response to such a minimum distance being breached?

Response:

The right to instruct the disposal of human remains

Q13 - Do you agree that the right to instruct the disposal of a body on death in the case of an adult should be vested in the nearest relative using the definition at Section 50 of the Human Tissue (Scotland) Act 2006? If not, why not? In whom should this power be vested instead?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q14 - In the case of the death of a person under the age of 16 years, do you agree that the right to instruct the disposal of the body should follow the proposal at paragraph 43? If not, why not? In whom should this power be vested instead? How should this be defined in legislation?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q15 - Do you agree with the proposal for who should have the right to instruct the disposal of the body in the event of a stillbirth? If not, why not? Who should have the right to instruct the disposal of the body in the event that the mother or father are unable to do so? How should this right be defined in legislation?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q16 - Do you agree with the proposal of allowing someone not listed to instruct the disposal of human remains in the case of a stillborn baby, pregnancy loss and the death of a child only on cause shown? Is it appropriate that no similar provision is proposed for the death of an adult?

Yes ☐ No ☐ Don't Know ☐

Additional information:

#### The management of cemeteries

Q17 - Do you agree that Scottish Ministers should have the power to make regulations pertaining to the general management of cemeteries, including giving Burial Authorities the right to take action to address unsafe, damaged and abandoned lairs and memorials?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q18 - Alternatively, would the introduction of non-statutory guidance provide a useful option between the current situation where no guidance exists and the introduction of regulations?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q19 - Are there any reasons why a minimum burial depth of 3 feet from the surface to the top of the coffin should not be implemented? Should there be any exemptions?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Burial and cremation records

Q20 – Do you agree that records and forms relating to burial and cremation in Scotland should be stored and transferred electronically wherever possible? Should any exclusions apply? Should this be applied to all forms of disposing of human remains in Scotland?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q21 – Should records and forms relating to burial and cremation be kept for 50 years or is it better that they are kept indefinitely?

50 years ☐ Indefinitely ☐ Other period ☐

Additional information:

Alleviating pressure on burial grounds

Q22 - Do you agree that the sale of lairs in perpetuity should be ended?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q23 - Does the proposed alternative approach provide a suitable balance between enabling people to buy lairs and safeguarding lairs for the future?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q24 - Should there be any restrictions about to whom the owner of a lair can transfer his or her interest? Should this be restricted to family members?

Response:

Q25 - Do you agree that Burial Authorities should no longer be able to sell multiple lairs or blocks of lairs to an individual?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q26 - The Burial and Cremation Review Group recommended that Burial Authorities may refuse to sell a lair if it believes that it is not for imminent use. How long should constitute 'imminent' in this situation? How could this be tested?

Response:

Q27 – Do you agree with the proposal that full lairs and partially-full and unused lairs should be considered for reuse in certain circumstances with appropriate safeguards in place?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q28 - Is a period of 75 years sufficient before reuse of a full lair can be considered?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q29 - Does the initial consultation provide sufficient assurance that relevant specialist interests have been consulted? Should any other specific organisations or groups be consulted at this stage?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q30 - Does the process set out allow for sufficient notice to be given that a lair is being proposed for reuse? Should any particular methods of notification be used in addition to those noted?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q31 – What can be done to make sure that there are no financial disincentives to opposing to the reuse of a grave?

Response:

Q32 - Other than family members, who should be able to object to the proposed reuse of a lair?

Response:

Q33 - What considerations should be made to determine whether an objection from a non-family member is legitimate?

Response:

Q34 - If the Burial Authority decides not to reuse a lair on the basis of an objection from a non-family member, should that person become liable for the maintenance of the lair? If not, should the Burial Authority remain responsible?

Response:

Q35 - Do you agree that the 'dig and deepen' method should be used to allow the reuse of full lairs?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q36 - Are any other techniques available that should be considered?

Response:

Q37 - Do you agree that headstones and memorials may be reused if appropriate?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q38 - Do you agree that headstones and memorials should be removed from lairs if they cannot be made safe? In this instance, what should happen to headstones and memorials that are removed?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q39 - Are any other approaches for easing the pressure on burial land suitable for use in Scotland? For example, should above ground mausoleums, similar to those found in Europe, be considered?

Response:

Q40 - Is a period of 25 years sufficient before the use of a partially-full or unused lair can be considered?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q41 - Is 12 months long enough to advertise the intended reuse of a full lair or use of a partially-full or unused lair? Where should the Burial Authority's intention be advertised?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q42 - Where a Burial Authority intends to reuse a lair having undertaken all appropriate consultations, should it be required to make clear to prospective purchasers that the lair is being reused or is part of a lair that is partly full?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q43 - Do the safeguards described provide sufficient reassurance to ensure that lairs are not reused inappropriately? Are any other safeguards required – for example, should the Burial Authority be required to seek a court order to reuse a lair?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q44 - Should certain categories of grave – such as Commonwealth War Graves – be automatically excluded from consideration for reuse?

Yes ☐ No ☐ Don't Know ☐

Additional information:

### Exhumation

Q45 - Do you agree with the proposals to streamline the process for authorising exhumations, including an additionally streamlined process for particular categories of exhumation?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q46 - Do you agree with the proposal to provide an alternative process where the purpose of the exhumation is to allow the reuse of a full lair, including that the Burial Authority need not seek specific authorisation once it has carried out specified notifications that it intends to reuse the grave?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q47 - Do you agree that authorisation for exhumations should be carried out by the inspector, rather than the Scottish Government?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q48 - Do you agree with the proposed approach for the exhumation of cremated remains?

Yes ☐ No ☐ Don't Know ☐

Additional information:

#### Pandemics and mass-fatality events

Q49 – Do you agree that the Bill should set out the process for applying for and authorising an exhumation for archaeological purposes? Should any particular issues be taken into account or conditions applied?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q50 - Do you agree that the same power to suspend regulations relating to cremation in response to pandemics or other similar incidents should be extended to any relevant burial regulations?

Yes ☐ No ☐ Don't Know ☐

Additional information:

#### Cremation forms and procedures

Q51 - Do you agree with the principle that a single form should be prescribed for applying for cremations or is it preferable that separate forms should be provided for applying for different categories of cremation? Please set out your reasons for your view.

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q52 - Do you agree that each of these categories should be provided for in cremation application forms?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q53 – Do you agree that Form A should contain these options for any ashes which are recovered?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q54 – Do you agree that no cremation which is applied for using Form A should be able to proceed unless the applicant has specified what should happen to the ashes? Do the categories above cover all relevant options or should other options be offered?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q55 – Do you agree that Form A should state that it may not be possible to recover ashes after the cremation of a very young child?

Yes ☐ No ☐ Don't Know ☐

Q56 – Is the process for enabling a person other than the applicant to collect any ashes recovered appropriate? Are the timings proposed suitable?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q57 - If ashes are left at the crematorium, how long should be required to elapse before the crematorium can make arrangements to dispose of the ashes?

Response:

Q58 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes ☐ No ☐ Don't Know ☐

Additional information:



Q59 – Should application for other categories of cremation require a countersignature?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q60 - Given the similarities between the proposed forms, would a single application form applying to the cremation of people born alive and stillborn babies be appropriate, allowing for specific sections of the form to be completed depending on the kind of cremation? Would separate forms for each category be more appropriate?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q61 - What information should be considered essential for the cremation application?

Response:

Q62 - What is the best way to enable Cremation Authorities to undertake this scrutiny? What level of seniority is appropriate for this role? Should the crematorium manager be legally responsible for this scrutiny, even if the actual scrutiny is delegated to a suitably senior member of staff? Should a senior Cremation Authority staff member be required to countersign the form to confirm that all legal requirements have been met?

Response:

Q63 – Is there any need for the introduction of statutory forms for applying for a burial?

Yes ☐ No ☐ Don't Know ☐

Additional information:

#### Pregnancy loss

Q64 – Is a comparable process for the burial of a pregnancy loss of less than 24 weeks gestation required?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q65 - Is an alternative process required before the cremation of a pregnancy loss where there is no medical certificate?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q66 – Do you agree with these proposals for the form used to seek the mother's agreement to the hospital organising the cremation of a pregnancy loss of less than 24 weeks' notice?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q67 - Do you agree with the proposal for who should have the right to instruct the disposal of the remains in the event of a pregnancy loss of less than 24 weeks gestation? If not, in whom should this right be vested?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q68 - Do you agree with the proposal to provide a list of people who have the right to instruct the disposal of the remains in the event that the woman is unable to do so? If so, who should be included in this list?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q69 – Should there be a maximum time for which a pregnancy loss can be stored by a hospital before it is cremated as part of a shared cremation? How long should this be?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q70 – Should the forms for the cremation of a pregnancy loss of less than 24 weeks gestation be statutory? If not, why not?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q71 - Should the form used by the hospital to release a pregnancy loss to the mother be statutory?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q72 – Should there be a prescribed form for the application for cremation of a pregnancy loss of less than 24 weeks gestation where the cremation is organised by the mother?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q73 – Do you agree that the application should be countersigned by someone who is not a member of the applicant's family and who is not involved in the arrangements for the cremation? Will this prove impractical? Should the legislation specify categories of people who may countersign cremation application forms?

Yes ☐ No ☐ Don't Know ☐

Additional information:

#### Cremation register

Q74 - Is this list comprehensive? Should any other information be required to be recorded in the Cremation Register?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q75 – Does this proposal provide sufficient confidentiality in the case of the cremation of a pregnancy loss?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q76 - Are there any reasons why the Cremation Register should not be a public document, assuming that appropriate data protection and confidentiality considerations are in place?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q77 - Do you agree that the Cremation Register should be retained indefinitely?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Accreditation of Cremation Authority staff

Q78 - Should the accreditation requirements described in paragraph 176 be set out in a Code of Practice or in legislation?

Code of Practice ☐ Legislation ☐ Don't Know ☐

Additional information:

Q79 - How should a person's accreditation be checked? How often should a person's accreditation be checked or renewed?

Response:

Inspector of crematoria

Q80 - Do you agree that the role of Inspector should be responsible for crematoria and cemeteries?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q81 – Do you agree that the Inspector should be responsible for particular additional functions, as described? Are there any other functions that the inspector should carry out?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q82 - Should there be a formal schedule of inspection to ensure that every Cremation Authority and Burial Authority is inspected at least once during a given period?

Yes ☐ No ☐ Don't Know ☐

Additional information:

### Regulation of the funeral industry

Q83 - Would regulation of the funeral industry be beneficial? What would regulating the industry achieve that cannot be achieved already? What are the disadvantages of regulating the funeral industry?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q84 - If the funeral industry were to be regulated, what approach would be most useful for Scotland? Do the examples given from other jurisdictions provide useful models, ranging from a fully licensed system to a process of self-regulation?

Yes ☐ No ☐ Don't Know ☐

Q85 - Do you agree that an additional inspector role, separate from the Inspector of Crematoria, would be required to support a regulatory regime?

Yes ☐ No ☐ Don't Know ☐

Additional information:

### Funeral poverty

Q86 - Do you agree with the proposal that Local Authorities should have a legal duty to ensure that their up-to-date burial and cremation costs are published on their website in clear and accessible way?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q87 - Should Local Authorities be required by law to charge funeral costs on a cost-recovery basis only?

Yes ☐ No ☐ Don't Know ☐

Additional information:

Q88 - What else could be done to reduce funeral costs and ensure that they remain affordable for everyone?

Response:

Any other relevant issues

Please use this space to provide information about relevant issues which are not covered in the consultation paper or any topic which you think should be considered:



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**COUNCIL EXECUTIVE**

**CONSULTATION ON SEPA'S SECOND CATCHMENT MANAGEMENT PLAN FOR THE  
SCOTLAND RIVER BASIN DISTRICT**

**REPORT BY HEAD OF OPERATIONAL SERVICES**

**A. PURPOSE OF REPORT**

The purpose of this report is to inform the Council Executive of SEPA's consultation on the second Catchment Management Plan for the Scotland River Basin District of which West Lothian is a part.

**B. RECOMMENDATION**

It is recommended that the Council Executive notes:

1. The background and terms of SEPA's River Basin Catchment Management Plan for the Scotland River Basin District; and
2. agrees that the draft response to the consultation detailed in Appendix 1 be forwarded to SEPA to meet the consultation deadline.

**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 Council is a Responsible Body under the Water Environment & Water Services (Scotland) Act 2003, which confers a legal duty to ensure that the aims of the European Water Framework Directive remain integral to the discharge of its statutory functions.

The report accords with the adopted West Lothian Local Plan (WLLP) policies ENV 15 & 15a which confirms the council's support to protecting the water environment.

The consultation does not raise any strategic environmental assessment, equality, health or risk issues for the Council.

<b>III</b>	<b>Implications for scheme of delegation</b>	None.
<b>IV</b>	<b>Impact on performance and performance indicators</b>	None.
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	SOA.3 Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business; SOA.4 We live in resilient, cohesive safe communities; and SOA.8 We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	None
<b>VII</b>	<b>Consultations at PDSP</b>	The report was considered and approved for forwarding to the Council Executive by the Environment PDSP on 23 April 2015
<b>VIII</b>	<b>Other consultations</b>	Planning Services

## **D. TERMS OF REPORT**

### **D1 Background**

Scotland's water environment is one of our greatest natural assets providing a range of ecosystem services which support our health, wellbeing, wildlife and the sustainable growth of our economy.

River basin management planning is at the heart of sustainable water management, securing widespread improvements in the water environment and in turn supporting government agendas. The first Scotland River Basin Management Plan was published in 2009. The plan provided;

- An assessment of the state of the water environment;
- a description of the pressures upon the water environment; and
- environmental improvement targets.

Scotland's first river basin plans enabled SEPA to develop and trial pioneering approaches to tackling pressures from land management. This catchment-based approach allows the design of complementary solutions, while making the best use of resources and delivering multiple benefits to all those who rely on the water environment for their livelihoods and leisure. Extending the principles of catchment scale delivery will be a core feature of SEPAs vision for an integrated approach to water management.

With climate change, there is an expectation that such events will become more frequent. Flooding events have affected a number of communities over recent years - Flood Risk Management Strategies are being developed and these will be coordinated with river basin management planning. There is also the need to consider the increasing likelihood of sustained periods of low rainfall and the potential implications of such events for communities and key sectors like food and drink. As such, the river basin management plans should be seen as a key component of Scotland's Climate Change Adaptation Programme.

## **D2 Some of the key benefits of protecting and improving the water environment**

- Safeguarding and supporting the expansion of businesses that depend on a high quality water environment, e.g.; tourism, fisheries, aquaculture & whisky production;
- providing cooling water for key industries such as distilleries and hydro power;
- providing effective dilution for pollutants;
- protecting drinking water supplies & avoiding increased purification treatment costs;
- maintaining and expanding opportunities for a wide range of recreational activities;
- contributing to the social well-being and regeneration of areas where a high quality water environment is, or has the potential to be, an important community amenity;
- protecting and enhancing wildlife, including rare and endangered species; and
- improving our ability to cope with the effects of a changing climate (e.g. more frequent droughts, floods, heat waves).

## **D3 Developing the second river basin management plan for the Scotland river basin district**

River basin management is about protecting and improving Scotland's rivers, lochs, estuaries, coastal waters and groundwater.

All businesses rely on the water environment in some way or another and it plays a prominent role in the success of many, such as tourism, whisky production, fish farming and renewable energy generation. Communities depend on fresh surface waters or groundwater for drinking water and to take away waste waters.

Sustainable management of the many ways water is used is central to river basin management planning. Such management requires public bodies, water users and land managers to work together by continuing to build on the partnership approach developed in the first plan cycle.

It will also help achieve other policy priorities, e.g.

- Improving resilience to climate change;
- contributing to the goals of 2020 Challenge for Scotland's Biodiversity;
- the Scottish Forestry Strategy; and
- reducing the risk of flooding

The main proposals for the second plan are:

- Re-phasing SEPA objectives for 2021 and 2027 to ensure they prioritise those improvements that will bring the greatest benefits;
- step changes in the effort focused on the key significant management challenges; and
- new or improved measures for tackling pressures on the water environment to help secure achievement of SEPA's objectives.

The consultation goes on to set out, at a Scotland wide level, via maps and graphs, more details related to themes covering:

- Meeting the challenge;
- water quality;
- improving the physical condition of the water environment;
- barriers to fish movement;
- flows and levels;
- managing the risks posed by invasive non-native species; and
- overall outcomes for the Scotland river basin district.

SEPA is committed to reviewing and updating the river basin management plan every six years and will be publishing a new, updated river basin management plan towards the end of 2015. This consultation will be open for four months from December 2014 to April 2015. It sets out the changes proposed to the river basin management plan for the Scotland river basin district.

The draft responses to the detailed questions are set out in Appendix 1.

#### **D4 West Lothian issues related to River Basin Catchment Management Planning**

The Panel has previously been informed about physical restoration proposals related to the Boghead Burn from its source near Armadale to its confluence at Westfield on the River Avon. The Council is also a partner in a project to improve the River Almond by improving upstream access for migrating fish species through the removal or adaptation of weirs

Linlithgow Loch is a current example where impaired water quality is impacting on the loch and the ecosystems services that it delivers for the community. The loch is currently classified by SEPA as a “non-baseline” water body. The classification currently prevents projects to improve the loch from benefitting from the Scottish Government’s Water Environment Fund despite the fact that it issues into the Mill Burn and the River Avon.

In addition to the priorities identified by SEPA, water quality in West Lothian is badly affected by heavy metals and low pH (acid) associated with runoff from mining-related mineral substrates. This doesn’t appear to be a priority in the draft River Basin Plan and yet runoff from these sites is downgrading the Almond catchment in particular.

Impaired water quality associated with diffuse urban pollution, particularly from industrial estates is a significant pressure and one which needs to be addressed but is not deemed a priority in the proposed plan. The plan appears to suggest that only the ecology of the Broxburn is downgraded by this pressure.

Most new developments have sustainable drainage systems to mitigate the negative effects of flooding and impaired water quality the failure by Scottish Water to vest these features means that an increasing number are failing to fulfill their purpose.

#### **E. CONCLUSION**

Water quality is vital for a flourishing economy. SEPA has set out its proposals for the second river basin management plan for the Scotland river basin district which will be published at the end of 2015. West Lothian Council’s draft response is set out in Appendix 1.

In the draft response, reference has been made to the reliance on monitoring as the

basis for decision making on prioritisation at a time when monitoring has been scaled back by SEPA.

It is also suggested that urban runoff and acid mine water be considered a greater priority that is proposed in the draft plan.

Mention has also been made of the serious problems caused by the failure by Scottish Water to vest sustainable drainage systems and the implications of the current classification system which defines Linlithgow Loch a “below baseline water body” and prevents projects to mitigate the quality of runoff into the loch from securing financial support from the Water Environment Fund.

## **F. BACKGROUND REFERENCES**

SEPA Draft River Basin Management Plans & Forth Area Management Plan – Joint Report by Planning Services Manager & Head of Operational Services to the Development & Transport Policy Development & Scrutiny Panel - 11 June 2009

SEPA Draft River Basin Management Plans & Forth Area Management Plan – Joint Report by Planning Services Manager & Head of Operational Services to the Council Executive – 23 June 2009

Consultation on SEPA’s Second Catchment management Plan for the Scotland River Basin District – Report by Head of Operational Services to the Environment Policy Development & Scrutiny Panel – 23 April 2015

SEPA consultation on developing the second river basin management plan for the Scotland river basin district:  
[http://www.sepa.org.uk/water/river\\_basin\\_planning/scotland.aspx](http://www.sepa.org.uk/water/river_basin_planning/scotland.aspx)

Appendices/Attachments – Appendix 1 West Lothian Council draft response to SEPA’s Consultation on a Second River Basin Management Plan for the Scotland River Basin District:

Contact Persons:

Graeme Hedger, Team Leader – Flood Risk Management team, 01506-776926. E-mail: [graeme.hedger@westlothian.gov.uk](mailto:graeme.hedger@westlothian.gov.uk) and Chris Alcorn, Principal Planner, 01506 282428. E-mail [chris.alcorn@westlothian.gov.uk](mailto:chris.alcorn@westlothian.gov.uk)

**Jim Jack**

**Head of Operational Services**

**26 May 2015**

## **Appendix 1: SEPA Consultation questions summary - West Lothian Council draft response**

### **Rural diffuse pollution**

Q1. Which scenario do you consider to strike the appropriate balance between effort and feasibility in addressing rural diffuse pollution?

Please give reasons for your views.

A 1. The approach proposed in the step change 1 scenario appears realistic. Where the opportunity arises to reduce the impact of rural diffuse pollution in non-priority catchments, particularly where a partnership approach has been established, this should be supported by SEPA.

### **Other water quality pressures**

Q2. Do you agree with the general approach for managing the other pressures on water quality?

Please give reasons for your views.

It is understood that SEPA has scaled back its monitoring programme. It is a concern if the proposals to deal with other water quality pressures on second River basin Management Plan are being developed in the context of a significantly reduced dataset and an inability to detect some potentially toxic pollutants. It is of particular concern that the effluent from waste water treatment work continues to provide much of the low flow volume in rivers such as the Almond in West Lothian. As we learn more about the potential residual effects of human medication on freshwater and marine species, the more we need to challenge the acceptability of allowing treated sewage effluent to be released in relatively large volume into such watercourses. We should also continue to challenge treatment regimens to ensure that Scottish Water and its contractors continue to deliver the highest standards of treatment prior to release into the water environment.

Diffuse pollution from urban runoff is a serious problem in Scotland and one which appears to be of a lesser priority to SEPA. Runoff from our older industrial estates in particular continues to have a serious effect on the quality of receiving watercourses. A number of industrial estates were identified by SEPA for investment by Scottish Water under SR10 (Q&S3b). For a number of reasons, agreement was reached between SEPA as regulator and Scottish Water to focus on site audits and awareness raising and improving "housekeeping" within these industrial estates rather than physical measures. West Lothian Council is concerned that the approach taken under SR10 (Q&S3b) is not sustainable and will not be sustained. It is of particular concern to learn that a similar approach is proposed for SR15 (Q&S4). It is suggested that SEPA, as regulator, may be too readily accepting arguments from Scottish Water regarding the lack of available land and the structures that it will or won't vest etc. The Council is of the view that whilst site audits, awareness raising and improved housekeeping on industrial estates to be welcomed only physical structures and an rigorous enforcement regime by SEPA can together deliver a sustained improvement in water quality at these difficult sites.

Sustainable drainage systems designed and constructed to help mitigate the effects of development on the water environment have been commonplace in Scotland from 1997 onwards. There has been a lack of diligence on the part of a number of the public organisations involved which has resulted in a large number of legacy systems which are failing to fulfil the purposes for which they were constructed. SEPA's failure to monitor discharges to the water environment from these constructed systems and to take regulatory action when it is appropriate is part of the problem. This position needs to be reviewed. It is recommended that SEPA works proactively with Scottish Water and local authorities to move more legacy systems towards public ownership and ensure that such systems

continue to effectively mitigate the impact of development on the water environment. Regulation is required to drive effective maintenance regimes.

In West Lothian, acid mine water is a significant pressure on some water bodies. There was less investment to tackle this issue in West Lothian during the first River Basin Management Cycle than in previous years. The Council is of the view that more needs to be done to mitigate the effects of acid mine water and associated heavy metals on our local watercourses particularly where this is associated with precipitate leaching through an area of derelict land on which there are no mitigation measures. SEPA is asked to examine to what extent the Water Environment Fund might be used to encourage owners of land to tackle the issue of acid mine water impacting on the water environment.

West Lothian Council asks that SEPA reviews the classification of bodies of water that are deemed “below-baseline” when there is evidence that water quality in these bodies of water impacts significantly on the wider catchment. In particular, the Council requests that SEPA reviews the status that it has afforded to Linlithgow Loch, the largest freshwater lowland loch in the Lothians. Land use in the loch catchment is causing steady deterioration in water quality as a result of elevated levels of nutrient. The decline in the condition of the loch is resulting in extended seasonal blooms of toxic blue-green algae. There has been complaints that these are being released from the loch into the Mill Burn and the River Avon causing the colour of the river water to change dramatically. If the classification were to change, it would potentially enable stakeholders to seek support from the Water Environment Fund to bring forward project to mitigate the effects of polluted runoff on the loch.

### **Improving the physical condition of the water environment**

Q3. Which scenario do you consider to strike the appropriate balance between effort and feasibility in improving the physical condition of the water environment?  
Please give reasons for your views.

West Lothian Council favours the step change 1 scenario though it is unclear how the step change would be funded.

The Council is currently supporting projects in its area to improve the physical condition of the water environment. The Council is of the view that SEPA may be underselling the benefits that some of these projects have the potential to deliver particularly when combined with other funding streams and initiatives.

There are a variety of funds available through Scottish Government and its agencies. West Lothian Council would like to see funding streams from across the Scottish Government used in a more integrated way to deliver multiple benefits for the environment and to secure better value for money in the management of these funds.

The Council notes an increased reliance by SEPA on the charitable sector and local authorities to help deliver River Basin Management Plan projects. The Council commends some of the excellent partnerships that have been established. Two aspects of the approach need to be reviewed. Many charitable organisations carry too small a reserve to confidently enter into large contracts with consultants and contractors. Their financial integrity could potentially be compromised through additional works caused by unforeseen circumstances, claims by contractor and the decisions of adjudicators. If SEPA is to rely on the charitable sector to deliver projects then it should formally accept some of the associated risk. It is also imperative that organisations acquire the necessary skills to competently tender work, administer, supervise and manage contracts.

There may be scope to develop more effective working arrangements with local authorities allowing the authority to expend monies from the Water Environment Fund through their respective capital programmes. In some circumstances, a fee may be due for the services provided. In other circumstances the contribution made by the authority towards a project might be included as an in kind contribution with a monetary value.

### **Barriers to fish movement**

Q4. Which scenario do you consider to strike the appropriate balance between effort and feasibility in addressing barriers to fish passage?  
Please give reasons for your views.

Based on past performance on the Almond both step changes 1 & 2 appear very ambitious and there is uncertainty about the availability of capacity to undertake this work.

West Lothian Council is the owner and or part-owner of a number of barriers on the River Almond. It is also a partner of the Almond Barriers Project. Whilst acknowledging that the various stakeholders have been learning from this early project, is taking too long to deliver. Given that the default position is that many barriers are deteriorating due an absence of maintenance and may be more susceptible to the effects of high flows and adverse weather conditions it raises a question as to whether the approach in some circumstances may be overly cautious.

### **Hydroelectricity generation**

Q5. Do you consider that our proposals strike an appropriate balance between the second and third cycles in terms of the water bodies prioritised for action?  
If no, please give your reasons and which water bodies you think should be addressed in a different cycle to that proposed.

### **Invasive non-native species**

Q6. Do you agree with the general management approach for pressures on the water environment from invasive non-native species?  
Please give reasons for your views.

Caution is required when considering the likely benefits that will result from the adoption of a bio-security plan and the actions that are likely to result. It is suggested that the opportunity to enforce the measures will be too few limited and that there will be too many locations where effective control will not be possible.

SEPA has invested in a number of projects to control of invasive non-native species (INNS) and yet it appears in the proposed plan to be something less of a priority than it used to be. Projects of this nature need to be sustained over several years with high levels of monitoring and intervention. A short-term approach with sharp changes in direction dictated by the availability or otherwise of Water Environment Funding is not appropriate and compromises the investment that has been made.

It seems unlikely that efforts to eliminate INNS can ever be successful. For this reason a slow burn approach to control may be the best that can be expected. That needs to be underwritten through effective funding strategies by SEPA and SNH.

### **Proposed changes to heavily modified water body designations**

Q7. Do you agree with our proposals for de-designation of certain water bodies? If no, please give your reasons and indicate the water bodies concerned.



Q8. Do you consider that our proposals to designate heavily modified water bodies are appropriate for?

a) purposes other than agricultural land drainage?

b) agricultural land drainage purposes?

If no to either, please give your reasons and indicate the water bodies concerned.

The approach that SEPA is taking regarding the designation of heavily-modified water bodies (HMWBs) where these have been modified for the purposes of agriculture appears over-cautious. Where investment is required to restore HMWBs and this will impact on food production SEPA should still be working with farmers and landowners to bring about the restoration of HMWBs.

Projects of this nature have the ability to realise a range of other indirect benefits. Ideally, this effort would be tied in as a condition of receiving the single farm payment.





West Lothian  
Council

**COUNCIL EXECUTIVE**

**RESERVOIRS ACT 1975 – BIENNIAL REPORT TO SCOTTISH MINISTERS**

**A. PURPOSE OF REPORT**

The purpose of this report is to advise the Council Executive of the need for the Council, as Enforcement Authority, to submit a document to Scottish Ministers containing prescribed information about compliance by Undertakers of Large Raised Reservoirs with reservoir safety requirements and to attach a draft of the report prepared by officers.

**B. RECOMMENDATION**

It is recommended that the Council Executive notes the content of the report and approves the draft report allowing it to be finalised and submitted to the Scottish Ministers.

**C. SUMMARY OF IMPLICATIONS**

- |   |  |
|---|--|
| <b>I Council Values</b>   | Focusing on our customers' needs; being honest, open and accountable; making best use of our resources and working in partnership.   |
| <b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b> | <b>Legal:</b> The Reservoirs Act 1975; the Reservoirs (Scotland) Act 2011; and the Flood Risk Management (Scotland) Act 2009<br><br><b>Strategic Environmental Assessment (SEA):</b> Not applicable.<br><br><b>Equality &amp; Health:</b> Not applicable |
| <b>III Implications for Scheme of Delegations to Officers</b>   | None   |
| <b>IV Impact on performance and performance Indicators</b>  | None   |
| <b>V Relevance to Single Outcome Agreement</b>  | SOA 3. Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business;<br>SOA 4. We live in resilient, cohesive safe communities;<br>SOA 5. People most at risk are protected and supported to achieve improved life     |

chances;  
SOA 8. We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.

<b>VI Resources - (Financial, Staffing and Property)</b>	<b>Financial:</b> Not applicable
<b>VII Consideration at PDSP</b>	Not applicable
<b>VIII Other consultations</b>	None

## **D. TERMS OF REPORT**

West Lothian Council is currently Enforcement Authority in respect of nine Large Raised Reservoirs within the geographic areas administered by West Lothian Council.

West Lothian Council is Undertaker for one Large Raised Reservoir situated wholly within West Lothian.

Section 3 of the Reservoirs Act 1975 requires the Council, as Enforcement Authority, to prepare a report (Appendix 1) every two years containing information prescribed by Regulation 4 of S.I. 1985, No. 177 on Large Raised Reservoirs situated within the Council's administrative area.

Information supplied by the various Undertakers for the reservoirs for which West Lothian Council is Enforcement Authority indicates that the requirements of the Act have been met in respect of all the Large Raised Reservoirs within the Council's administrative area.

Information in respect of the reservoir for which West Lothian Council is Undertaker suggests that the requirements of the Act have also been met.

Scotland's reservoir safety regime has been reviewed. The Reservoirs (Scotland) Act 2011 repeals the Reservoirs Act 1975 in Scotland and heralds a transition to a more risk-based approach to reservoir safety. The Council will no longer have a role except as an Owner and Manager of Beecraigs and Eliburn (Livingston) Reservoirs. This may therefore likely to be the last report made to Scottish Ministers by West Lothian Council, as Enforcement Authority under the Reservoirs Act 1975.

## **E. CONCLUSION**

The Council is currently Enforcement Authority under the Reservoirs Act 1975 for Large Raised Reservoirs within the area it administers. In accord with the requirements of the Act, a Report (Appendix 1) has been drafted providing prescribed information to Scottish Ministers on the compliance by Undertakers with the requirements of the Act. The available information suggests that the requirements of the Act have been complied with.

Appendices/Attachments: None.

Contact Person: Graeme Hedger, Team Leader, Flood Risk Management 01506  
776926

Jim Jack, Head of Operational Services

23 April 2015

## Appendix 1



# Report to the Scottish Ministers made under the Reservoirs Act 1975, Section Three, Regulation 4 (2) Statutory Instrument 1985 / 177



**March 2015**

**Enforcement Authority**

West Lothian Council  
Civic Centre  
Howden South Road  
LIVINGSTON  
West Lothian  
EH54 6PR

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## Introduction

### Location

West Lothian is situated in the central belt of Scotland bounded by Edinburgh to the east, Stirling to the north, North Lanarkshire to the west and the Pentland Hills to the south. The area consists of gently undulating terrain, with a pattern of small-scale ridges and valleys running broadly east west. The most significant ridge north of the Pentlands, is the Bathgate Hills. The principal watercourse is the River Almond, which acts as the catchment for much of West Lothian with the River Avon draining the north of the district. With an interesting mixture of small rural communities and industrial towns, it is an area of great diversity.

Rapid development in electronics, high technology, marketing and a broad range of other industries has resulted in a general recognition of West Lothian's central location, skilled workforce and development potential. Rapid population growth has resulted in a local housing boom in recent years. The area has become the most successful in Scotland at attracting inward investment and with transformation of the old industrial landscape and continued investment in its infrastructure; West Lothian is fast becoming one of Scotland's most dynamic areas with population growth bucking the national trend.

### *Context*

Following the re-organisation of Local Government in Scotland, which took effect on 1st April 1996, West Lothian Council became the Enforcement Authority under the Reservoirs Act 1975 for Large Raised Reservoirs within its administrative area. These duties were inherited from the former Lothian Regional Council's Water & Drainage Departments but have changed in so far as the former Enforcement Authorities were also undertakers for a large number of the facilities in question.

Responsibility for the Reservoirs Act within the Council is currently delegated to the Council's Head of Operational Services.



## **Executive Summary**

### Register of Large Raised Reservoirs

Since the last report submitted in 2013 the Council, as Enforcement Authority under the Act, has also revised its register.

### Scottish Water

The major Undertaker for reservoirs within the administrative area of West Lothian is Scottish Water with five of the nine Large Raised Reservoirs in the Council's area.

**A. Statement as to the steps that the authority, as Enforcement Authority, has taken in respect of any reservoir to secure that Undertakers observe and comply with the requirements of the Act.**

The information as to the number and location of the large raised reservoirs in West Lothian was provided by the previous Enforcement Authority and is considered accurate. There are not thought to be any reservoirs in West Lothian Council's administrative area, where the ownership is unknown.

In order to help ensure that reservoirs are inspected and supervised in accord with the Act, the Council maintains a schedule of reservoirs detailing the dates of the last and next due inspections under Section 10. The schedules form part of the Register of Large Raised Reservoirs in the Council's administrative area and are updated each time the Register is revised. The Register was revised in March 2013.

This authority has been furnished with the names of all Supervising Engineers appointed under Section 12 of the Act. As the Council is not always furnished with the Report of the Supervising Engineer, it is committed to ensuring that these inspections are being carried out. There is regular communication between Undertakers, Supervising Engineers, Inspecting Engineers and the Council as Enforcement Authority.

The steps the Enforcement Authority has taken since the last report to ensure compliance with the Act are detailed below. Where necessary, further measures will be taken.

**General**

Membership of the respective All Reservoir Panel has been cross- checked against those appointed Supervising and Inspecting Engineers for Large Raised Reservoirs in West Lothian. All remain members of the respective Institute of Civil Engineers All Reservoirs Panel at the time of writing although new Engineers have been appointed in respect of a number of reservoirs.

### **Specific Sites**

#### **Bangour**

Undertaker: - Mr. Steven Reid – Bangour Trout Fishery

Supervising Engineering: - Kenneth MacGregor Hunter Barr of Fairhursts

March 2015 - In the preparation of this report it appeared to the Council, as Enforcement Authority, that this reservoir may not have been under the supervision of Institute of Civil Engineers All Reservoirs Panel Supervising Engineer under Section 12 of the Act. The requirements of the Act have been highlighted to the Undertaker and he has subsequently appointed Kenneth MacGregor Hunter Barr to supervise the reservoir.

Next inspection due not later than June 2016.

#### **Cobbinshaw**

Undertaker: - Scottish Canals

Supervising Engineer: - Andrew William Dermot Ross

20 May 2014 - A new statement was received from the new Supervising Engineer stated that the recommendations which were made in June 2011 by James W Findlay, have been carried into effect & he was satisfied with it.

Next inspection due not later than June 2021.

#### **Crosswood**

Undertaker: - Scottish Water

Supervising Engineer: - Stewart Laren Roberts of AECOM

18 September 2014 - A new statement was received from the Inspecting Engineer stated that the recommendations which were made in 22 April 2011 by Robert J Mann, have been carried into effect & was satisfied with it.

Next inspection is due not later than November 2020.

**Gowanbank**

Undertaker: - Scottish Water

Supervising Engineer: - Robert J Mann of AECOM

Gowanbank was inspected by the ICE All Reservoirs Panel Inspecting Engineer in June & July 2012. There were recommendations that have been highlighted. Review control of inlet flows with regard to the operation of the 4 No. inlet sleeve valves. Refurbish the valves, or remove them from service if the current level control system can be improved or is deemed to be adequate to safely control the inflow. The Act requires the above recommendation to be put into effect as soon as practicable. In the circumstances it is considered that this should be implemented within 3 years of the date of this report.

Next inspection due not later than June 2022.

**Harperigg**

Undertaker: -The City of Edinburgh Council

Supervising Engineer: - Allan G Shaw of AECOM

Last date of inspection was 6 October 2010 and there were recommendations that have been highlighted. It is recommended that the adequacy of the outlet arrangements in relation to guidelines for emergency draw-down be reviewed in conjunction with preparation of a flood plan, and fixed provisions for discharge be increased if considered appropriate having regard to available guidelines and in relation to downstream risk. It is further recommended that this recommendation be carried out before the date that flood plans become mandatory and in any case not later than 5 years from the date of this report.

Next inspection due date would be no longer than October 2019

**Loch Cote**

Undertaker: - Scottish Water

Supervising Engineer: - Ravi Nathan, Independent Consultancy

Appendix 1 of ICE All Reservoirs Panel Supervising Engineer's Statement to Scottish Water for Loch Cote Reservoir received notifying the Council of non-compliance under Section 11 of the Act regarding taking and compiling monitoring records. Enforcement Authority to write to Scottish Water.

Next inspection due not later than May 2016.

**Morton Lower**

Undertaker: - Scottish Water

Supervising Engineer: -Stewart Laren Roberts of AECOM

Last date of inspection was 14 August 2014 October 2010 and there were recommendations that have been highlighted. The outlet grating is redesigned to reduce the risk of blockage and this work be carried out within 3 years of this report.

Next inspection due not later than August 2024

## **Pateshill**

Undertaker: - Scottish Water

Supervising Engineer: - Robert J Mann of AECOM

Inspection was done in 18th August 2009 and there were recommendations that have been highlighted. Cut the rough vegetation on the north and west sides of the embankment and establish short vegetation to allow inspection of the embankment surfaces. Include for removing all trees from the embankment and killing their roots to prevent re-growth. Find and mark on site and on a plan the drain along the west bank noted as renewed in 1989, and the drain about 3 m deep recorded along the north flank discharging into a manhole. Make provision for gauging any discharges at drain outlets where practicable. Limit risk from excess inflow by improving overflow capacity or other appropriate means. Establish the available freeboard by survey, review its adequacy, and take any measures found necessary to contain waves in conjunction with recommended measures to limit risk from excess inflow. Service the guard valve (V7) on the outlet, and rectify the stiff operation of valves Nos 2, 3 and 10. Resume piezometer readings, review the assessed stability having regard to a period of records of piezometric levels, and take such other measures as appropriate to ensure adequate stability of the embankments. Carry out measures to enable monitoring to be carried out as directed below under 15.4 Directions as to matters to be recorded.

The Act requires the above items to be completed as soon as practicable. It is recommended that this be no later than three years of the date of this report.

Next inspection due not later than August 2019.

**B. Statement as to the steps taken to observe and comply with the Act where the Authority is also Undertaker.**

West Lothian Council is currently only the Undertaker for one reservoir, Beecraigs, Linlithgow.

The next inspection is due no later than 16 June 2015.

Supervising Engineer's report and certificate for 2013 received. There are no recommendations in the interests of safety. The new Supervising Engineer & Inspecting Engineers were appointed in January 2015 and the reservoir will be inspected in June 2015.

Monitoring of rainfall, levels etc. on a day-to-day basis is undertaken by staff employed by the Council.

To minimise the risk of a conflict of interest with the Council also being the Enforcement Authority under the Act, the day-to-day management of Beecraigs Reservoir is undertaken by the council's NETs, Land & Countryside Service.

The next inspection by an Inspecting Engineer should also be made before June 2015.

**C. Statement as to the number of reservoirs for which the Authority is Enforcement Authority.**

There are now eight large raised reservoirs within the ambit of the Act in the administrative area of West Lothian and for which West Lothian Council is Enforcement Authority. This excludes Beecraigs Reservoir for which the Council is Undertaker and cannot, therefore, be Enforcement Authority.

There are no large raised reservoirs in West Lothian, which also extend into the area of another local authority.

Inspecting Engineers (when required) and Supervising Engineers (at all times) as defined by Sections 10 & 12 of the Act have been appointed in respect of all those Large Raised Reservoirs in the council's area.

**D. Statement as to the number of Reservoirs Situated wholly in the Authority's area for which the Authority is the Undertaker.**

West Lothian Council is currently Undertaker in respect of only one reservoir situated wholly in the Authority's area. The reservoir in question is at Beecraigs situated at NT 01053 74298 in the Bathgate Hills between the towns of Bathgate & Linlithgow.





## **COUNCIL EXECUTIVE**

### **POLICY ON ADOPTION OF PRIVATE ROADS**

#### **REPORT BY HEAD OF OPERATIONAL SERVICES**

##### **A. PURPOSE OF REPORT**

The purpose of this report is to advise Council Executive on the legal position regarding the adoption of private roads and to seek approval for a policy to assess applications for adoption and to set the standards acceptable to the council for a private road to be added to the list of public roads.

##### **B. RECOMMENDATION**

It is recommended that Council Executive:

1. notes the contents of the report; and
2. approves Appendix A as the basic road design standards as satisfactory for private roads to be added to the list of public roads.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; and working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Roads (Scotland) Act 1984.
<b>III Implications for Scheme of Delegation to Officers</b>	None.
<b>IV Impact on performance and performance indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	Outcome 8 - We make the most efficient and effective use of resources by minimising our

impact on the built and natural environment.

**VI Resources - (Financial, Staffing and Property)**

None.

**VII Consideration at PDSP**

The report was considered at the Environment PDSP on 23 April 2105.

**VIII Other Consultations**

Legal Services.

**D. TERMS OF REPORT**

**Background**

The Roads (Scotland) Act 1984 (the 1984 Act) permits the frontagers of a private road to apply to the roads authority to have their private road added to the list of public roads. Section 16 of the 1984 Act is the relevant section of the legislation.

On reviewing council policy it became clear that the Council has not identified its requirements nor approved a policy to consider such requests under Section 16 of the 1984 Act. Therefore, it is considered that a policy should be developed and approved to identify what is considered to be the standard satisfactory for the roads authority to add a private road to the list of public roads.

**Legal Position**

The Roads (Scotland) Act 1984 (the 1984 Act) provides the definition of a road. The 1984 Act defines a road as ... *“any way (other than a waterway) over which there is a public right of passage and includes the road’s verge.”*

A road can be either a public road or a private road. A public road is *“a road which a roads authority has a duty to maintain”*. The Council as roads authority maintains a list of public roads.

A private road is *“any road other than a public road.”* The responsibility for the maintenance of a private road lies with the owner of land or frontagers of the private road.

Section 16 of the 1984 Act states that an application can be made for a private road to become a public road. If the private road subject to the application is *“of a standard satisfactory to the local roads authority then, if application is made by the requisite number of frontagers for such addition, the authority shall within 12 months of the application add the road to the list of public roads”*. If the standard of the road deteriorates below the satisfactory standard in the 12 month period then the council does not have a duty to add the road to the list of roads.

Any dispute in relation to the refusal to add a private road to the list of public roads following an application under section 16 of the 1984 Act being refused shall be determined by arbitration by a single arbiter agreed by the parties in default of agreement by the sheriff on the application of either party.

**Terms of Report**

A valid application from the requisite number of frontagers can be made to request that the Council adopt a private road which is not considered to be of a satisfactory standard. At present powers are delegated to the Head of Operational Services to consider such a request, but there is no clear guidance on how such applications should be considered and assessed.

The key elements of legal advice are as follows:

- any private road can be subject to a section 16 application;
- such an application must be considered by the council as the roads authority;
- if the application is made by the required number of frontagers and the road is of a standard satisfactory to the local roads authority it must be added to the list of roads within 12 months of the application being made;
- there is no legislative provision within the 1984 Act which defines what is a satisfactory standard;
- the local roads authority are under no legal duty to add a private road to their list of public roads that it considers is not of a satisfactory standard; and
- if the road is not of a satisfactory standard and not being added to the list of roads then it is recommended that the frontagers should be notified of the reasons why the private road is not being adopted.

Design standards vary depending on the function of the road, its design speed and volumes of traffic. Therefore, each request will have to be assessed on an individual basis to identify the elements of the private road that do not meet the relevant standards.

Appendix A indicates what evidence the council will require to be submitted in support of any application and the basic minimum requirements that must be met for a road to be added to the list of roads. It is proposed that any request where the private road fails to meet these basic standards should be rejected and a list of all failings passed to the frontagers. As stated earlier disputes can be referred by the frontagers and the Council to an arbiter for resolution. It is considered by the council that any such arbiter should be an independent suitably qualified engineer with roads design and construction experience.

The proposed policy and the required standards were discussed at the PDSP and the report approved. However, there was a suggestion that the definition of a private road should be extended to take in car parks and parking places, this was not supported by the panel. It is considered that the proposed policy will ensure that any private road put forward for addition to the list of public roads is of a standard which is consistent with all new roads currently adopted as part of developments.

## **E. Conclusions**

As stated earlier provision exists within the Roads (Scotland) Act 1984 for frontagers on a private road to make application for the private road to become a public road. There has been no formal guidance approved by West Lothian Council on how to assess and determine when a private road is considered of a standard satisfactory to the council as the roads authority.

Although the mechanism exists for frontagers to apply for a private road to become a public road it is most likely that the private road will not be of a satisfactory standard to

the council as roads authority. Adding roads to the list of public road will increase the maintenance burden to the council over time and therefore private roads will have to meet current design standards to be considered of a satisfactory standard. The minimum requirements are set out in Appendix A to this report.

## **F. BACKGROUND REFERENCES**

None

Appendices/Attachments: Appendix A

Contact Person: Jim Stewart,  
Development Management and Transportation Policy Manager, 01506 282327  
Email: [jim.stewart@westlothian.gov.uk](mailto:jim.stewart@westlothian.gov.uk)

Jim Jack  
Head of Operational Services

26 May 2015

## **APPENDIX A**

### **ROADS (SCOTLAND) ACT 1984 - SECTION 16 APPLICATION FOR PRIVATE ROAD TO BECOME PUBLIC ROAD**

#### **GUIDANCE FOR APPLICANTS**

##### **VALID APPLICATIONS**

- Private accesses and car parks are not considered to be private roads and will not be considered.
- The requisite number of frontagers is fully defined in section 1 of the Roads (Scotland) Act 1984. “the requisite number” means—
  - (a) a majority; or
  - (b) such number as together owns land which includes not less than half of the boundary between the land fronting or abutting the private road.

##### **SUPPORTING EVIDENCE**

The following information should be provided in support of any application.

- An application shall be accompanied by a signed letter from the individual frontagers or from an agent acting on their behalf;
- The extent and length of each individual applicant's frontage;
- Proof of the thickness of the layers that make up the private road construction is to be provided by the applicants;
- Construction materials of each road layer;
- Details of the location of any structures under or over the private road;
- Details and location of road drainage including outfall locations; and
- Details of any public or private utilities or services within the private road.

##### **STANDARDS**

Applications will be assessed against the following standards.

- (1) In rural areas a private road must be a minimum of 5.5 metres wide with a 2 metre verge on both sides of the road.
- (2) In urban areas a private road must be a minimum of 5.0 metres wide with a footway. Shared surfaces will be considered if traffic speeds are less than 20 miles per hour.
- (3) The councils geometric design standards in force at the time of the application must be met.

- (4) The materials use in the construction must comply with the Specification for Highway Works Volume 1.
- (5) The following minimum construction depths must be achieved.
- Surface Course - 40 mm thick
  - Binder Course - 60 mm thick
  - Road Base – 150 mm thick
  - Type 1 Sub Base – 250 mm thick
- (6) The road drainage system associated with the private road must meet the requirements of SEPA prior to discharge into any watercourses.
- (7) The drainage system must be contained within the public road and shall not discharge into adjacent land.
- (8) Drainage outfalls through private land must be accessible to the roads authority.

Roads and Transportation

26 May 2015



## **COUNCIL EXECUTIVE**

### **PROPOSED CHANGE OF SPEED LIMIT** **40MPH TO 30 MPH ON PART OF THE B9080, WINCHBURGH**

### **REPORT BY HEAD OF OPERATIONAL SERVICES.**

#### **A. PURPOSE OF REPORT**

Following statutory consultation the extent of the proposed 30mph limit has been raised. The request is that the 30mph limit is extended to the existing 40mph sign location. As this is an extension to the length of the proposed 30mph limit approval to extend the limit is required.

#### **B. RECOMMENDATION**

It is recommended that council executive approves the initiation of the statutory procedures to extend the 30mph speed limit to replace the existing 40mph limit on the B9080 to the west of Winchburgh.

#### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs  Being honest, open and accountable
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Policy – none  Legal – The introduction of a 30mph speed limit will require the promotion of a traffic order in line with the Road Traffic Regulation Act 1984.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	The introduction of the 30mph speed limit will support Outcome no. 4 – We live in resilient, cohesive and safe communities
<b>VI Resources - (Financial, Staffing and Property)</b>	The cost of promoting and implementing the speed limit will be entirely funded by the developer. Maintenance costs relating to the road signage will require to be accommodated in future revenue budgets.
<b>VII Consideration at PDSP</b>	None.

## **VIII Other consultations**

Police Scotland and the local ward members have been consulted.

## **D. TERMS OF REPORT**

The proposed introduction of extension to the 30 mph speed limit on the B9080 reflects the ongoing development on the western approach of Winchburgh and relates to the change of urban boundary identified by the extent of development contained in the Finalised West Lothian Local Plan.

Planning permission in principle for the development of Winchburgh has been granted and a number of the development blocks identified in the masterplan now have detailed planning permission.

Part of the new urban core road at the west side of Winchburgh has detailed planning permission along with housing developments in blocks M and K. House building has commenced on blocks M and K and works to alter the road layout have been completed.

Following consultation it is proposed to extend the proposed 30mph limit 152 metres west to cover the full existing 40mph zone. The length of road subject to the speed limit change is approximately 1100 metres and includes the tie in to the west end of the new urban core road. A location plan is attached which shows the new road layout, the extent of the speed limit proposal and the location of the key development areas M and K which when completed will form part of the urban area of Winchburgh.(Appendix 1).

Police Scotland has been consulted and is in agreement with the report.

The local ward members have been consulted and all support the proposed change in the speed limit.

## **E. CONCLUSION**

The reduction of the speed limit on the identified sections of the B9080 mph identify the start of the extended urban envelope of Winchburgh and ensure that the speed limit is appropriate for the mix of pedestrian and vehicle uses in this developing urban areas.

## **F. BACKGROUND REFERENCES**

None

Appendices/Attachments:-

Appendix One – B9080 Speed Limit Change

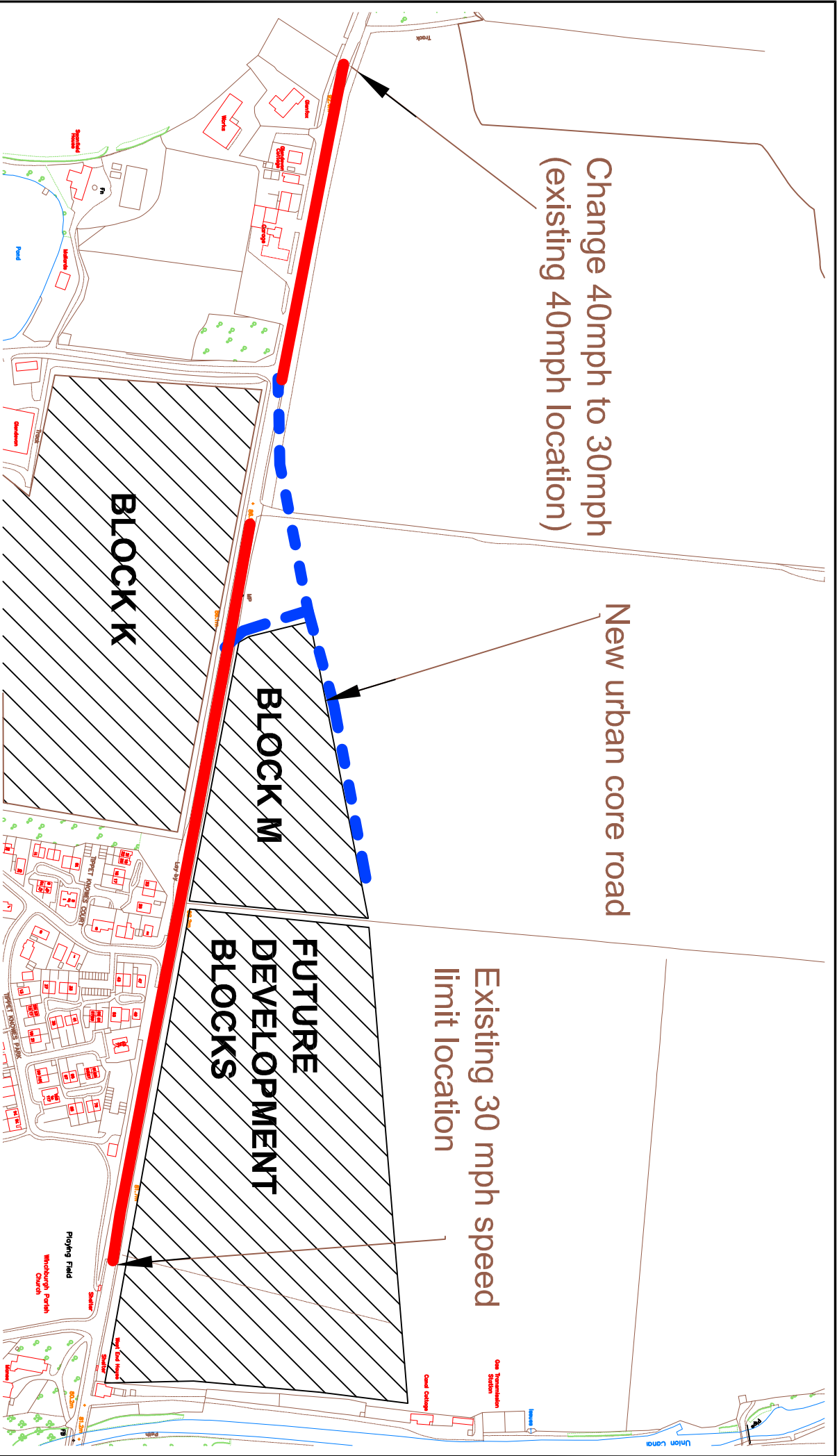
Contact Person: Jim Stewart, Development Management and Transportation Planning Manager, Whitehill House, 7 Whitestone Place, Whitehill Industrial Estate, Bathgate, West Lothian,

Tel: 01506 282327, e-mail: [jim.stewart@westlothian.gov.uk](mailto:jim.stewart@westlothian.gov.uk)

Jim Jack, Head of Operational Services,  
Whitehill House, 7 Whitestone Place, Whitehill Industrial Estate, Bathgate, West Lothian,

Date of meeting: 26 May 2015





DATA LABEL:-	Public
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WEST LOTHIAN COUNCIL		B9080 Winchburgh Core Development Area	
OPERATIONAL SERVICES		Proposed Speed Limit Changes	
ROADS & TRANSPORTATION MANAGER WHITEHILL HOUSE WHITEHILL INDUSTRIAL ESTATE BATHGATE EH48 2HA TEL 01506 282351	TRANSPORTATION Transport Planning & Development Management		
	DATE:- April 2015	DRAWN BY:- Chris Nicol	
	SCALE:- 1:5000	CHECKED BY:- Jim Stewart	
	Drg. No.:- TP/B9080/TRO 1		





## **COUNCIL EXECUTIVE**

### **PROCUREMENT ARRANGEMENTS – BATHVILLE FLATS URBAN REGENERATION**

#### **REPORT BY HEAD OF FINANCE AND ESTATES**

##### **A. PURPOSE OF REPORT**

To seek Council Executive approval to commence tendering procedures for the procurement of a contractor to complete the works for the Bathville Flats urban regeneration project, employing the evaluation methodology and criteria detailed in the recommendation below.

##### **B. RECOMMENDATION**

It is recommended that the Council Executive approves:

1. The use of the Open Procedure for procurement of contractors to complete the works for phases one to four of the Bathville Flats urban regeneration whereby all suppliers expressing an interest in the contract will be invited to tender for any of the ten lots, and,
2. The use of the Restricted Procedure for the procurement of contractors to undertake phase five (1- 27 Station Road), due to the complex nature of the project.
3. The award criteria as set out in Section D of the report.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Focusing on our customer's needs, being honest, open and accountable providing equality of opportunities, making best use of our resources working in partnership
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Tenders will be issued, received and analysed in accordance with Standing Orders of West Lothian Council and the Public Contracts (Scotland) Regulations 2012.
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None.

<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None.
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	None.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	The costs are estimated to be around £3.92 million, with £2.67 million applicable to activities carried out by Building Services and appointed sub-contractors. All projects will be funded through the housing capital budget.
<b>VII</b>	<b>Consideration at PDSP</b>	None.
<b>VIII</b>	<b>Other consultations</b>	The specification will be provided by Housing Construction and Building Services and their design team, who will also participate in the evaluation. The Corporate Finance Manager was consulted on budget implications. The Community Benefits Officer was consulted on inclusion of community benefit clauses.

#### **D. TERMS OF REPORT**

##### **Background**

The Bathville Flats, Armadale consist of forty eight existing properties over five sites providing housing for council tenants and four private tenants. Armadale is one of West Lothian's core development areas which will see a continuing house building programme to the south of the town over the coming years.

The proposal is to carry out the regeneration in five phases. Phases one to four will be managed by Building Services and consist of full and partial refurbishments with the works being carried out without the need to decant the tenants. Building Services will carry out part of the installation of refurbishment works, which will be tendered as a materials supply only procurement; the remaining works will be tendered as a supply and installation procurement and will be managed by Building Services.

Following evaluation at a senior management level in Housing, Building and Construction Services, it was agreed that given the complexity and locality of phase five, it should be tendered as a complete procurement package. The phase five procurement will be managed by Construction Services and will consist of demolition of a block of four flats, refurbishment of ten flats and complete new build of nine flats,

The Bathville Flats refurbishment will offer tenants a safe and secure environment

which is well-designed, sustainable and with easy access to local services and facilities, local agencies and support networks. This will create increased opportunities for social contact, educational advancement and economic and personal wellbeing and improved security.

The project will contribute to the council's asset management strategy by improving the quality of housing properties and surrounding soft and hard landscape.

It is recommended that the tender is conducted in accordance with the Open Procedure for tenders over the threshold.

### **In House Capability**

In line with the council's Best Value Framework, Building Services will carry out part of the refurbishment works with part of phases one to four of the project being tendered to appoint external contractors who will be managed by Building Services. Part of the design team has been resourced in-house with a previous procurement exercise procuring engineering and cost disciplines. This team will produce a detailed set of drawings and specification to enable to tenderers to give the council as accurate prices as possible. Tenders will be published in ten lots to allow small and medium enterprises the opportunity to bid for the works.

### **Procurement Issues**

The requirement will be advertised in accordance with the European Union Procurement Directives. It is proposed that the Open Procedure is used for phase one to four whereby suppliers expressing an interest in the contract will be invited to bid for the supply of materials and works with the restricted procedure being used for phase five given the complexity of these works.

The following award criteria will be applied at the tender stage:

Price	- 60%
Quality	- 40%

### **Sustainability Considerations**

Following the Community Benefits in Procurement Procedure approved by the Council Executive in 4 June 2013, bidders will be required to follow the Construction Industry Training Board (CITB) National Skills Academy guidance for Community Benefits.

Following consultation with the Community Benefits Lead Officer, initial investigations indicate that there is scope to incorporate a CITB Community Benefits clause into the contract documentation. As a minimum, the council will expect the successful Contractor to deliver such benefits as part of the Contract, and will be monitored as such.

### **Budget Implications**

Council Executive approved a three year housing Capital Programme on 29

January 2015. The approved budget for Bathville Cross phases 1 to 5 is £3.92m with new build costs of £1.47m and the refurbishment works of £2.45m.

The estimated construction costs for the five phases is £3.92m with building services works for phase one to four estimated at £2.67m and construction costs estimated at £1.25 million for phase five (1 -27 Station Road). These costs are estimates and will be updated as the projects progress to reflect further details as available. Any changes to the cost estimates will be reported as part of the quarterly capital monitoring reports to Council Executive.

#### **E. CONCLUSION**

It is recommended that the Council Executive approves the application of the evaluation methodology detailed in Section D above for the tendering of works to complete the Bathville Flats urban regeneration project.

#### **F. BACKGROUND REFERENCES**

A copy of the specification for this contract is available on request from Corporate Procurement.

Appendices/Attachments: None.

Contact Person: Sadie Trivett, Senior Procurement Specialist

Email: [sadie.trivett@westlothian.gov.uk](mailto:sadie.trivett@westlothian.gov.uk)

Tel: 01506 281811

**Donald Forrest**

**Head of Finance and Estates**

Date: 26 May 2015



## **COUNCIL EXECUTIVE**

### **MINOR CHANGES TO FINANCIAL REGULATIONS**

#### **REPORT BY HEAD OF FINANCE AND ESTATES**

##### **A. PURPOSE OF REPORT**

To advise Council Executive of minor changes to the council's Financial Regulations, following a review to reflect updated corporate fraud arrangements, and to account for the most up to date position in various areas.

##### **B. RECOMMENDATION**

It is recommended that Council Executive approves the revised Financial Regulations, as set out in appendix one of this report.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Being honest, open and accountable, making the best use of our resources.
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	The Local Government (Scotland Act) 1973 requires the council to make proper arrangements for the administration of its financial affairs.
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	The Financial Regulations operate in parallel with the framework set out in the council's Scheme of Delegation.
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	The Financial Regulations facilitate effective financial control.
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	Our public services are high quality, continually improving, efficient and responsive to local people's needs.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	None.
<b>VII</b>	<b>Consideration at PDSP</b>	Given the minor and administrative nature of the changes, there was no requirement for these to be considered at PDSP.
<b>VIII</b>	<b>Other consultations</b>	Corporate Finance Manager, Audit and Risk Manager, Corporate Procurement Manager, Revenues Manager, Estates Manager.

## **D. TERMS OF REPORT**

### **D.1 Introduction**

Financial Regulations are required to conduct business efficiently, secure best value, and ensure proper administration of the council's financial affairs in accordance with the Local Government (Scotland) Act 1973.

In accordance with the terms of the council's Scheme of Delegation, the Head of Finance and Estates is responsible for maintaining a continuous review of the Financial Regulations and submitting changes to Council Executive for approval.

### **D.2 Requirement for a Review**

Under the terms of the council's Code of Corporate Governance, the Financial Regulations must be reviewed at least once every administrative term. The Financial Regulations were last reviewed in 2013 and the resultant changes approved by Council Executive on 4 June 2013. There is no further requirement under the Code for the Financial Regulations to be reviewed this administrative term.

However minor changes to the Financial Regulations are required as a result of changes to the council's counter fraud arrangements involving the redeployment of two of the council's counter fraud investigators within the Audit, Risk and Counter Fraud Unit. In doing this, the opportunity has been taken to conduct a more general review of the Financial Regulations. There are minor changes relating to areas within the responsibility of the Head of Finance and Estates, as set out in section D.3 below, and it should be noted that the Regulations have not been fundamentally altered.

### **D.3 Summary of Main Changes**

#### **Section A.2 General Accounting Framework**

Updated to refer to the Local Authority Accounts (Scotland) Regulations 2014.

#### **Section A.5 Final Accounts**

Updated for the requirements of the Local Authority Accounts (Scotland) Regulations 2014 in relation to the submission and approval of the unaudited and audited Annual Accounts.

#### **Section B.2 Internal Audit**

Updated to refer to the internal audit charter and to remove reference to the investigation of fraudulent housing benefit claims and the council's Benefit Fraud Strategy. References to fraud and irregularity have been moved to section B.4.

#### **Section B.3 Risk Management and Business Continuity**

Updated to refer to the Governance and Risk Board in place of Risk Management Board.

#### **Section B.4 Counter Fraud**

This section has been added and covers the role, authority and responsibilities of the counter fraud team. Previous sections B4 to B7 have been re-referenced B5 to B8.

#### **Section B.6 Custody and Security of Assets, Stocks and Stores**

Paragraph 6.1, relating to the requirement for the Head of Finance and Estates to be responsible for maintaining a register of all land and buildings and ensuring that all material fixed assets are included in the council's asset register, has been added.

#### **Section C.2 Income**

References to community charge have been removed in accordance with the provisions of the Community Charge Debt (Scotland) Act 2015 which received royal assent on 25 March 2015.

#### **Section C.5 Procurement of Supplies, Services and Works**

The rules in relation to the council's procurement and ordering processes have been updated and rewritten to make them clearer and to reference to the council's Purchase to Pay



Systems Procedure.

### **Section C.6 Payment Procedures**

A requirement has been added to the effect that payments must only be made by cheque and petty cash when the use of other methods of payment is not appropriate.

The revised Financial Regulations and previous Financial Regulations dated 4 June 2013 are appended for comparison purposes.

### **E. CONCLUSION**

The Financial Regulations are a key component of the council's governance and control framework. The report outlines a number of minor changes which will ensure the regulations are up to date and are consistent with the latest circumstances.

### **F. BACKGROUND REFERENCES**

Report to Council Executive 24 March 2015: Consideration of the Council's Unaudited Accounts, Annual Governance Statement and Audited Accounts

Report to Audit and Governance Committee 9 February 2015: Counter Fraud Plan 2015/16

Report to Council Executive 18 March 2014: Corporate Counter Fraud Arrangements

Appendix 1 – Financial Regulations revised 26 May 2015

Appendix 2 – Financial Regulations 4 June 2013

Contact Person: Kenneth Ribbons, Audit and Risk Manager [kenneth.ribbons@westlothian.gov.uk](mailto:kenneth.ribbons@westlothian.gov.uk)  
Tel: 01506 281573

**Donald Forrest**  
**Head of Finance and Estates**  
**Date: 26 May 2015**





# **STANDING ORDERS**

## **FINANCIAL REGULATIONS**

**26 May2015**

## **FINANCIAL REGULATIONS**

### **1. INTRODUCTION**

- 1.1 West Lothian Council is committed to delivering high quality, integrated services in conjunction with Community Planning partners. The council has adopted modern business processes, enabled by technology, so that services are organised around the needs of citizens.
- 1.2 In order to conduct its business efficiently, the council must have sound financial management policies that are strictly adhered to. The requirement for sound financial management is further reinforced by the Local Government (Scotland) Act 1973 that stipulates that every local authority must make arrangements for the proper administration of its financial affairs and by the CIPFA Prudential Code for Capital Finance on Local Authorities (the 'Prudential Code') which stipulates that councils must be able to demonstrate, on an on-going basis, that capital spending and associated borrowing is affordable, prudent and sustainable. In addition the council has a duty to make arrangements which secure best value. The best value obligation applies both to elected members and officers. For these reasons it is essential for the council to establish financial regulations and supporting procedures.
- 1.3 The 1973 Act also requires that each authority appoints a proper officer to take responsibility for the administration of its financial affairs. The council has resolved that the proper officer is the Head of Finance and Estates.
- 1.4 The Accounts Commission has stated that a regime of good governance for a local authority includes the creation and implementation of procedures for the effective discharge of the statutory responsibilities of the proper officer in relation to the overall financial management of the council. In addition to setting out these responsibilities, the financial regulations and associated procedures also provide clarity about the financial accountabilities of other officers within the council.
- 1.5 Members and officers have a responsibility for fostering the culture and attitudes that are necessary for good governance. Full details of the relevant roles and responsibilities are set out in the council's Code of Corporate Governance.
- 1.6 The financial regulations operate in parallel with the framework set out in the council's Scheme of Delegation. This includes the delegated authority of the Chief Executive and Depute Chief Executives to authorise other senior officers in their service who are appropriately qualified to use their delegated powers under these regulations, unless they cannot do so by law or because of specific provisions of the Scheme of Delegation.
- 1.7 Reference in the regulations to 'Depute Chief Executives' means: -
  - Depute Chief Executive – Education, Planning and Area Services
  - Depute Chief Executive – Corporate, Operational and Housing Services
  - Depute Chief Executive - Community Health and Care Partnership and Social Policy

1.8 Reference in the regulations to 'Heads of Service' means: -

- Head of Finance and Estates
- Head of Education (Development)
- Head of Education (Quality Assurance)
- Head of Area Services
- Head of Planning and Economic Development
- Head of Housing, Construction and Building Services
- Head of Corporate Services
- Head of Operational Services
- Head of Social Policy

## **2. STATUS OF FINANCIAL REGULATIONS**

- 2.1 The financial regulations provide the framework for managing the council's financial affairs. They apply to every member and officer of the council and everyone acting on its behalf. Additionally, all members and officers have a general responsibility for ensuring that the use of the council's resources is legal, properly authorised and provides value for money.
- 2.2 The Head of Finance and Estates is responsible for maintaining a continuous review of the financial regulations, including the financial limits contained in the regulations and submitting any changes, other than of a minor nature, to the Council Executive for approval. The council's Code of Corporate Governance requires the financial regulations to be reviewed at least once every Administrative term.
- 2.3 The Head of Finance and Estates is also responsible for issuing procedures, guidance and advice to underpin the financial regulations, and for investigating any breach of the regulations.
- 2.4 Depute Chief Executives are responsible for ensuring that Heads of Service are aware of and put in place arrangements for their services to comply with the financial regulations.

### **3. FORMAT OF FINANCIAL REGULATIONS**

- 3.1 The financial regulations cover all aspects of the administration of the council's financial affairs and have been grouped in accordance with the main elements of financial administration as follows:

#### **Financial Regulation A: Financial Management and Planning**

- A.1 Introduction
- A.2 General Accounting Framework
- A.3 Revenue Budgets
- A.4 Capital Budgets
- A.5 Final Accounts
- A.6 Partnerships and Joint Arrangements
- A.7 Bids for External Funding
- A.8 Grants to External Organisations

#### **Financial Regulation B: Risk Management and Control of Resources**

- B.1 Introduction
- B.2 Internal Audit
- B.3 Risk Management and Business Continuity
- B.4 Counter Fraud
- B.5 Insurance
- B.6 Custody and Security of Assets, Stocks and Stores
- B.7 Banking Arrangements
- B.8 Treasury Management

#### **Financial Regulation C: Systems and Procedures**

- C.1 Introduction
- C.2 Income
- C.3 Salaries and Wages
- C.4 Allowances and Expenses
- C.5 Procurement of Work, Goods and Services
- C.6 Payment Procedures
- C.7 Value Added Tax

## **FINANCIAL REGULATION A – FINANCIAL MANAGEMENT AND PLANNING**

### **A.1 INTRODUCTION**

- 1.1 Financial Management and Planning incorporates the various elements associated with the development, maintenance and monitoring of the council's financial strategy and financial position. These are: -

- General Accounting Framework
- Revenue Budgets
- Capital Budgets
- Final Accounts

### **A.2 GENERAL ACCOUNTING FRAMEWORK**

- 2.1 The Local Authority Accounts (Scotland) Regulations 2014 require that a local authority keep adequate accounting records. The proper officer is responsible for determining the form of, and maintaining, the council's accounting control systems and accounting records. The proper officer for West Lothian Council is the Head of Finance and Estates.
- 2.2 The Head of Finance and Estates must ensure that adequate systems of accounting control are maintained throughout the council and that services conform with council policy, legislation and codes of practice on these matters.
- 2.3 The Head of Finance and Estates is responsible for coordinating the preparation of the revenue and capital budgets on an annual basis as part of a medium term revenue budget strategy and capital planning strategy.
- 2.4 The Local Government in Scotland Act 2003 sets out that it is the duty of a local authority to determine the maximum amount it can afford to allocate to capital expenditure and that, in discharging this duty, the authority must comply with capital expenditure regulations. The capital expenditure regulations state that councils must comply with the provisions of the Prudential Code.
- 2.5 The Prudential Code stipulates that councils must be able to demonstrate, on an on-going basis, that capital spending and associated borrowing are affordable, prudent and sustainable and comply with Best Value requirements. The council's role, in this regard, is fulfilled by approving, annually, a series of prudential indicators for West Lothian and ensuring that there are suitable arrangements for monitoring the indicators on an on-going basis. In addition, when considering, agreeing and implementing a capital investment strategy, the Prudential Code requires councils to take account of a variety of factors such as value for money, asset management planning, practicality and achievability. The Head of Finance and Estates is responsible for reporting to the council on all relevant matters that are required to be taken into account by the council when setting prudential indicators. The Head of Finance and Estates is also responsible for establishing procedures for monitoring prudential indicators.
- 2.6 It is the responsibility of the Head of Finance and Estates to ensure appropriate procedures and instructions are issued for: -



- developing, maintaining and reviewing the overall budget strategy.
  - producing the annual and medium term revenue and capital budgets, in compliance with the Provisions of the Prudential Code.
  - producing annual activity budgets.
  - budgetary control of revenue and capital expenditure.
  - budget monitoring of prudential indicators.
  - storage and disposal of financial records.
  - producing financial management information.
  - submission of statistical returns; and
  - completion of the Statutory Abstract of Accounts.
- 2.7 Effective budgetary control arrangements are essential to ensure the council meets its objectives and outcomes within available resources. The council's budgetary control for revenue and capital budgets is focused on a risk based approach that ensures time is prioritised to high risk areas of the council's budget. A key element in this approach to budget monitoring is that a comprehensive zero based budgeting exercise is undertaken each year for all staffing and non-staffing budgets. In addition, Heads of Service are responsible for identifying and agreeing material budget risk areas with the Head of Finance and Estates, which are monitored on a monthly basis.
- 2.8 The Head of Finance and Estates is responsible for completing, or ensuring the proper completion by services of claims for external funding. Heads of Service are responsible for timeously providing information required by the Head of Finance and Estates for this purpose.
- 2.9 Committee reports must contain a statement of financial implications, and confirmation that the Head of Finance and Estates has verified the financial content of the report.

### **A.3 REVENUE BUDGETS**

#### **3.1 General Fund Revenue Budget Planning Process**

The council is required to approve a balanced revenue budget for each financial year. Over the medium term the council will face a range of expenditure pressures and continuing funding constraints and therefore effective prioritisation of resources will be essential to achieving balanced budgets. Both Audit Scotland and the Chartered Institute of Public Finance and Accountancy (CIPFA) have identified that public bodies must focus on their medium to long term financial sustainability to ensure effective public services in the future, and they have advised that this is best achieved developing medium term financial strategies. It is therefore very important that the councils financial strategies are based on defined and agreed priorities and there is clarity as to how budgets will be managed.

Delivering council priorities should underpin the medium term financial strategy and help ensure that constrained resources are allocated to achieve desired outcomes and value for money.

The medium term financial strategy fully incorporates the resources needed to deliver the councils priorities, and will include plans for efficiency based on delivery of approved workstreams. The medium term financial strategy will

be integrated with the council's Corporate Plan. The Corporate Plan provides the corporate and strategic framework for delivering agreed priorities.

### **3.2 General Fund Revenue Budget**

#### **Preparation**

The Head of Finance and Estates is responsible for co-ordinating the preparation of the revenue budget on an annual basis as part of a medium term revenue budget strategy. The Head of Finance and Estates is also responsible for preparing prudential indicators in line with the provisions of the Prudential Code. The prudential indicators cover both the General Fund and the Housing Revenue Account (HRA). The revenue budget is integrated with the capital budget and the Corporate Plan. Heads of Service are responsible for preparing their service budgets and activity budgets in accordance with approved budget control totals.

The Head of Finance and Estates is responsible for submitting the revenue budget and prudential indicators to the Corporate Management Team for consideration prior to presentation to the council.

#### **Approval**

The Head of Finance and Estates is responsible for presenting, annually, a revenue budget and prudential indicators to the full council. The council shall consider and approve a revenue budget, approve prudential indicators and set a council tax level for the following year. The council tax setting must, by law, take place before 11 March in any year.

#### **Budgetary Control**

The council is responsible for establishing a monitoring and control framework that complies with the requirements of the Prudential Code. Budgetary control frameworks and procedures are in place for General Services and HRA revenue budgets.

The council's budgetary control framework and procedures set out a risk based approach to budget monitoring. A full zero based budgeting exercise for all spend and income is undertaken annually to ensure a robust base budget is in place as a realistic guide to actual spend and income for the year.

As part of the risk based approach to budget monitoring, Heads of Service are responsible for identifying and agreeing material budget risk areas with the Head of Finance and Estates. Risk schedules will be prepared for these areas and relevant budgets monitored on a monthly basis.

The budgetary control frameworks confirm the budgetary control responsibilities of council officers and elected members. In terms of budgetary control, elected members have overall responsibility for proper governance and monitoring of public funds and for ensuring effective services are provided within the constraints of agreed budgets.

The Head of Finance and Estates is responsible for ensuring that appropriate procedures and instructions are issued for budgetary control. The Head of Finance and Estates is also responsible for providing appropriate financial information to enable budgets to be monitored effectively.

Heads of Service are responsible for the implementation of budgetary control procedures within their services and for ensuring the budgetary control process is carried out.

Heads of Service have primary responsibility for the budgetary control process within their service and are responsible for confirming budget projections, updating Risk Schedules and submitting these to the Head of Finance and Estates. The Head of Finance and Estates is responsible for monitoring the overall budget and reporting on the financial position to the Corporate Management Team, and to the Council Executive for periods 4, 6 and 9 each year. The reports to the Council Executive should include monitoring of prudential indicators.

Outwith periods 4, 6 and 9, the focus of budget monitoring will be on risk areas identified and monitored through the monthly update of Risk Schedules.

The Head of Finance and Estates is responsible for ensuring monthly budgetary control reports are available to budget holders.

At the financial year end, the Head of Finance and Estates is responsible for reporting the final outturn report to the Corporate Management Team and the Council Executive.

#### **Budget Virements**

Budget virements within service areas are processed in agreement with the relevant Head of Service and Head of Finance and Estates. The virement must be within the parameters of the approved service budget. In the event of inter-service virements, authorisation for the virements should be confirmed by the relevant Depute Chief Executives. All virements between Devolved School Management (DSM) budget headings are subject to the DSM Scheme of Delegation.

### **3.3 HRA Revenue Budget**

#### **Preparation**

The Depute Chief Executive – Corporate, Operational and Housing Services is responsible for preparing a revenue budget for the Housing Revenue Account as part of a medium term revenue budget and rent strategy. This budget is based on financial information provided by the Head of Finance and Estates. The Housing revenue budget is integrated with the Housing capital budget.

#### **Approval**

The Depute Chief Executive – Corporate, Operational and Housing Services is responsible for presenting an HRA revenue budget to a meeting of the full council. The council shall consider and approve a budget, and set rent levels for all council housing stock and service charges at this meeting.

#### **Budgetary Control**

The Depute Chief Executive – Corporate, Operational and Housing Services is responsible for monitoring the HRA budget and reporting on the financial position to the Corporate Management Team and the Council Executive based on financial information provided by the Head of Finance and Estates. The reports to the Council Executive are presented for periods 4, 6 and 9

each year. A risk based approach to monitoring focusing on the use of Risk Schedules is undertaken for the HRA revenue budget. The Depute Chief Executive – Corporate, Operational and Housing Services is also responsible for reporting a final outturn report to the Corporate Management Team and the Council Executive.

#### **Budget Virements**

Budget virements are processed in agreement with the Depute Chief Executive – Corporate, Operational and Housing Services and Head of Finance and Estates. The virement must be within the parameters of the approved HRA budget.

### **A.4 CAPITAL BUDGETS**

#### **4.1 General Services Capital Planning Process**

The Head of Finance and Estates is responsible for preparing and maintaining a medium term General Services capital plan and strategy and presents this to the Corporate Management Team for approval prior to its consideration by the Council Executive. The capital planning strategy is integrated with asset management planning, strategic planning and option appraisal and takes account of the council's duty to comply with the Prudential Code. All capital investment contained in the medium term capital plan has been approved on the basis of a Strategic Outline Business Case. The capital plan is fully integrated with the council's medium term revenue budget strategy and Corporate Plan. Investment within the capital plan is split between four asset category types, each of which has a specific Asset Lead Officer. Depute Chief Executives are responsible for designating Asset Lead Officers to fulfil all aspects of work for the specified asset categories.

#### **4.2 General Services Annual Capital Budget**

##### **Preparation**

The Head of Finance and Estates is responsible for ensuring that a detailed General Services capital budget is prepared annually taking account of the detailed allocation of block budgets. Asset Lead Officers are responsible for preparing their asset category capital budgets in accordance with approved annual budget totals. The Head of Finance and Estates is responsible for co-ordinating the capital budget. The budget should be supported by information required under the provisions of the Prudential Code.

##### **Approval**

The Head of Finance and Estates is responsible for presenting, annually, a General Services capital budget to the Council Executive which shall consider and approve a budget.

##### **Budgetary Control**

The council is responsible for establishing a monitoring and control framework that complies with the requirements of the Prudential Code. Budgetary control frameworks and procedures are in place for General Services and HRA capital budgets.

The capital budgetary control framework and procedures set out a risk based approach to budget monitoring.

As part of the risk based approach to budget monitoring, Heads of Service are responsible for identifying and agreeing material capital investment risks with the Head of Finance and Estates. Risk Schedules will be prepared for these areas of investment and relevant budgets monitored on a monthly basis.

The budgetary control frameworks confirm the budgetary control responsibilities of council officers and elected members. In terms of budgetary control, elected members have overall responsibility for proper governance and monitoring of public funds and for ensuring effective services are provided within the constraints of agreed budgets.

The Head of Finance and Estates is responsible for ensuring that appropriate procedures and instructions are issued for budgetary control. The Head of Finance and Estates is also responsible for providing appropriate financial information to enable budgets to be monitored effectively. Asset Lead Officers are responsible for the implementation of budgetary control procedures. It is the responsibility of Asset Lead Officers to control income and expenditure within their areas of responsibility and to monitor net expenditure against the agreed budget.

The Head of Finance and Estates is responsible for reporting on the financial position of the General Services capital programme to the Corporate Management Team and to the Council Executive for periods 4, 6 and 9 each year. The reports should include the information required to comply with the provisions of the Prudential Code.

Outwith periods 4, 6 and 9, the focus of budget monitoring will be on investment risk areas identified and monitored through the monthly update of Risk Schedules.

At the financial year end, the Head of Finance and Estates is responsible for reporting the final outturn and budget roll forward report, taking into account slippage or accelerated spend within the capital programme, to the Council Executive.

The Head of Finance and Estates is responsible for ensuring monthly budgetary control reports from Business Objects are available to Asset Lead Officers.

#### **Budget Virements**

In consultation with the Head of Finance and Estates, Asset Lead Officers are authorised to approve virements between capital projects within their section of the capital programme.

However, if it is proposed to add a new capital project, delete an approved capital project from the programme, or materially change a capital project from the scope set out in the Strategic Outline Business Case then Asset Lead Officers must notify the Head of Finance and Estates who must report for approval to the Council Executive.

### **4.3 Housing Capital Planning Process**

The Depute Chief Executive – Corporate, Operational and Housing Support is responsible for ensuring that the council agrees and implements a medium

term Housing capital investment and planning process that fully complies with the provisions of the Prudential Code.

The capital planning process will include appropriate links with asset management planning, strategic planning and option appraisal and will take account of the council's responsibility to adhere to the Social Housing Quality Standard.

#### **4.4 Housing Annual Capital Budget**

##### **Preparation**

The Deputy Chief Executive – Corporate, Operational and Housing Services is responsible for ensuring that the Housing capital budget is prepared annually as part of the agreed capital investment and planning process based on financial information provided by the Head of Finance and Estates. The Deputy Chief Executive will also consult the Head of Finance and Estates on the implications for prudential indicators when preparing the budget.

##### **Approval**

The Deputy Chief Executive – Corporate, Operational and Housing Services is responsible for presenting, annually, a Housing capital budget to the Council Executive which shall consider and approve a budget including any revenue consequences. The budget report should include the information required under the provisions of the Prudential Code.

##### **Budgetary Control**

The Deputy Chief Executive – Corporate, Operational and Housing Services is responsible for undertaking monitoring of the Housing capital programme and for reporting to the Corporate Management Team and the Council Executive based on financial information provided by the Head of Finance and Estates. The reports are presented to the Council Executive for periods 4, 6 and 9 each year. The reports should include the information required to comply with the provisions of the Prudential Code. A risk based approach to monitoring focusing on the use of Risk Schedules is also undertaken for the Housing capital budget.

##### **Budget Virements**

The Deputy Chief Executive – Corporate, Operational and Housing Services, as Asset Lead Officer for Housing, is authorised to approve virements between capital projects within the capital programme.

However, if it is proposed to add a new capital project, delete an approved capital project from the programme, or substantially alter a capital project the Deputy Chief Executive – Corporate, Operational and Housing Services must report for approval to the Council Executive.

#### **A.5 FINAL ACCOUNTS**

- 5.1 The Head of Finance and Estates is responsible for ensuring that the statutory Annual Accounts are produced in compliance with council policy, relevant legislation and accounting requirements.
- 5.2 The Head of Finance and Estates submits a copy of the unaudited Annual Accounts to the Audit and Governance Committee for approval prior to

submission to the appointed auditor in accordance with the agreed timetable but, in any event, by the prescribed date.

- 5.3 The Head of Finance and Estates submits a copy of the audited Annual Accounts to the council and the appointed auditor in accordance with the agreed timetable but, in any event, by the prescribed date of 30 September.
- 5.4 Heads of Service are required to provide information in accordance with instructions on the Annual Accounts issued annually by the Head of Finance and Estates.

#### **A.6 PARTNERSHIPS AND JOINT ARRANGEMENTS**

- 6.1 Working in partnership with a wide range of other organisations is a key policy and priority of the council. It is essential that appropriate accounting and control arrangements are in place to regulate the operation of all arrangements involving third parties. In relation to funding of external organisations, the council complies with the 'Code of Guidance on Funding External Bodies and Following the Public Pound' issued by the Accounts Commission and the Convention of Scottish Local Authorities (COSLA).
- 6.2 Heads of Service must consider the overall corporate governance arrangements when arranging contracts with external bodies. They must consult with the Head of Finance and Estates in respect of financial issues and ensure that financial risks have been fully appraised before agreements are entered into.
- 6.3 Heads of Service are responsible for ensuring that appropriate approvals are obtained in relation to work with external bodies.
- 6.4 The Head of Finance and Estates must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory and provide for effective internal control.

#### **A.7 BIDS FOR EXTERNAL FUNDING**

- 7.1 To assess the financial implications, Heads of Service must consult with the Head of Finance and Estates regarding the financial content of all bids and businesses cases for external funding prior to them being submitted by the council. This applies, for example, to Scottish Government and European Union funding. In accordance with the internal procedures on External Funding Reporting Arrangements, proposals for the use of funding awarded should be set down on a funding pro-forma and submitted to the Head of Finance and Estates.
- 7.2 The Head of Finance and Estates is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the authority's accounts.

#### **A.8 GRANTS TO EXTERNAL ORGANISATIONS**

- 8.1 Approval of grants to external organisations must be made within the terms of council policy.

## **FINANCIAL REGULATION B – RISK MANAGEMENT AND CONTROL OF RESOURCES**

### **B.1 INTRODUCTION**

- 1.1 It is essential that robust systems are developed and maintained for identifying and evaluating on an integrated basis all significant strategic and operational risks to the council. This involves the proactive participation of all those associated with planning and delivering services.

### **B.2 INTERNAL AUDIT**

- 2.1 Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.
- 2.2 The council has established an Audit and Governance Committee which meets at least four times per year. The Committee undertakes a corporate review of the council's control environment, including financial controls, corporate governance, and risk management. The Committee's remit and powers are set out in the council's Scheme of Administration.
- 2.3 The council has established an Audit Risk and Counter Fraud Unit which includes internal audit. Internal audit operates in accordance with the Public Sector Internal Audit Standards issued by CIPFA in collaboration with the Chartered Institute of Internal Auditors.
- 2.4 The internal audit charter sets out the role and responsibilities of internal audit and is approved by the Audit and Governance Committee.
- 2.5 The Audit and Risk Manager is responsible for internal audit and reports directly to the Head of Finance and Estates. The Audit and Risk Manager has the right of direct access to the Chair of the Audit and Governance Committee and the Chief Executive, and may also consult with the Monitoring Officer at any time about any matter within his remit.
- 2.6 The remit of internal audit is to review, appraise and report on the:
- effectiveness of systems of financial and non-financial control;
  - extent of compliance with approved policies, plans and procedures, including the local code of corporate governance;
  - extent of compliance with regulations and legislation;
  - degree to which the council's assets are properly accounted for and safeguarded;
  - suitability and reliability of management data and performance information;
  - effectiveness of management in discharging its responsibility for ensuring value for money.
- 2.7 The Audit and Risk Manager prepares an annual risk based audit plan in consultation with Audit Scotland and senior council officers. The Audit and Governance Committee approves the annual internal audit plan before being issued.
- 2.8 Subject to any necessary prior consultation internal audit staff have authority to:
- enter at all reasonable times council premises or land;



- access all records, documents and correspondence relating to any aspect of internal audit's remit;
- require and receive such explanations as are necessary concerning any matter under examination; and
- require any employee of the council to produce cash, stores or any other council property under that person's control.

The Audit and Risk Manager determines what prior consultations may be necessary.

- 2.9 At the end of each financial year the Audit and Risk Manager prepares an annual report which sets out internal audit's performance for the year and which includes an opinion on the effectiveness of the council's framework of governance, risk management and control. The annual report is submitted to the Audit and Governance Committee.

### **B.3 RISK MANAGEMENT AND BUSINESS CONTINUITY**

- 3.1 The council has a responsibility to have effective risk management processes in place.
- 3.2 The council has established a Governance and Risk Board with responsibility for oversight of the council's risk management arrangements. The Governance and Risk Board ensures that the council has effective risk management and business continuity arrangements in place.
- 3.3 The Audit and Risk Manager is responsible for developing, maintaining and reviewing the corporate risk management framework, including guidance on business continuity. In doing so the Audit and Risk Manager consults with the Head of Finance and Estates, Governance and Risk Board, and Risk Management Working Group.
- 3.4 The Executive Management Team is responsible for oversight of the council's strategic risks and ensures that these are effectively identified, recorded and managed.
- 3.5 Heads of Service are responsible for managing their service's risks in accordance with the corporate framework and must ensure that significant risks to service objectives are effectively identified, recorded and managed.
- 3.6 Heads of Service are responsible for business continuity arrangements for their service. They must ensure that effective business continuity plans are in place to support the delivery of critical services within their remit. This includes ensuring that I.T. applications are appropriately backed up and ensuring that effective disaster recovery arrangements are in place.

### **B.4 COUNTER FRAUD**

- 4.1 The council has an approved Anti-Fraud and Corruption Policy and a zero tolerance approach to all forms of fraud, theft and corruption.
- 4.2 The council has established an Audit Risk and Counter Fraud Unit which includes a counter fraud team which investigates allegations of fraud and irregularity. The term fraud for this purpose includes, but is not restricted to, criminal offences such as theft, corruption, and embezzlement. An irregularity is defined as a breach of council policy or procedure which does not involve the commission of a criminal offense.

- 4.3 Wherever any matter arises which involves, or is thought to involve, a fraud, or irregularity that affects the affairs of the council, the relevant Head of Service must immediately notify the Head of Finance and Estates.
- 4.4 In accordance with the provisions of the council's Disclosure of Information by Employees (Whistle Blowing) Policy, the counter fraud team operates a whistle blowing hotline.
- 4.5 Referrals received by the counter fraud team, from whatever source, are investigated in accordance with Audit Risk and Counter Fraud Unit's procedures for the investigation of suspected fraud and irregularities.
- 4.6 Subject to any necessary prior consultation, counter fraud staff have authority to:
- enter at all reasonable times council premises or land;
  - access all records, documents and correspondence relevant to any counter fraud investigation;
  - require and receive such explanations as are necessary concerning any matter under investigation; and
  - require any employee of the council to produce cash, stores or any other council property under that person's control.
- 4.7 The Audit and Risk Manager determines what prior consultations may be necessary.

## **B.5 INSURANCE**

- 5.1 The Head of Finance and Estates is responsible for reviewing risks annually and determining the balance between insurance through external cover and self-insurance. Insurance cover will be placed following a tendering process.
- 5.2 The Head of Finance and Estates will maintain an Insurance Fund in accordance with legislation and accounting rules.
- 5.3 Heads of Service must immediately notify the Head of Finance and Estates in writing of any loss, liability or damage or any event likely to lead to a claim and must inform the police where appropriate, in accordance with the claim procedures provided by the Head of Finance and Estates.
- 5.4 The Head of Finance and Estates negotiates all claims in consultation with Heads of Service and the council's insurers, where applicable.
- 5.5 Heads of Service consult the Head of Finance and Estates and the Chief Solicitor regarding the terms of any indemnity that the council is required to give.

## **B.6 CUSTODY AND SECURITY OF ASSETS, STOCKS AND STORES**

- 6.1 The Head of Finance and Estates is responsible for maintaining a register of all land and buildings and ensuring that all material fixed assets are included in the council's asset register.
- 6.2 Heads of Service are responsible for maintaining proper security, care and custody of all buildings, stocks, stores, furniture, equipment, cash and other property including that owned by third parties.

- 6.3 Heads of Service should ensure that cash holdings within each service unit are minimised, held in accordance with the council's cash procedure, and do not exceed relevant insurance limits.
- 6.4 Heads of Service are responsible for maintaining and regularly updating an inventory for all stocks and fixed assets in every establishment within their service in accordance with guidelines issued by the Head of Finance and Estates.
- 6.5 Disposals or write-offs of stores, plant, furniture and equipment must be carried out in accordance with procedures issued by the Head of Finance and Estates.
- 6.6 Council property must not be removed from council premises other than for council purposes except in accordance with council policy.

#### **B.7 BANKING ARRANGEMENTS**

- 7.1 The Head of Finance and Estates is responsible for ensuring that arrangements are made for the provision of mainstream banking services and that the contract is tendered at least every five years.
- 7.2 The Head of Finance and Estates makes arrangements regarding the opening and operation of all council bank accounts and use of banking services in the name of the council. The Head of Finance and Estates must authorise the opening of bank accounts for the use of petty cash.
- 7.3 For third party bank accounts operated by council staff as part of their council duties, cheques must be signed by two delegated signatories unless agreed otherwise by the Head of Finance and Estates.
- 7.4 All arrangements for Clearing House Automated Payment system (CHAPS) payments will be made under the arrangements approved by the Head of Finance and Estates. Heads of Service are responsible for authorising non-commercial payments and CHAPS payment forms. Whenever Heads of Service delegate responsibility for authorisation, they must notify the Head of Finance and Estates in writing of the officers with delegated authority. A specimen signature for delegated officers must also be provided.

#### **B.8 TREASURY MANAGEMENT**

- 8.1 The council's treasury management policy statement is as follows:
  - Treasury management is the management of the council's investments and cash flows, its banking, money market and capital market transactions; the effective control of the risks associated with those activities; and the pursuit of optimum performance consistent with those risks.
  - The council regards the successful identification, monitoring and control of risk to be the prime criteria by which the effectiveness of its treasury management activities will be measured. Accordingly, the analysis and reporting of treasury management activities will focus on their risk implications for the organisation.

- The council acknowledges that effective treasury management will provide support towards the achievement of its business and service objectives. It is therefore committed to the principles of achieving best value in treasury management, and to employing suitable performance management techniques, within the context of effective risk management.
- 8.2 For the cornerstones for effective treasury management, the council will create and maintain:
- a treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities
  - suitable treasury management practices (TMPs), setting out the manner in which the council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.
- 8.3 The content of the policy statement and TMPs will follow the recommendations contained in Sections 6 and 7 of the CIPFA Treasury Management Code, subject only to amendment where necessary to reflect the particular circumstances of this organisation. Such amendments will not result in the organisation materially deviating from the CIPFA Treasury Management Code's key principles.
- 8.4 The council has responsibility for the implementation and regular monitoring of its treasury management policies and practices. The council delegates responsibility for the execution and administration of treasury management decisions to the Head of Finance and Estates, who will act in accordance with the organisation's policy statement and TMPs and CIPFA's Standard of Professional Practice on Treasury Management where they are a CIPFA member.
- 8.5 The Head of Finance and Estates will prepare the following reports – an annual plan in advance of the year, a mid-year report and an annual report by 30 September of the following financial year. The Partnership and Resources Policy Development and Scrutiny Panel will receive and scrutinise the annual plan and refer it to the Council for formal approval. This is consistent with the revised CIPFA Treasury Management Code and the Scottish Investment Regulations 2010.
- 8.6 To demonstrate that the council's borrowing decisions are compliant with the Prudential Code's requirement that borrowing is prudent, affordable and sustainable, the Head of Finance and Estates will prepare and monitor prudential indicators. Prudential indicators will be approved annually by Council and updates provided in the treasury management reports.
- 8.7 The council adopts in full both the CIPFA Treasury Management Code and the CIPFA Prudential Code.
- 8.8 All investments of money under its control shall be made in the name of the council. All money held by the council will be aggregated for the purposes of treasury management and shall be under the control of the Head of Finance and Estates. Investments can only be in organisations included in the permitted investments list approved by Council.

## **FINANCIAL REGULATION C – SYSTEMS AND PROCEDURES**

### **C.1 INTRODUCTION**

- 1.1 Sound systems and procedures are essential for an effective framework of accountability and control.

### **C.2 INCOME**

- 2.1 The recovery and collection of all money due to the council is undertaken in accordance with guidelines issued by the Head of Finance and Estates. The guidelines include procedures for issuing accounts, recording income, paying in cash, under and over banking, security and insurance of cash, cash transfers, personal cheques and the supply of receipts and tickets.
- 2.2 Services must ensure that where income is received by payment card, that the council's Payment Card Industry (PCI) compliance procedures are followed.
- 2.3 The corporate debt policy backed up by procedures sets out the terms of the joined up approach the council will take with debtors who, in particular, have multiple debts due to the council.
- 2.4 Accounts should be issued for sums due to the council, unless alternative arrangements have been agreed with the Head of Finance and Estates. Heads of Service must:
- ensure the prompt rendering of accounts in connection with work done, goods supplied or services rendered
  - ensure that all money received by the council is paid directly to the council's bank account
  - provide such information as is required to establish income due to the council.
- 2.5 Where accounts have not been issued other appropriate arrangements must be adopted and promptly initiated in line with the guidelines issued by the Head of Finance and Estates.
- 2.6 Arrangements for payment of accounts due by instalment are at the discretion of the relevant Head of Service, except for council tax and business rates where there are statutory rights to pay in instalments.
- 2.7 In consultation with Heads of Service, the Head of Finance and Estates is authorised to write off miscellaneous debt of up to £3,000 where the council has tried all reasonable means of debt collection and there is no prospect of recovery. Miscellaneous debt for this purpose excludes council tax, non-domestic rates, and any other debt write off specifically delegated to another officer.
- 2.8 In consultation with Heads of Service, the Head of Finance and Estates is authorised to write on any amount of miscellaneous credit where all attempts to trace the creditor has failed (if the creditor is subsequently traced the action will be reversed and the credit refunded).

- 2.9 In addition, the Head of Finance and Estates, in consultation with Heads of Service , is authorised to write-off any amount of miscellaneous debt that cannot be recovered where the debtor: -
- has been sequestrated (declared bankrupt and, where possible, a suitable claim has been made); or
  - is a company in liquidation, receivership, administrative receivership, dissolution, or has been struck off the register of companies (and, where possible, a suitable claim has been made); or
  - cannot be traced; or
  - is deceased and there are no funds in the estate; or
  - the debt is prescribed (i.e. outwith the legal time limit for collection).
- 2.10 With regard to council tax and non-domestic rates debts that cannot be recovered, the Head of Finance and Estates is authorised to write-off: -
- debts up to £3,000 in any one case;
- or any amount where the debtor:
- has been sequestrated (declared bankrupt and, where possible, a suitable claim has been made); or
  - is a company in liquidation, receivership, administrative receivership, dissolution, or has been struck off the register of companies (and, where possible, a suitable claim has been made); or
  - cannot be traced; or
  - is deceased and there are no funds in the estate; or
  - the debt is prescribed (i.e. outwith the legal time limit for collection).
- 2.11 In addition the Head of Finance and Estates is authorised to write on any amount of council tax and non-domestic rates where all attempts to trace the creditor has failed (if the creditor is subsequently traced the action will be reversed and the credit refunded).
- 2.12 The Depute Chief Executive – Corporate, Operational and Housing Services is authorised to write off HRA rent arrears of up to £3,000 in any one case where the council has tried all reasonable means of debt collection and there is no prospect of recovery.
- 2.13 In addition, the Depute Chief Executive – Corporate, Operational and Housing Services is authorised to write-off any amount of HRA rent arrears that cannot be recovered where the debtor:-
- has been sequestrated (declared bankrupt and, where possible, a suitable claim has been made); or
  - cannot be traced; or
  - is deceased and there are no funds in the estate; or
  - the debt is prescribed (i.e. outwith the legal time limit for collection).
- 2.14 Where there are valid social work reasons for so doing, and in accordance with council policy and legislative requirements, the Depute Chief Executive - Community Health and Care Partnership and Social Policy is authorised to write off debts of up to £3,000, where the council has tried all reasonable

means of debt collection and there is no prospect of recovery. This debt relates to:

- charges based on the Department of Work and Pensions or National Assistance Act regulations for residential or domiciliary care
- any other Social Work client contributions calculated through the charging policy.

### **C.3 SALARIES AND WAGES**

3.1 The Scheme of Delegation to Officers provides for the appointment of employees. This establishes basic pay. Depute Chief Executives are responsible for authorising any variations to pay, and for ensuring that:

- all documents authorising variations to pay are submitted in accordance with conditions of service, council policies and other statutory provisions
- the Head of Corporate Services is provided with such information as is required to complete council and statutory returns.

3.2 The Head of Corporate Services is responsible for:

- processing and payment of salaries, compensation and other emoluments to employees and elected members or retiring allowances to former employees
- maintaining appropriate internal controls in HR and payroll processes
- ensuring that there is adequate segregation of duties between the HR and payroll functions.
- paying pension contributions to the City of Edinburgh Council and the Scottish Public Pensions Agency, and tax and National Insurance contributions to HM Revenue and Customs.

### **C.4 ALLOWANCES AND EXPENSES**

4.1 The Head of Corporate Services is responsible for:

- submitting a draft scheme of members' allowances to the Council Executive annually prior to the start of the financial year
- administering the scheme of members' allowances in accordance with the relevant statutory provisions and
- publishing details of payments to individual members by 1 June each year for the preceding financial year

4.2 The Head of Corporate Services is responsible for:

- the reimbursement of travelling and subsistence expenses to officers and elected members.
- Maintaining appropriate internal controls over the processes for reimbursement of travelling and subsistence expenses.

4.3 Heads of Service are responsible for ensuring that:

- claims for expenses are submitted in accordance with conditions of service, council policies and other statutory provisions
- the Head of Corporate Services is provided with such information as is required to complete council and statutory returns.

## **C.5 PROCUREMENT OF SUPPLIES, SERVICES AND WORKS**

- 5.1 The council operates a Corporate Procurement Unit and services are required to make use of the Unit. Corporate Procurement maintains a contract register and can be contacted for advice on any type of purchase. This service will consist of the provision of purchasing advice, compliance with council standing orders for the regulation of contracts, national and European procurement regulations, and disposal of equipment.
- 5.2 All procurement and purchasing must comply with the council's standing orders for the regulation of contracts.
- 5.3 All contracts and orders must adhere to council payment terms which are 30 days from receipt of a valid invoice. Any exceptions to the council's payment terms must be approved in advance by the Head of Finance and Estates.
- 5.4 Each Head of Service shall be responsible for all orders emanating from their service and shall ensure they fully observe all guidance issued by the Head of Finance and Estates.
- 5.5 Heads of Service must ensure that proper security and control arrangements are implemented and must comply with the council's information security policy and guidelines.
- 5.6 Orders are only to be issued for supplies, services or works which have been procured in compliance with the council's standing orders for the regulation of contracts, and only if the cost is covered by a budget allocation or by a special financial provision.
- 5.7 Orders for supplies, services or works must be processed in accordance with the council's Purchase to Pay Systems Procedure. Orders must be placed in advance of the supplies, services or works being received.
- 5.8 Heads of Service must ensure that records of all officers with responsibility for creating and approving orders on all council purchase to pay systems are maintained.
- 5.9 It is the responsibility of the Head of Service to satisfy themselves that an order represents a valid supply of supplies, services or works prior to authorising it.
- 5.10 Orders for supplies and services subject to contract must be placed with the contracted supplier. For works contracts, orders shall only be placed with organisations subject to the outcome of a competitive procurement exercise, and which hold a relevant construction industry registration certificate.
- 5.11 Before entering into leasing agreements, Heads of Service must consult with the Head of Finance and Estates to establish the correct accounting treatment for the lease.

## **C.6 PAYMENT PROCEDURES**

- 6.1 The Head of Finance and Estates will issue procedures covering payments to third parties. This will include procedures and guidance on use of the most appropriate purchase to pay system, purchase cards, e5 cheque facility,



CHAPS and cash. Heads of Service are responsible for ensuring compliance with these procedures.

- 6.2 Heads of Service are responsible for entering goods received and invoice details into the relevant purchase to pay system to enable payment to be made.
- 6.3 An invoice must be matched to a pre-authorised order held on the relevant purchase to pay system. The Head of Service is responsible for ensuring that an invoice represents a valid liability of the council before authorising it for payment. The council's payment terms are 30 days from receipt of a valid invoice. Invoices must be processed without delay to ensure the council's payment terms are complied with.
- 6.4 Payment must not be made prior to the receipt of supplies and services without the approval of the Head of Service. Where a payment requires to be made in circumstances where there is no supply of goods or services, e.g. grant payments and refunds, then such payments must be made in accordance with procedures issued by the Head of Finance and Estates.
- 6.5 The standard method of payment of money due from the council is by electronic bank transfer such as BACS and CHAPS drawn on the council's bank account. The only exceptions are payments made by cheque, petty cash and other payments from advance accounts. Payments must only be made by cheque and petty cash when other methods of payment are not appropriate. The council's cheque facility and cash procedures detail spend that can be processed by petty cash.
- 6.6 All cheques, excluding those required for authorised imprest accounts, are printed only on the authority of the Head of Finance and Estates who makes proper arrangements for their ordering, issuing and safe custody.
- 6.7 Cheques drawn on the council's main bank accounts must bear the facsimile signature of the Head of Finance and Estates, or be signed by one of the following officers: Head of Finance and Estates, Corporate Finance Manager, Delegated Group Accountant, Revenues Manager and Benefits Manager.
- 6.8 Cheques for over £50,000 drawn on the council's main bank accounts must bear the facsimile signature of the Head of Finance and Estates and be signed by one of the following officers: Head of Finance and Estates, Corporate Finance Manager, Delegated Group Accountant, Revenues Manager and Benefits Manager.

## **C.7 VALUE ADDED TAX**

- 7.1 The Head of Finance and Estates is responsible for issuing guidance on the application of value added tax rules.
- 7.1 Heads of Service are responsible for identifying and accounting properly for both their input and output value added tax.





# **STANDING ORDERS**

## **FINANCIAL REGULATIONS**

**Updated 4 June 2013**

## **FINANCIAL REGULATIONS**

### **1. INTRODUCTION**

- 1.1 West Lothian Council is committed to delivering high quality, integrated services at the heart of a network of partners. The council has adopted modern business processes, enabled by technology, so that services are organised around the needs of citizens.
- 1.2 In order to conduct its business efficiently, the council must have sound financial management policies that are strictly adhered to. The requirement for sound financial management is further reinforced by the Local Government (Scotland) Act 1973 that stipulates that every local authority must make arrangements for the proper administration of its financial affairs and by the CIPFA Prudential Code for Capital Finance on Local Authorities (the 'Prudential Code') which stipulates that councils must be able to demonstrate, on an on-going basis, that capital spending and associated borrowing is affordable, prudent and sustainable. In addition the council has a duty to make arrangements which secure best value. The best value obligation applies both to elected members and officers. For these reasons it is essential for the council to establish financial regulations and supporting procedures.
- 1.3 The 1973 Act also requires that each authority appoints a proper officer to take responsibility for the administration of its financial affairs. The council has resolved that the proper officer is the Head of Finance and Estates.
- 1.4 The Accounts Commission has stated that a regime of good governance for a local authority includes the creation and implementation of procedures for the effective discharge of the statutory responsibilities of the proper officer in relation to the overall financial management of the council. In addition to setting out these responsibilities, the financial regulations and associated procedures also provide clarity about the financial accountabilities of other officers within the council.
- 1.5 Members and officers have a responsibility for fostering the culture and attitudes that are necessary for good governance. Full details of the relevant roles and responsibilities are set out in the council's Code of Corporate Governance.
- 1.6 The financial regulations operate in parallel with the framework set out in the council's Scheme of Delegation. This includes the delegated authority of the Chief Executive and Deputy Chief Executives to authorise other senior officers in their service who are appropriately qualified to use their delegated powers under these regulations, unless they cannot do so by law or because of specific provisions of the Scheme of Delegation.
- 1.7 Reference in the regulations to 'Depute Chief Executives' means: -
  - Depute Chief Executive – Education, Planning and Area Services
  - Depute Chief Executive – Corporate, Operational and Housing Services
  - Depute Chief Executive - Community Health and Care Partnership and Social Policy

1.8 Reference in the regulations to 'Heads of Service' means: -

- Head of Finance and Estates
- Head of Education (Development)
- Head of Education (Quality Assurance)
- Head of Area Services
- Head of Planning and Economic Development
- Head of Housing, Construction and Building Services
- Head of Corporate Services
- Head of Operational Services
- Head of Social Policy

## **2. STATUS OF FINANCIAL REGULATIONS**

- 2.1 The financial regulations provide the framework for managing the council's financial affairs. They apply to every member and officer of the council and everyone acting on its behalf. Additionally, all members and officers have a general responsibility for ensuring that the use of the council's resources is legal, properly authorised and provides value for money.
- 2.2 The Head of Finance and Estates is responsible for maintaining a continuous review of the financial regulations, including the financial limits contained in the regulations and submitting any changes, other than of a minor nature, to the Council Executive for approval. The council's Code of Corporate Governance requires the financial regulations to be reviewed at least once every Administrative term.
- 2.3 The Head of Finance and Estates is also responsible for issuing procedures, guidance and advice to underpin the financial regulations, and for investigating any breach of the regulations.
- 2.4 Depute Chief Executives are responsible for ensuring that Heads of Service are aware of and put in place arrangements for their services to comply with the financial regulations.

### **3. FORMAT OF FINANCIAL REGULATIONS**

- 3.1 The financial regulations cover all aspects of the administration of the council's financial affairs and have been grouped in accordance with the main elements of financial administration as follows:

#### **Financial Regulation A: Financial Management and Planning**

- A.1 Introduction
- A.2 General Accounting Framework
- A.3 Revenue Budgets
- A.4 Capital Budgets
- A.5 Final Accounts
- A.6 Partnerships and Joint Arrangements
- A.7 Bids for External Funding
- A.8 Grants to External Organisations

#### **Financial Regulation B: Risk Management and Control of Resources**

- B.1 Introduction
- B.2 Internal Audit
- B.3 Risk Management and Business Continuity
- B.4 Insurance
- B.5 Custody and Security of Assets, Stocks and Stores
- B.6 Banking Arrangements
- B.7 Treasury Management

#### **Financial Regulation C: Systems and Procedures**

- C.1 Introduction
- C.2 Income
- C.3 Salaries and Wages
- C.4 Allowances and Expenses
- C.5 Orders for Work, Goods and Services
- C.6 Payment Procedures
- C.7 Value Added Tax

## **FINANCIAL REGULATION A – FINANCIAL MANAGEMENT AND PLANNING**

### **A.1 INTRODUCTION**

- 1.1 Financial Management and Planning incorporates the various elements associated with the development, maintenance and monitoring of the council's financial strategy and financial position. These are: -

- General Accounting Framework
- Revenue Budgets
- Capital Budgets
- Final Accounts

### **A.2 GENERAL ACCOUNTING FRAMEWORK**

- 2.1 The Local Authority Accounts (Scotland) Regulations 1985 require that the proper officer shall determine the council's system of accounting control and supporting records. The proper officer in West Lothian is the Head of Finance and Estates.
- 2.2 The Head of Finance and Estates must ensure that adequate systems of accounting control are maintained throughout the council and that service units conform with council policy, legislation and codes of practice on these matters.
- 2.3 The Head of Finance and Estates is responsible for coordinating the preparation of the revenue and capital budgets on an annual basis as part of a medium term revenue budget strategy and capital planning strategy.
- 2.4 The Local Government in Scotland Act 2003 sets out that it is the duty of a local authority to determine the maximum amount it can afford to allocate to capital expenditure and that, in discharging this duty, the authority must comply with capital expenditure regulations. The capital expenditure regulations state that councils must comply with the provisions of the Prudential Code.
- 2.5 The Prudential Code stipulates that councils must be able to demonstrate, on an on-going basis, that capital spending and associated borrowing are affordable, prudent and sustainable and comply with Best Value requirements. The council's role, in this regard, is fulfilled by approving, annually, a series of prudential indicators for West Lothian and ensuring that there are suitable arrangements for monitoring the indicators on an on-going basis. In addition, when considering, agreeing and implementing a capital investment strategy, the Prudential Code requires councils to take account of a variety of factors such as value for money, asset management planning, practicality and achievability. The Head of Finance and Estates is responsible for reporting to the council on all relevant matters that are required to be taken into account by the council when setting prudential indicators. The Head of Finance and Estates is also responsible for establishing procedures for monitoring prudential indicators.
- 2.6 It is the responsibility of the Head of Finance and Estates to ensure appropriate procedures and instructions are issued for: -



- developing, maintaining and reviewing the overall budget strategy.
  - producing the annual and medium term revenue and capital budgets, in compliance with the Provisions of the Prudential Code.
  - producing annual activity budgets.
  - budgetary control of revenue and capital expenditure.
  - budget monitoring of prudential indicators.
  - storage and disposal of financial records.
  - producing financial management information.
  - submission of statistical returns; and
  - completion of the Statutory Abstract of Accounts.
- 2.7 Effective budgetary control arrangements are essential to ensure the council meets its objectives and outcomes within available resources. The council's budgetary control for revenue and capital budgets is focused on a risk based approach that ensures time is prioritised to high risk areas of the council's budget. A key element in this approach to budget monitoring is that a comprehensive zero based budgeting exercise is undertaken each year for all staffing and non-staffing budgets. In addition, Heads of Service are responsible for identifying and agreeing material budget risk areas with the Head of Finance and Estates, which are monitored on a monthly basis.
- 2.8 The Head of Finance and Estates is responsible for completing, or ensuring the proper completion by Services of claims for external funding. Heads of Service are responsible for timeously providing information required by the Head of Finance and Estates for this purpose.
- 2.9 Committee reports must contain a statement of financial implications, and confirmation that the Head of Finance and Estates has verified the financial content of the report.

### **A.3 REVENUE BUDGETS**

#### **3.1 General Fund Revenue Budget Planning Process**

The council is required to approve a balanced revenue budget for each financial year. Over the medium term the council will face a range of expenditure pressures and continuing funding constraints and therefore effective prioritisation of resources will be essential to achieving balanced budgets. Both Audit Scotland and the Chartered Institute of Public Finance and Accountancy (CIPFA) have identified that public bodies must focus on their medium to long term financial sustainability to ensure effective public services in the future, and they have advised that this is best achieved developing medium term financial strategies. It is therefore very important that the councils financial strategies are based on defined and agreed priorities and there is clarity as to how budgets will be managed.

Delivering council priorities should underpin the medium term financial strategy and help ensure that constrained resources are allocated to achieve desired outcomes and value for money.

The medium term financial strategy fully incorporates the resources needed to deliver the councils priorities, and will include plans for efficiency based on delivery of approved workstreams. The medium term financial strategy will be integrated with the council's Corporate Plan. The Corporate Plan will aim

to build on the council's strong foundation and provide the corporate and strategic framework for delivering agreed priorities.

### **3.2 General Fund Revenue Budget**

#### **Preparation**

The Head of Finance and Estates is responsible for co-ordinating the preparation of the revenue budget on an annual basis as part of a medium term revenue budget strategy. The Head of Finance and Estates is also responsible for preparing prudential indicators in line with the provisions of the Prudential Code. The prudential indicators cover both the General Fund and the Housing Revenue Account (HRA). The revenue budget is integrated with the capital budget and the Corporate Plan. Heads of Service are responsible for preparing their service budgets and activity budgets in accordance with approved budget control totals.

The Head of Finance and Estates is responsible for submitting the revenue budget and prudential indicators to the Corporate Management Team for consideration prior to presentation to the council.

#### **Approval**

The Head of Finance and Estates is responsible for presenting, annually, a revenue budget and prudential indicators to the full council. The council shall consider and approve a revenue budget, approve prudential indicators and set a council tax level for the following year. The council tax setting must, by law, take place before 11 March in any year.

#### **Budgetary Control**

The council is responsible for establishing a monitoring and control framework that complies with the requirements of the Prudential Code. Budgetary control frameworks and procedures are in place for General Services and HRA revenue budgets.

The council's budgetary control framework and procedures set out a risk based approach to budget monitoring. A full zero based budgeting of all spend and income is undertaken annually to ensure a robust base budget is in place as a realistic guide to actual spend and income for the year.

As part of the risk based approach to budget monitoring, Heads of Service are responsible for identifying and agreeing material budget risk areas with the Head of Finance and Estates. Risk Schedules will be prepared for these areas and relevant budgets monitored on a monthly basis.

The budgetary control frameworks confirm the budgetary control responsibilities of council officers and elected members. In terms of budgetary control, elected members have overall responsibility for proper governance and monitoring of public funds and for ensuring effective services are provided within the constraints of agreed budgets.

The Head of Finance and Estates is responsible for ensuring that appropriate procedures and instructions are issued for budgetary control. The Head of Finance and Estates is also responsible for providing appropriate financial information to enable budgets to be monitored effectively.

Heads of Service are responsible for the implementation of budgetary control procedures within their services and for ensuring the budgetary control process is carried out.

Heads of Service have primary responsibility for the budgetary control process within their service and are responsible for confirming budget projections, updating Risk Schedules and submitting these to the Head of Finance and Estates. The Head of Finance and Estates is responsible for monitoring the overall budget and reporting on the financial position to the Corporate Management Team, and to the Council Executive for periods 4, 6 and 9 each year. The reports to the Council Executive should include monitoring of prudential indicators.

Outwith periods 4, 6 and 9, the focus of budget monitoring will be on risk areas identified and monitored through the monthly update of Risk Schedules.

The Head of Finance and Estates is responsible for ensuring monthly budgetary control reports are available to budget holders.

At the financial year end, the Head of Finance and Estates is responsible for reporting the final outturn report to the Corporate Management Team and the Council Executive.

### **Budget Virements**

Budget virements within service areas are processed in agreement with the relevant Head of Service and Head of Finance and Estates. The virement must be within the parameters of the approved service budget. In the event of inter-service virements, authorisation for the virements should be confirmed by the relevant Depute Chief Executives. All virements between Devolved School Management (DSM) budget headings are subject to the DSM Scheme of Delegation.

## **3.3 HRA Revenue Budget**

### **Preparation**

The Depute Chief Executive – Corporate, Operational and Housing Services is responsible for preparing a revenue budget for the Housing Revenue Account as part of a medium term revenue budget and rent strategy. This budget is based on financial information provided by the Head of Finance and Estates. The Housing revenue budget is integrated with the Housing capital budget.

### **Approval**

The Depute Chief Executive – Corporate, Operational and Housing Services is responsible for presenting an HRA revenue budget to a meeting of the full council. The council shall consider and approve a budget, and set rent levels for all council housing stock and service charges at this meeting.

### **Budgetary Control**

The Depute Chief Executive – Corporate, Operational and Housing Services is responsible for monitoring the HRA budget and reporting on the financial position to the Corporate Management Team and the Council Executive based on financial information provided by the Head of Finance and Estates. The reports to the Council Executive are presented for periods 4, 6 and 9

each year. A risk based approach to monitoring focusing on the use of Risk Schedules is undertaken for the HRA revenue budget. The Depute Chief Executive – Corporate, Operational and Housing Services is also responsible for reporting a final outturn report to the Corporate Management Team and the Council Executive.

#### **Budget Virements**

Budget virements are processed in agreement with the Depute Chief Executive – Corporate, Operational and Housing Services and Head of Finance and Estates. The virement must be within the parameters of the approved HRA budget.

### **A.4 CAPITAL BUDGETS**

#### **4.1 General Services Capital Planning Process**

The Head of Finance and Estates is responsible for preparing and maintaining a five year General Services capital plan and strategy and presents this to the Corporate Management Team for approval prior to its consideration by the Council Executive. The capital planning strategy is integrated with asset management planning, strategic planning and option appraisal and takes account of the council's duty to comply with the Prudential Code. All capital investment contained in the five year capital plan has been approved on the basis of a Strategic Outline Business Case. The capital plan is fully integrated with the council's medium term revenue budget strategy and Corporate Plan. Investment within the capital plan is split between four asset category types, each of which has a specific Asset Lead Officer. Depute Chief Executives are responsible for designating Asset Lead Officers to fulfil all aspects of work for the specified asset categories.

#### **4.2 General Services Annual Capital Budget**

##### **Preparation**

The Head of Finance and Estates is responsible for ensuring that a detailed General Services capital budget is prepared annually taking account of the detailed allocation of block budgets. Asset Lead Officers are responsible for preparing their asset category capital budgets in accordance with approved annual budget totals. The Head of Finance and Estates is responsible for co-ordinating the capital budget. The budget should be supported by information required under the provisions of the Prudential Code.

##### **Approval**

The Head of Finance and Estates is responsible for presenting, annually, a General Services capital budget to the Council Executive which shall consider and approve a budget.

##### **Budgetary Control**

The council is responsible for establishing a monitoring and control framework that complies with the requirements of the Prudential Code. Budgetary control frameworks and procedures are in place for General Services and HRA capital budgets.

The capital budgetary control framework and procedures set out an increased focus on a risk based approach to budget monitoring.

As part of the risk based approach to budget monitoring, Heads of Service are responsible for identifying and agreeing material capital investment risks with the Head of Finance and Estates. Risk Schedules will be prepared for these areas of investment and relevant budgets monitored on a monthly basis.

The budgetary control frameworks confirm the budgetary control responsibilities of council officers and elected members. In terms of budgetary control, elected members have overall responsibility for proper governance and monitoring of public funds and for ensuring effective services are provided within the constraints of agreed budgets.

The Head of Finance and Estates is responsible for ensuring that appropriate procedures and instructions are issued for budgetary control. The Head of Finance and Estates is also responsible for providing appropriate financial information to enable budgets to be monitored effectively. Asset Lead Officers are responsible for the implementation of budgetary control procedures. It is the responsibility of Asset Lead Officers to control income and expenditure within their areas of responsibility and to monitor net expenditure against the agreed budget.

The Head of Finance and Estates is responsible for reporting on the financial position of the General Services capital programme to the Corporate Management Team and to the Council Executive for periods 4, 6 and 9 each year. The reports should include the information required to comply with the provisions of the Prudential Code.

Outwith periods 4, 6 and 9, the focus of budget monitoring will be on investment risk areas identified and monitored through the monthly update of Risk Schedules.

At the financial year end, the Head of Finance and Estates is responsible for reporting the final outturn and budget roll forward report, taking into account slippage or accelerated spend within the capital programme, to the Council Executive.

The Head of Finance and Estates is responsible for ensuring monthly budgetary control reports from Business Objects are available to Asset Lead Officers.

#### **Budget Virements**

In consultation with the Head of Finance and Estates, Asset Lead Officers are authorised to approve virements between capital projects within their section of the capital programme.

However, if it is proposed to add a new capital project, delete an approved capital project from the programme, or materially change a capital project from the scope set out in the Strategic Outline Business Case then Asset Lead Officers must notify the Head of Finance and Estates who must report for approval to the Council Executive.

### **4.3 Housing Capital Planning Process**

The Depute Chief Executive – Corporate, Operational and Housing Support is responsible for ensuring that the council agrees and implements a five year

Housing capital investment and planning process that fully complies with the provisions of the Prudential Code.

The capital planning process will include appropriate links with asset management planning, strategic planning and option appraisal and will take account of the council's responsibility to adhere to the Social Housing Quality Standard.

#### **4.4 Housing Annual Capital Budget**

##### **Preparation**

The Deputy Chief Executive – Corporate, Operational and Housing Services is responsible for ensuring that the Housing capital budget is prepared annually as part of the agreed capital investment and planning process based on financial information provided by the Head of Finance and Estates. The Deputy Chief Executive will also consult the Head of Finance and Estates on the implications for prudential indicators when preparing the budget.

##### **Approval**

The Deputy Chief Executive – Corporate, Operational and Housing Services is responsible for presenting, annually, a Housing capital budget to the Council Executive which shall consider and approve a budget including any revenue consequences. The budget report should include the information required under the provisions of the Prudential Code.

##### **Budgetary Control**

The Deputy Chief Executive – Corporate, Operational and Housing Services is responsible for undertaking monitoring of the Housing capital programme and for reporting to the Corporate Management Team and the Council Executive based on financial information provided by the Head of Finance and Estates. The reports are presented to the Council Executive for periods 4, 6 and 9 each year. The reports should include the information required to comply with the provisions of the Prudential Code. A risk based approach to monitoring focusing on the use of Risk Schedules is also undertaken for the Housing capital budget.

##### **Budget Virements**

The Deputy Chief Executive – Corporate, Operational and Housing Services, as Asset Lead Officer for Housing, is authorised to approve virements between capital projects within the capital programme.

However, if it is proposed to add a new capital project, delete an approved capital project from the programme, or substantially alter a capital project the Deputy Chief Executive – Corporate, Operational and Housing Services must report for approval to the Council Executive.

#### **A.5 FINAL ACCOUNTS**

- 5.1 The Head of Finance and Estates is responsible for ensuring that the statutory Abstract of Accounts is produced in compliance with council policy, relevant legislation and accounting requirements.
- 5.2 The Head of Finance and Estates submits a copy of the Abstract of Accounts to the council and the Controller of Audit in accordance with the agreed timetable but, in any event, by the prescribed date.

- 5.3 Heads of Service are required to provide information in accordance with instructions on the final accounts issued annually by the Head of Finance and Estates.

#### **A.6 PARTNERSHIPS AND JOINT ARRANGEMENTS**

- 6.1 Working in partnership with a wide range of other organisations is a key policy and priority of the council. It is essential that appropriate accounting and control arrangements are in place to regulate the operation of all arrangements involving third parties. In relation to funding of external organisations, the council complies with the 'Code of Guidance on Funding External Bodies and Following the Public Pound' issued by the Accounts Commission and the Convention of Scottish Local Authorities (COSLA).
- 6.2 Heads of Service must consider the overall corporate governance arrangements when arranging contracts with external bodies. They must consult with the Head of Finance and Estates in respect of financial issues and ensure that financial risks have been fully appraised before agreements are entered into.
- 6.3 Heads of Service are responsible for ensuring that appropriate approvals are obtained in relation to work with external bodies.
- 6.4 The Head of Finance and Estates must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory and provide for effective internal control.

#### **A.7 BIDS FOR EXTERNAL FUNDING**

- 7.1 To assess the financial implications Heads of Service must consult with the Head of Finance and Estates regarding the financial content of all bids and businesses cases for external funding prior to them being submitted by the council. This applies, for example, to Scottish Government and European Union funding. In accordance with the internal procedures on External Funding Reporting Arrangements, proposals for the use of funding awarded should be set down on a funding pro-forma and submitted to the Head of Finance and Estates.
- 7.2 The Head of Finance and Estates is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the authority's accounts.

#### **A.8 GRANTS TO EXTERNAL ORGANISATIONS**

- 8.1 Approval of grants to external organisations must be made within the terms of council policy.

## **FINANCIAL REGULATION B – RISK MANAGEMENT AND CONTROL OF RESOURCES**

### **B.1 INTRODUCTION**

- 1.1 It is essential that robust systems are developed and maintained for identifying and evaluating on an integrated basis all significant strategic and operational risks to the council. This involves the proactive participation of all those associated with planning and delivering services.

### **B.2 INTERNAL AUDIT**

- 2.1 Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.
- 2.2 The council has established an Audit and Governance Committee which meets at least four times per year. The Committee undertakes a corporate review of the council's control environment, including financial controls, corporate governance and risk management. The Committee's remit and powers are set out in the Council's Scheme of Administration.
- 2.3 The council has established an Audit and Risk Management Unit which includes internal audit and which operates in accordance with the 'the "Public Sector Internal Audit Standards" issued by CIPFA in collaboration with the Chartered Institute of Internal Auditors.
- 2.4 The Audit and Risk Manager is responsible for internal audit and reports directly to the Head of Finance and Estates. The Audit and Risk Manager has the right of direct access to the Chair of the Audit and Governance Committee and the Chief Executive, and may consult with the Monitoring Officer at any time about any matter within his remit.
- 2.5 The role of internal audit is to review, appraise and report on the:
- effectiveness of systems of financial and non financial control;
  - extent of compliance with approved policies, plans and procedures, including the local code of corporate governance;
  - extent of compliance with regulations and legislation;
  - degree to which the council's assets are properly accounted for and safeguarded;
  - suitability and reliability of management data and performance information;
  - effectiveness of management in discharging its responsibility for ensuring value for money.
- 2.6 The Audit and Risk Manager prepares an annual risk based audit plan in consultation with the Audit and Governance Committee, Chief Executive, Heads of Service, Head of Finance and Estates, Monitoring Officer and Audit Scotland. The Audit and Governance Committee approves the annual internal audit plan before being issued.



- 2.7 Subject to any necessary prior consultation internal audit staff have authority to:
- enter at all reasonable times council premises or land;
  - access all records, documents and correspondence relating to any aspect of the internal audit function's remit as set out in paragraph 2.5 above;
  - require and receive such explanations as are necessary concerning any matter under examination; and
  - require any employee of the council to produce cash, stores or any other council property under that person's control.
- 2.8 At the end of each financial year the Audit and Risk Manager prepares an annual report which sets out the Audit and Risk Management Unit's performance for the year and which includes an opinion on the effectiveness of the council's framework of governance, risk management and control. The annual report is submitted to the Audit and Governance Committee.
- 2.9 The council has an approved Anti-Fraud and Corruption Policy. Wherever any matter arises which involves, or is thought to involve, a fraud, theft or irregularity that affects the affairs of the council, the relevant Heads of Service must immediately notify the Head of Finance and Estates. A decision on whether to investigate is then taken in accordance with the Policy. Allegations referred to the Audit and Risk Management Unit are investigated in accordance with its procedures for the investigation of suspected fraud and irregularities.
- 2.10 Fraudulent claims relating to Housing Benefit or Council Tax Reduction are dealt with under the council's Benefit Fraud Strategy. The Benefits Manager investigates all such claims.

### **B.3 RISK MANAGEMENT AND BUSINESS CONTINUITY**

- 3.1 The council has a responsibility to have effective risk management processes in place, and has approved a Risk Management Policy and Strategy.
- 3.2 In accordance with the Risk Management Strategy, the council has established a Risk Management Board with responsibility for oversight of the council's risk management arrangements. The Risk Management Board ensures that the council has effective corporate risk management arrangements, and that there are up to date and effective business continuity arrangements.
- 3.3 The Audit and Risk Manager is responsible for reviewing the Risk Management Policy and Strategy, and developing, maintaining and reviewing the corporate risk management framework, including business continuity. In doing so the Audit and Risk Manager consults with the Head of Finance and Estates and the Risk Management Board.
- 3.4 The Executive Management Team is responsible for oversight of the council's strategic risks and ensures that these are effectively identified, recorded and managed.

- 3.5 Heads of Service are responsible for managing their service's risks in accordance with the corporate framework and ensure that significant risks to service objectives are effectively identified, recorded and managed.
- 3.6 Heads of Service are responsible for business continuity arrangements for their service. They ensure that effective business continuity plans are in place to support the delivery of critical services within their remit. This includes ensuring that I.T. applications are appropriately backed up and that effective disaster recovery arrangements are in place.

#### **B.4 INSURANCE**

- 4.1 The Head of Finance and Estates is responsible for reviewing risks annually and determining the balance between insurance through external cover and self-insurance. Insurance cover will be placed following a tendering process.
- 4.2 The Head of Finance and Estates will maintain an Insurance Fund in accordance with legislation and accounting rules.
- 4.3 Heads of Service must immediately notify the Head of Finance and Estates in writing of any loss, liability or damage or any event likely to lead to a claim and must inform the police where appropriate, in accordance with the claim procedures provided by the Head of Finance and Estates.
- 4.4 The Head of Finance and Estates negotiates all claims in consultation with Heads of Service and the council's insurers, where applicable.
- 4.5 Heads of Service consult the Head of Finance and Estates and the Chief Solicitor regarding the terms of any indemnity that the council is required to give.

#### **B.5 CUSTODY AND SECURITY OF ASSETS, STOCKS AND STORES**

- 5.1 Heads of Service are responsible for maintaining proper security, care and custody of all buildings, stocks, stores, furniture, equipment, cash and other property including that owned by third parties.
- 5.2 Heads of Service should ensure that cash holdings within each service unit are minimised, held in accordance with the council's cash procedure, and do not exceed relevant insurance limits.
- 5.3 Heads of Service are responsible for maintaining and regularly updating an inventory for all stocks and fixed assets in every establishment within their service in accordance with guidelines issued by the Head of Finance and Estates.
- 5.4 Disposals or write-offs of stores, plant, furniture and equipment must be carried out in accordance with procedures issued by the Head of Finance and Estates.
- 5.5 Council property must not be removed from council premises other than for council purposes except in accordance with council policy.

## **B.6 BANKING ARRANGEMENTS**

- 6.1 The Head of Finance and Estates is responsible for ensuring that arrangements are made for the provision of mainstream banking services and that the contract is tendered at least every five years.
- 6.2 The Head of Finance and Estates makes arrangements regarding the opening and operation of all council bank accounts and use of banking services in the name of the council. The Head of Finance and Estates must authorise the opening of bank accounts for the use of petty cash.
- 6.3 For third party bank accounts operated by council staff as part of their council duties, cheques must be signed by two delegated signatories unless agreed otherwise by the Head of Finance and Estates.
- 6.4 All arrangements for Clearing House Automated Payment system (CHAPS) payments will be made under the arrangements approved by the Head of Finance and Estates. Heads of Service are responsible for authorising non-commercial payments and CHAPS payment forms. Whenever Heads of Service delegate responsibility for authorisation, they must notify the Head of Finance and Estates in writing of the officers with delegated authority. A specimen signature for delegated officers must also be provided.

## **B.7 TREASURY MANAGEMENT**

- 7.1 The council's treasury management policy statement is as follows:
  - Treasury management is the management of the council's investments and cash flows, its banking, money market and capital market transactions; the effective control of the risks associated with those activities; and the pursuit of optimum performance consistent with those risks.
  - The council regards the successful identification, monitoring and control of risk to be the prime criteria by which the effectiveness of its treasury management activities will be measured. Accordingly, the analysis and reporting of treasury management activities will focus on their risk implications for the organisation.
  - The council acknowledges that effective treasury management will provide support towards the achievement of its business and service objectives. It is therefore committed to the principles of achieving best value in treasury management, and to employing suitable performance management techniques, within the context of effective risk management.
- 7.2 For the cornerstones for effective treasury management, the council will create and maintain:
  - a treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities
  - suitable treasury management practices (TMPs), setting out the manner in which the council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.

- 7.3 The content of the policy statement and TMPs will follow the recommendations contained in Sections 6 and 7 of the CIPFA Treasury Management Code, subject only to amendment where necessary to reflect the particular circumstances of this organisation. Such amendments will not result in the organisation materially deviating from the CIPFA Treasury Management Code's key principles.
- 7.4 The council has responsibility for the implementation and regular monitoring of its treasury management policies and practices. The council delegates responsibility for the execution and administration of treasury management decisions to the Head of Finance and Estates, who will act in accordance with the organisation's policy statement and TMPs and CIPFA's Standard of Professional Practice on Treasury Management where they are a CIPFA member.
- 7.5 The Head of Finance and Estates will prepare the following reports – an annual plan in advance of the year, a mid-year report and an annual report by 30 September of the following financial year. The Partnership and Resources Policy Development and Scrutiny Panel will receive and scrutinise the annual plan and refer it to the Council for formal approval. This is consistent with the revised CIPFA Treasury Management Code and the Scottish Investment Regulations 2010.
- 7.6 To demonstrate that the council's borrowing decisions are compliant with the Prudential Code's requirement that borrowing is prudent, affordable and sustainable, the Head of Finance and Estates will prepare and monitor prudential indicators. Prudential indicators will be approved annually by Council and updates provided in the treasury management reports.
- 7.7 The council adopts in full both the CIPFA Treasury Management Code and the CIPFA Prudential Code.
- 7.8 All investments of money under its control shall be made in the name of the council. All money held by the council will be aggregated for the purposes of treasury management and shall be under the control of the Head of Finance and Estates. Investments can only be in organisations included in the permitted investments list approved by Council.

## **FINANCIAL REGULATION C – SYSTEMS AND PROCEDURES**

### **C.1 INTRODUCTION**

- 1.1 Sound systems and procedures are essential for an effective framework of accountability and control.

### **C.2 INCOME**

- 2.1 The recovery and collection of all money due to the council is undertaken in accordance with guidelines issued by the Head of Finance and Estates. The guidelines include procedures for issuing accounts, recording income, paying in cash, under and over banking, security and insurance of cash, cash transfers, personal cheques and the supply of receipts and tickets.
- 2.2 Services must ensure that where income is received by payment card, that the council's Payment Card Industry (PCI) compliance procedures are followed.
- 2.3 The corporate debt policy backed up by procedures sets out the terms of the joined up approach the council will take with debtors who, in particular, have multiple debts due to the council.
- 2.4 Accounts should be issued for sums due to the council, unless alternative arrangements have been agreed with the Head of Finance and Estates. Heads of Service must:
- ensure the prompt rendering of accounts in connection with work done, goods supplied or services rendered
  - ensure that all money received by the council is paid directly to the council's bank account
  - provide such information as is required to establish income due to the council.
- 2.5 Where accounts have not been issued other appropriate arrangements must be adopted and promptly initiated in line with the guidelines issued by the Head of Finance and Estates.
- 2.6 Arrangements for payment of accounts due by instalment are at the discretion of the relevant Head of Service, except for council tax and business rates where there are statutory rights to pay in instalments.
- 2.7 In consultation with Heads of Service, the Head of Finance and Estates is authorised to write off miscellaneous debt of up to £3,000 where the council has tried all reasonable means of debt collection and there is no prospect of recovery. Miscellaneous debt for this purpose excludes council tax, non-domestic rates, community charge and any other debt write off specifically delegated to another officer.
- 2.8 In consultation with Heads of Service, the Head of Finance and Estates is authorised to write on any amount of miscellaneous credit where all attempts to trace the creditor has failed (if the creditor is subsequently traced the action will be reversed and the credit refunded).

- 2.9 In addition, the Head of Finance and Estates, in consultation with Heads of Service , is authorised to write-off any amount of miscellaneous debt that cannot be recovered where the debtor: -
- has been sequestrated (declared bankrupt and, where possible, a suitable claim has been made); or
  - is a company in liquidation, receivership, administrative receivership, dissolution, or has been struck off the register of companies (and, where possible, a suitable claim has been made); or
  - cannot be traced; or
  - is deceased and there are no funds in the estate; or
  - the debt is prescribed (i.e. outwith the legal time limit for collection).
- 2.10 With regard to council tax, non-domestic rates, and community charge debts that cannot be recovered, the Head of Finance and Estates is authorised to write-off: -
- debts up to £3,000 in any one case;
- or any amount where the debtor:
- has been sequestrated (declared bankrupt and, where possible, a suitable claim has been made); or
  - is a company in liquidation, receivership, administrative receivership, dissolution, or has been struck off the register of companies (and, where possible, a suitable claim has been made); or
  - cannot be traced; or
  - is deceased and there are no funds in the estate; or
  - the debt is prescribed (i.e. outwith the legal time limit for collection).
- 2.11 In addition the Head of Finance and Estates is authorised to write on any amount of council tax, non-domestic rates, and community charge where all attempts to trace the creditor has failed (if the creditor is subsequently traced the action will be reversed and the credit refunded).
- 2.12 The Depute Chief Executive – Corporate, Operational and Housing Services is authorised to write off HRA rent arrears of up to £3,000 in any one case where the council has tried all reasonable means of debt collection and there is no prospect of recovery.
- 2.13 In addition, the Depute Chief Executive – Corporate, Operational and Housing Services is authorised to write-off any amount of HRA rent arrears that cannot be recovered where the debtor:-
- has been sequestrated (declared bankrupt and, where possible, a suitable claim has been made); or
  - cannot be traced; or
  - is deceased and there are no funds in the estate; or
  - the debt is prescribed (i.e. outwith the legal time limit for collection).
- 2.14 Where there are valid social work reasons for so doing, and in accordance with council policy and legislative requirements, the Depute Chief Executive - Community Health and Care Partnership and Social Policy is authorised to write off debts of up to £3,000, where the council has tried all reasonable

means of debt collection and there is no prospect of recovery. This debt relates to:

- charges based on the Department of Work and Pensions or National Assistance Act regulations for residential or domiciliary care
- any other Social Work client contributions calculated through the charging policy.

### **C.3 SALARIES AND WAGES**

3.1 The Scheme of Delegation to Officers provides for the appointment of employees. This establishes basic pay. Depute Chief Executives are responsible for authorising any variations to pay, and for ensuring that:

- all documents authorising variations to pay are submitted in accordance with conditions of service, council policies and other statutory provisions
- the Head of Corporate Services is provided with such information as is required to complete council and statutory returns.

3.2 The Head of Corporate Services is responsible for:

- processing and payment of salaries, compensation and other emoluments to employees and elected members or retiring allowances to former employees
- maintaining appropriate internal controls in HR and payroll processes
- ensuring that there is adequate segregation of duties between the HR and payroll functions.
- paying pension contributions to the City of Edinburgh Council and the Scottish Public Pensions Agency, and tax and National Insurance contributions to HM Revenue and Customs.

### **C.4 ALLOWANCES AND EXPENSES**

4.1 The Head of Corporate Services is responsible for:

- submitting a draft scheme of members' allowances to the Council Executive annually prior to the start of the financial year
- administering the scheme of members' allowances in accordance with the relevant statutory provisions and
- publishing details of payments to individual members by 1 June each year for the preceding financial year

4.2 The Head of Corporate Services is responsible for:

- the reimbursement of travelling and subsistence expenses to officers and elected members.
- Maintaining appropriate internal controls over the processes for reimbursement of travelling and subsistence expenses.

4.3 Heads of Service are responsible for ensuring that:

- claims for expenses are submitted in accordance with conditions of service, council policies and other statutory provisions
- the Head of Corporate Services is provided with such information as is required to complete council and statutory returns.

## **C.5 PROCUREMENT OF ORDERS FOR WORK, GOODS AND SERVICES**

- 5.1 The Council operates a Corporate Procurement Unit and Services are required to make use of the Unit. Corporate Procurement will maintain a contract register and can be contacted for advice on any type of purchase. This service will consist of the provision of purchasing advice, disposal of equipment and compliance with WLC standing orders, Public Contracts Scotland Regulation (2012) and EU Regulations.
- 5.2 Each Head of Service shall be responsible for and ensure compliance with all orders emanating from their Service and shall ensure they fully observe all guidance issued by the Head of Finance and Estates.
- 5.3 Heads of Service must ensure that proper security and control arrangements are implemented and must comply with the council's information security policy and guidelines.
- 5.4 All procurement and purchasing carried out must comply with Standing Orders Relating to Contracts.
- 5.5 All tenders, contracts and orders must adhere to Council payment terms of invoice in arrears of delivery, with payment 30 days from receipt of invoice, payment will be by BACS. Any exceptions to the Council's payment terms must be approved in advance by the Head of Finance and Estates.
- 5.6 Orders are only to be issued for goods, works or services which are compliant with Standing Orders for Contracts and only if the cost is covered by a budget allocation or by a special financial provision.
- 5.7 All orders must be placed using PECOS, the council's on-line procurement system, where services have access to this system.
- 5.8 Where services do not have access to PECOS, all orders must be placed using the relevant electronic ordering system.
- 5.9 Heads of Service must ensure that they notify the Head of Finance and Estates of all officers with responsibility for creating and approving orders on PECOS.
- 5.10 An official PECOS order must be placed with the supplier to ensure that the invoice date does not pre-date the order date. Telephoned, faxed or e-mailed orders are not permitted.
- 5.11 Orders for items subject to contract should be placed with the contracted supplier. For construction contracts, orders shall only be placed with organisations that hold a relevant construction industry registration certificate.
- 5.12 Before entering into leasing agreements, Heads of Service must consult with the Head of Finance and Estates to establish the correct accounting treatment for the lease.



## **C.6 PAYMENT PROCEDURES**

- 6.1 The Head of Finance and Estates will issue procedures covering payments to third parties. This will include procedures and guidance on petty cash and cash handling, use of daily cheques and purchase cards. Heads of Service are responsible for ensuring compliance with these procedures.
- 6.2 Heads of Service are responsible for entering goods received and invoice details into PECOS to enable payment to be made.
- 6.3 An invoice must be matched to a pre-authorised order held on PECOS. Where this is not the case, the Head of Service is responsible for ensuring that an invoice represents a valid liability of the council before authorising it for payment. The council's payment terms are 30 days from receipt of an appropriate invoice. Invoices must be processed without delay to ensure the council's payment terms are complied with.
- 6.4 Payment must not be made prior to the receipt of goods without the approval of the Head of Service. Where a payment requires to be made in circumstances where there is no supply of goods or services, e.g. grant payments and refunds, then such payments must be made in accordance with procedures issued by the Head of Finance and Estates.
- 6.5 The normal method of payment of money due from the council is by electronic bank transfer such as BACS and CHAPS, cheque or other instrument drawn on the council's bank account. The only exceptions are payments from petty cash and other payments from advance accounts.
- 6.6 All cheques, excluding those required for authorised imprest accounts are printed only on the authority of the Head of Finance and Estates who makes proper arrangements for their ordering, issuing and safe custody.
- 6.7 Cheques drawn on the council's main bank accounts must bear the facsimile signature of the Head of Finance and Estates, or be signed by one of the following officers: Head of Finance and Estates, Corporate Finance Manager, Delegated Group Accountant, Revenues Manager and the Benefits Manager.
- 6.8 Cheques for over £50,000 drawn on the council's main bank accounts must bear the facsimile signature of the Head of Finance and Estates and be signed by one of the following officers: Head of Finance and Estates, Corporate Finance Manager, Delegated Group Accountant, Revenues Manager and the Benefits Manager.

## **C.7 VALUE ADDED TAX**

- 7.1 The Head of Finance and Estates is responsible for issuing guidance on the application of value added tax rules.
- 7.2 Heads of Service are responsible for identifying and accounting properly for both their input and output value added tax.





## **COUNCIL EXECUTIVE**

### **PROPOSED SALE OF NORTH LODGE, ALMONDELL COUNTRY PARK, BROXBURN**

### **REPORT BY HEAD OF FINANCE AND ESTATES**

#### **A. PURPOSE OF REPORT**

To seek Council Executive approval for the sale of the surplus property at North Lodge, Almondell Country Park, Broxburn to Mr Douglas Scotland.

#### **B. RECOMMENDATION**

It is recommended that Council Executive:

1. Approves the sale of North Lodge, Almondell Country Park, Broxburn to Mr Douglas W Scotland for the sum of £76,577.00, subject to the terms and conditions set out in the report, and
2. Authorises the Head of Finance and Estates to accept the second highest offer should the sale to Mr Scotland not proceed.

#### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our Customers needs; making the best use of our resources; being honest, open and accountable.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	None.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	The purchase price will contribute towards the performance indicator for capital receipts.
<b>V Relevance to Single Outcome Agreement</b>	None.
<b>VI Resources - (Financial, Staffing and Property)</b>	A capital receipt of £76,577 will be received during the financial year 2015/16, as part of the council's budgeted capital receipts programme.
<b>VII Consideration at PDSP</b>	Not applicable

## **VIII Other consultations**

The elected members for the ward have received a copy of this report for their information.

### **D. TERMS OF REPORT**

The property at North Lodge, Almondell Country Park, Broxburn (shown in red on the attached plan) is a one bedroomed detached lodge situated at the north entrance to the Country Park. It was previously used by the council as residential accommodation for a country park employee.

However, following the retirement of the member of staff, consideration was given to the future use of the property. Housing, Construction and Building Services did not consider it viable for addition to the housing stock, because of the amount of expenditure that would be necessary, and the property was declared surplus.

The property was advertised for sale on the open market from March 2015, through direct marketing to parties who had previously indicated an interest, and appropriate press and other advertising at offers over £65,000.

Five offers have been received, with the highest offer from Mr Douglas Scotland, for £76,577. The date of entry is yet to be confirmed and the offer is conditional upon Mr Scotland's successful mortgage application and permission to change the configuration within the property being granted. Mr Scotland is very familiar with the lodge and operations around the Country Park. The second highest offer is also above the asking price.

Although it is anticipated that the sale to Mr Scotland will be concluded, it is recommended that powers be delegated to the Head of Finance and Estates to accept the second highest offer should this not be the case.

### **E. CONCLUSION**

It is considered to be in the council's best interests to sell the North Lodge, Almondell Country Park, Broxburn to Mr Douglas Scotland, for £76,577.

### **F. BACKGROUND REFERENCES**

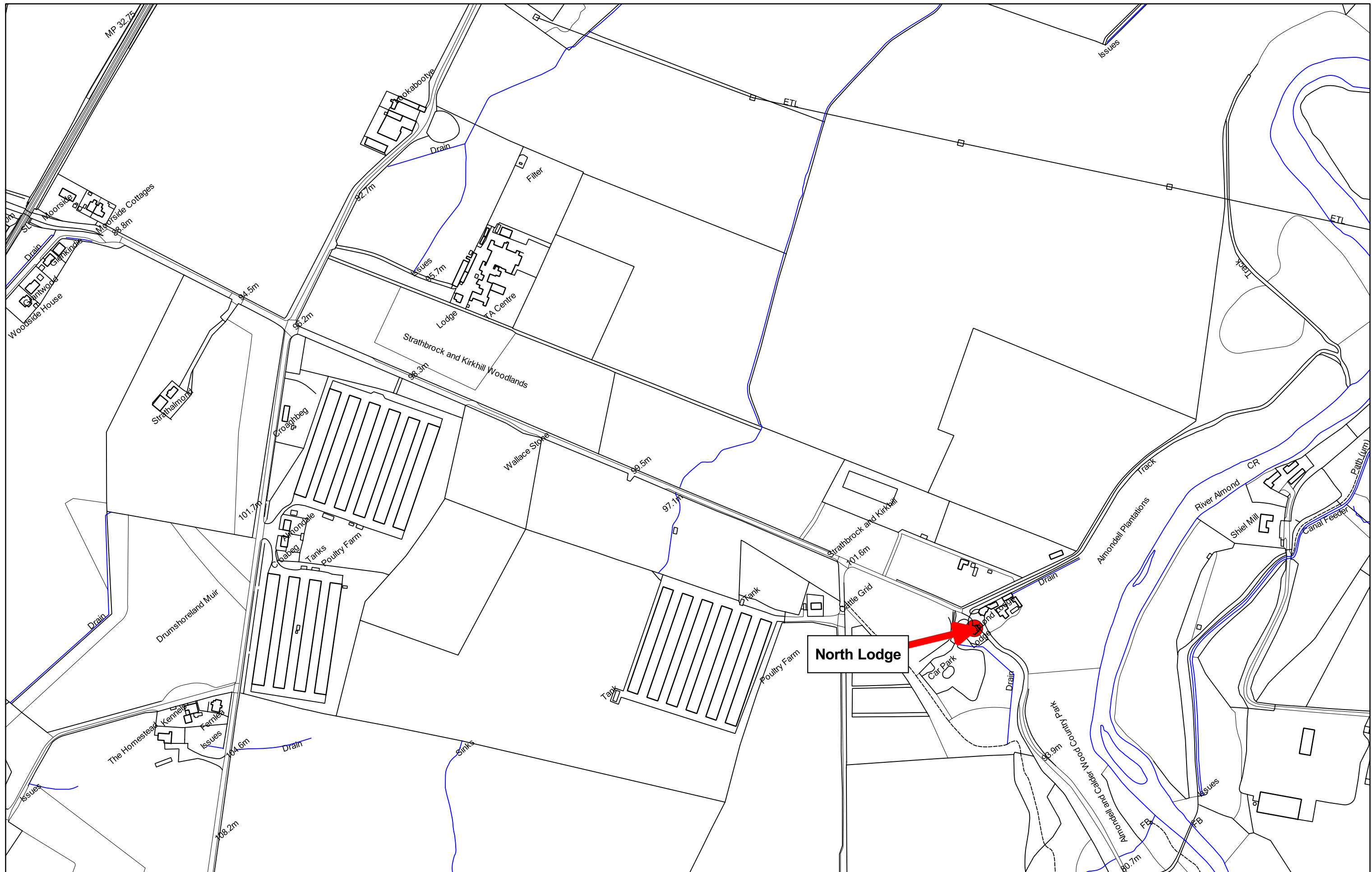
Management Arrangements For "Tied" Housing Stock - Report by Head of Housing, Construction and Building Services.

Appendices/Attachments: Location plan attached

Contact Person: Sharon Eveleigh, Property Assistant.  
Tel. (01506) 281823; email: [sharon.eveleigh@westlothian.gov.uk](mailto:sharon.eveleigh@westlothian.gov.uk)

**Donald Forrest, Head of Finance and Estates**

Date of meeting: 26 May 2015



### North Lodge, East Calder, Broxburn, EH52 5PE

1:4,000



Property Management and Development, West Lothian Civic Centre, Livingston, EH54 6FF

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West Lothian  
Council

## **COUNCIL EXECUTIVE**

### **MOBILE PHONE MAST SITE, CAPUTHALL ROAD, DEANS INDUSTRIAL ESTATE, LIVINGSTON**

## **REPORT BY HEAD OF FINANCE AND ESTATES**

### **A. PURPOSE OF REPORT**

To seek Council Executive approval to the granting of a lease to Cornerstone Telecommunications Limited for nineteen years, three hundred and sixty four days for a site at Caputhall Road, Deans Industrial Estate, Livingston.

### **B. RECOMMENDATION**

It is recommended that Council Executive approves a lease of the site to Cornerstone Telecommunications Limited for nineteen years, three hundred and sixty four days at an initial rent of £5,000 per annum.

### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Being honest, open and accountable. Making best use of our resources. Working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	None.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	Contributes to the appropriate performance indicators for income received from the Tenanted non-residential Portfolio.
<b>V Relevance to Single Outcome Agreement</b>	Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.
<b>VI Resources - (Financial, Staffing and Property)</b>	The letting will secure a rental income stream of £5,000 per annum.
<b>VII Consideration at PDSP</b>	None.
<b>VIII Other consultations</b>	The local elected members for the ward have been provided with a copy of the report

## **D. TERMS OF REPORT**

The proposed site is a small terrace of rough land at the top of a steeply wooded slope. Its high elevation provides for good phone connectivity for Livingston.

Cornerstone Telecommunications Limited is a joint venture between Telefonica 02 and Vodaphone. The 15m mast will carry equipment for both operators.

The main terms of the lease would be as follows:

**Tenant** – Cornerstone Telecommunications Limited.

**Subjects** – 100 sq m fenced site together with a right of pedestrian and power and data cable access from Caputhall Road.

**Date of Entry** – 1 July 2014 (provisional)

**Rent** - £5,000 per annum (Excluding VAT) with a rent review at each fifth anniversary of the term, based on the growth in the retail price index.

**Lease Duration** – Nineteen years three hundred and sixty four days from date of entry with a tenant option to break at any time on giving three months' notice should their operating licence terminate.

**Use** – Mobile phone communications.

**Legal Expenses** - Each party to meet their own legal costs.

**General** - There will be various other detailed terms and conditions which will be included in the legal documentation which are common in leases of this type of property.

## **E. CONCLUSION**

It is considered to be in the council's best interest to grant a lease to Cornerstone Telecommunications Limited in accordance with the terms and conditions set out above

## **F. BACKGROUND REFERENCES**

None

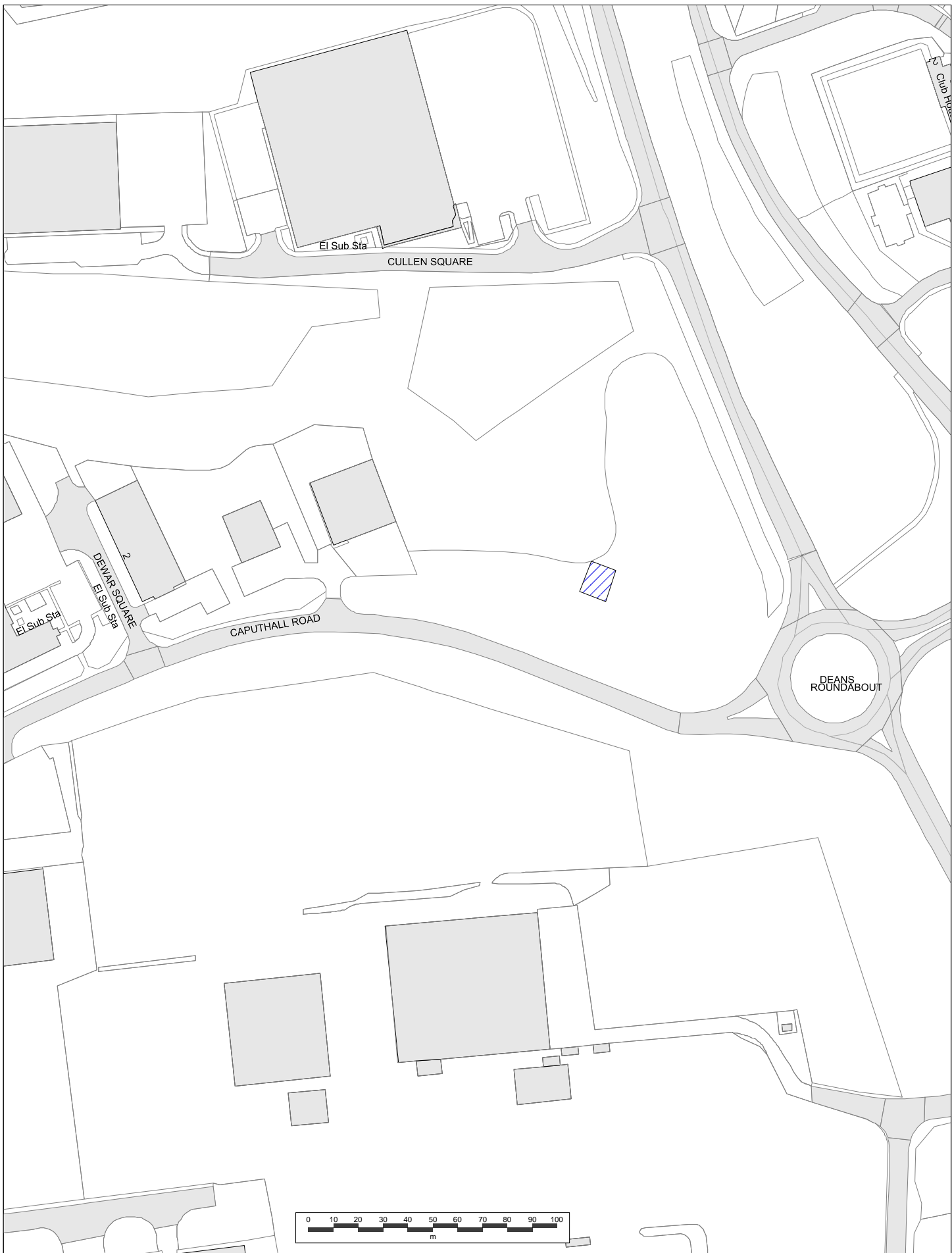
Appendices/Attachments: Location plan attached

Contact Person: Tracey Thomson, Commercial Property Surveyor Tel.01506 281122; email: [stephen.letch@westlothian.gov.uk](mailto:stephen.letch@westlothian.gov.uk)

**Donald Forrest, Head of Finance and Estates**

Date: 26 May 2015









## **COUNCIL EXECUTIVE**

### **LEASE OF FORMER AULD SCHOOL, 9 SCHOOL LANE, MID CALDER**

### **REPORT BY HEAD OF FINANCE AND ESTATES**

#### **A. PURPOSE OF REPORT**

To seek Council Executive approval to the granting of a lease of the former Auld School, 9 School Lane, Mid Calder, for a trial period of four months.

#### **B. RECOMMENDATION**

It is recommended that Council Executive:

1. approves a lease of the former Auld School, 9 School Lane, Mid Calder, to Andrew Grant and Jillian Baillie, for a period of four months from 1 June 2015, at a rent of £500 per month, and
2. delegates powers to the Head of Finance and Estates to enter into a lease of the property.

#### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Being honest, open and accountable; making best use of our resources; working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	None.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None
<b>V Relevance to Single Outcome Agreement</b>	Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.
<b>VI Resources - (Financial, Staffing and Property)</b>	The letting will secure a rental income of £2,000 in 2015/16, and a saving in property overheads of £3,000 for the four month period.

<b>VII Consideration at PDSP</b>	None.
<b>VIII Other consultations</b>	The local elected members for the ward have been provided with a copy of the report Head of Area Services

## **D. TERMS OF REPORT**

### **Background**

During 2013 and 2014 the council carried out a refurbishment of the former Auld School, 9 School Lane, Mid Calder, initially to provide changing facilities for use in connection with the local football pitch, and subsequently to provide a community hall and related accommodation.

The changing facilities have been managed by the local football club, but this was not intended to be a long term arrangement, and a local steering committee was charged with identifying a long term solution. This has proved difficult to deliver, and in the meantime, the refurbished hall is not available for community use.

An approach has been received from Andrew Grant and Jillian Baillie to operate a café from the Auld School, and to combine that with the management of the changing facilities and community hall, to ensure their availability to the local community.

The applicants run businesses locally, and have prepared a business plan, their preference would be to operate for a short period to establish whether the proposal was indeed viable. Ideally this would start in June 2015, to capture business linked to the local gala, and run over the summer.

Officers consider that this arrangement could secure the availability of the community facilities to local users, as well as supporting a local business. Taking account of the circumstances, a trial period would be beneficial to review how the arrangement works in practice.

The Head of Finance and Estates has a delegated authority to negotiate the terms for lease of a council asset on a one to one basis, where the applicant has identified an opportunity. Terms of any agreement have to be reported to the Council Executive. Terms for a short term agreement have been agreed as follows:

- The lease will be for a period of four months from 1 June 2015.
- The tenant will have exclusive use of the kitchen, and will be permitted to use the entrance hall and foyer as a café with seating
- The rent will be £500 per calendar month
- The tenant will be responsible for internal repairs and maintenance; utility costs and non-domestic rates
- The tenant will make the changing rooms and community hall available for let to local community groups, sports clubs and private hire, between the hours of 9 am to 10 pm.
- Charges for the use of the community facilities will be retained by the tenant, but will be based on the council's approved scales of charge.

In order to ensure that residential parking will not be adversely affected it will also be a condition of the agreement that the tenant and their customers will not be allowed to

park in School Lane. Failure to comply, or to ensure compliance, will be a breach of the terms of the agreement

As the trial basis is to run through the summer, with a date of entry on 1 June 2015, it is recommended that powers be delegated to the Head of Finance and Estates to enter into a short term lease.

#### **E. CONCLUSION**

It is considered to be in the council's best interests to agree a short term lease of the Auld School, School Lane, Mid Calder, for use as a café, with the tenant managing the availability of the community facilities and changing rooms.

#### **F. BACKGROUND REFERENCES**

None

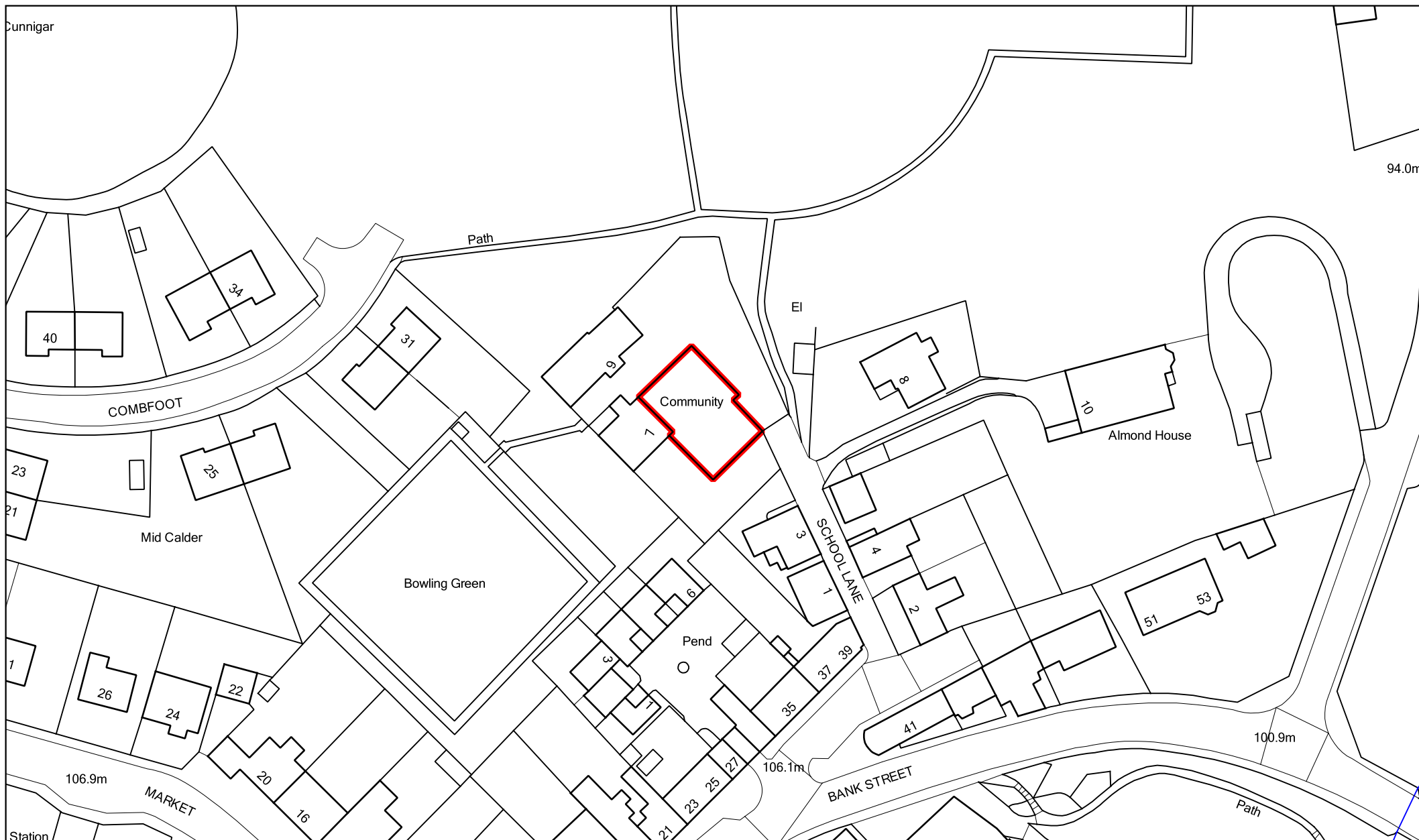
Appendices/Attachments: Location plan attached



Contact Person: Paul Furbank. Economic Property Development Manager. Tel. 01506 281824; email: paul.furbank@westlothian.gov.uk

**Donald Forrest, Head of Finance and Estates**

Date of meeting: 26 May 2015





 <div>West Lothian Council</div>	<b>9 School Lane, Mid Calder</b>			1:1,000	<div>N</div> 
	Property Management and Development, West Lothian Civic Centre, Livingston, EH54 6FF		2015-05-13T09:44:13	Reproduced from the Ordnance Survey mapping with the permission of Her Majesty's Stationary Office. © Crown Copyright. Unauthorised reproduction infringes crown copyright and may lead to prosecution or civil proceedings. West Lothian Council Licence LA09052L	







## **COUNCIL EXECUTIVE**

### **ARMADALE PARTNERSHIP CENTRE**

#### **JOINT REPORT BY HEAD FINANCE AND ESTATES AND HEAD OF AREA SERVICES**

##### **A. PURPOSE OF REPORT**

To advise Council Executive of the review undertaken on potential partnership property proposals relating to Armadale and to outline the approach to future community engagement and consultation relating to these.

##### **B. RECOMMENDATION**

It is recommended that Council Executive:

1. Notes the findings of the review undertaken by officers in relation to the development and delivery of a partnership centre in Armadale;
2. Notes the potential for the Community Education Centre as a potential location for the integration of the area based Housing Services, Customer Information and Library Services as elsewhere in West Lothian;
3. Agrees that consultation should be undertaken with relevant stakeholders on the design and delivery requirements for the proposed facility and wider service delivery in Armadale and that these should be concluded by October 2015;
4. Notes that as part of the consultation an appraisal on the future use of the existing Housing Offices at the Cross will be undertaken with a view to developing proposals to maximise economic benefits; and
5. Agrees that officers shall present a further report to Council Executive by the end of 2015, following conclusion of the consultation, containing with detailed proposals for delivering a partnership centre and on the future delivery of services incorporating the management of assets.

##### **C. SUMMARY OF IMPLICATIONS**

- |   |  |
|---|--|
| <b>I Council Values</b>   | Focusing on our customers' needs, Being honest, open and accountable, Making best use of our resources |
| <b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b> | None.  |
| <b>III Implications for Scheme of Delegations to Officers</b>   | None.  |

<b>IV Impact on performance and performance Indicators</b>	The utilisation and efficient use of property asset will improve following implementation of projects.
<b>V Relevance to Single Outcome Agreement</b>	<p>The significant investment in collaborative partnership projects will aim to support a number of single outcome agreement performance measures including:</p> <p>Our children have the best start in life and are ready to succeed;</p> <p>We live longer, healthier lives and have reduced health inequalities; and</p> <p>We make the most efficient and effective use of resources by minimising our impact on the built environment.</p>
<b>VI Resources - (Financial, Staffing and Property)</b>	<p>There is a capital budget of approximately £1m within the General Services Capital Programme for 2016/17 for the partnership centre project.</p> <p>The General Services Capital Programme for 2016/17 also contains capital budget of approximately £970,000 for a new pavilion currently proposed for Watson Park, Armadale.</p> <p>Staff required for the management of the project(s) will be provided from existing resources.</p> <p>External design and construction professionals where required will be engaged through existing framework agreements or traditionally procured. These will be funded from the existing identified resources.</p>
<b>VII Consideration at PDSP</b>	Not applicable.
<b>VIII Other consultations</b>	<p>The report proposes appropriate consultations with stakeholders.</p> <p>The local elected members for the ward have been provided with a copy of this report for their information.</p>

## **D. TERMS OF REPORT**

### **D1 BACKGROUND**

Council officers have reviewed the relevant issues regarding a proposed partnership centre project for Armadale, including:

- Evaluation of outline operational accommodation requirements; and
- Consideration of a potential viable location to deliver accommodation required;

The review has identified outline proposals for the delivery of the partnership centre which can form the basis for consultation with stakeholders.

West Lothian Council has a track record of developing and delivering services in partnership with other organisations and communities. As one of the key towns in West Lothian the existing and future population of Armadale could benefit from being able to access all public services through integrated delivery locations.

### **D2 REVIEW FINDINGS**

From the review, officers have identified a number of key considerations in relation to the delivery of a potential partnership centre at Armadale. These are as follows:

- The primary operational accommodation requirements for the council are Customer Information Services (CIS), Housing Services and Library Services (incorporating Museums) in a single location to provide a focus for the community to access services;
- Secondary operational accommodation requirements are the co-location of Community facilities and Customer Services;
- The existing Community Education Centre is in satisfactory condition;
- The existing Community Education Centre is suitable for the majority of community uses;
- Based on the existing opening hours and rooms available, utilisation varies between 15% and 25% occupancy for the Community Education Centre;
- The existing housing offices, whilst in satisfactory condition and suitable for use would benefit from modernisation and accessibility improvements;
- Existing library and museum accommodation is of sufficient size and in satisfactory condition. There is however scope for improved utilisation by having more intensive use of the property through being co-located with other council services;
- Existing early years / play group accommodation at the Community Education Centre could be improved including the provision of outdoor play equipment.
- NHS Lothian has identified that the existing Health Centre is likely to remain at its current capacity. New facilities required to meet increasing population demands have not been confirmed.

### **D3 Resources Available**

The General Services Capital Programme contains a budget of £1m in 2016/17 for the development of the partnership centre. In addition to this there is also an allocation of £970,000 for the construction of new changing facilities at Watson Park, Armadale.

#### **D4 PARTNERSHIP CENTRE / FACILITIES PROPOSAL**

In considering the above officers propose community consultations and partner engagement is progressed on the following proposals:

- Extension and reconfiguration of existing Community Education Centre to accommodate an area housing office and CIS which would relocate from the existing offices at the cross;
- Provision of payment facilities;
- Creation of external play area at existing Community Education Centre to accommodate improved early years / play group facilities;
- Review and appraisal of existing area housing office for the purposes of evaluating future use with a view to maximising economic or community benefits;
- The wider delivery of services and the future use of assets in the town centre; and
- Engagement with stakeholders on the potential to maximise co-location opportunities at the Community Education Centre.

The exact location of service accommodation and the extent of any extensions will be developed as consultations progress. It is proposed that the detail of proposals will be reported on before the end of 2015. Proposals to extend and reconfigure the existing Community Education Centre, to accommodate integrated service delivery together with partner's requirements that may emerge from consultations with stakeholders will provide the community with an Armadale Partnership Centre.

#### **D5 BENEFITS OF PARTNERSHIP CENTRE / CO-LOCATION OF SERVICES**

The proposed development of an Armadale Partnership Centre will deliver a number of benefits to the local community, these are:

- The facility will deliver a single location to access council services;
- The existing facilities at the Community Education Centre will benefit from greater utilisation;
- Opportunity for greater partnership working in Armadale through availability of accommodation and co-location; and
- Opportunity to improve economic activity through re-use of existing area housing offices at the Cross.

#### **D6 PARTNERSHIP WORKING AND COMMUNITY ENGAGEMENT**

It is proposed that to facilitate the wide ranging consultations that a community engagement group is established with invitations extended to representatives from the Community Council, Community Education Centre Management Committee, sports clubs and local community groups together with Council Services. This group will engage with the project team and support the development of proposals from design through to construction and completion. This level of local engagement will ensure that the delivery of projects is transparent and collaborative. The intention is for the consultation to be concluded by October 2015 and to report to Council Executive on the results by the end of 2015. This would allow design development and construction programming to be finalised to allow a site start in Summer 2016.

Officers will continue to engage with NHS colleagues on proposals for new health facilities.

#### **E. CONCLUSION**

The review undertaken by officers has identified the key considerations for the delivery of a partnership centre in Armadale. The findings of the review have identified the

potential for the initial co-location of area Housing Services with Customer Information Services and Library Services which is our standard service delivery model. As outlined in the report this will provide a focal point for the local community to access services and support the vitality and viability of the town centre.

## **F. BACKGROUND REFERENCES**

Council Report – General Services Capital Programme 2015/16 to 2017/18 Update 29 January 2015

Appendices/Attachments:

Contact Person:

Paul Kettrick, Asset Manager, Finance and Estates

Tel: 01506 281826

Email: [paul.kettrick@westlothian.gov.uk](mailto:paul.kettrick@westlothian.gov.uk),

**Donald Forrest**  
**Head of Finance and Estates**

**Steve Field**  
**Head of Area Services**

Date: 28 May 2015





## **COUNCIL EXECUTIVE**

### **MORTGAGE TO RENT SCHEME**

#### **REPORT BY HEAD OF HOUSING CONSTRUCTION AND BUILDING SERVICES**

##### **A. PURPOSE OF REPORT**

To update Council Executive on how the Mortgage to Rent Scheme has operated in West Lothian since 2009 and consider how it should operate in future.

##### **B. RECOMMENDATION**

It is recommended that Council Executive:

- (1) note how the scheme to help owner occupiers in financial difficulty has been working in West Lothian;
- (2) agree that only in exceptional circumstances should houses be acquired under the scheme which are assessed as requiring repairs costing more than £8,500;
- (3) note that it is proposed to introduce an asbestos survey of property acquisitions under the scheme;
- (4) note how rents were previously established for mortgage to rent properties and note the changes introduced by Scottish Government on 1 April 2015; and
- (5) agrees that in cases where the Scottish Government benchmark rent was applied prior to 1 April 2015 that this rent level continues for current tenancies but further agrees that for subsequent tenancies rents will be based on the average rental charges for social properties within West Lothian, based on the number of apartments.

##### **C. SUMMARY OF IMPLICATIONS**

- |   |  |
|---|--|
| <b>I Council Values</b>   | Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; working in partnership |
| <b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b> | Existing policy review.  |

<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	The scheme helps with council performance indicators in dealing with homelessness.
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	We live in resilient, cohesive and safe communities. People most at risk are protected and supported to achieve improved life chances.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	Provision has been made in the 3 year Housing Capital Programme of £600,000 per annum through to 2017/18.
<b>VII</b>	<b>Consideration at PDSP</b>	Services for the Community PDSP 3 March 2015.
<b>VIII</b>	<b>Other consultations</b>	Legal and Financial Services.

#### **D. TERMS OF REPORT**

The council has participated in the national mortgage to rent scheme which is part of the Scottish Government's Homeowners Support Fund for some time. The scheme is available to home owners who get into financial difficulties and are in danger of being made homeless. Subject to homeowners meeting eligibility criteria the owner can decide to sell their home to a public sector landlord. The scheme seeks agreement from creditors to pay off outstanding loans secured on the property. The owner then becomes a tenant with Scottish Secure Tenancy and no future right to buy. Full details of the scheme including terms and conditions are available on the Government's website.

From a council point of view, the scheme is attractive as it provides a mechanism for enhancing the council's housing stock. Through the government subsidy, and rental income stream, the housing stock is increased and capital investment costs are offset. Prior to the transfer, the property is surveyed and any outstanding works required to bring the house up to the Scottish Housing Quality Standard identified. The council has to accept the results of this survey and carry out any work identified within a 6 month period. It can add in the results of gas and electrical checks and an asbestos survey (the asbestos survey is new and should now be done on new applications in West Lothian). These costs are deducted from the valuation and paid to the landlord. Prior to 1 April 2015, under the terms of the scheme, costs of agreed works were capped at £6000. From 1 April 2015, this was increased to £8,500. As before, if there is additional work identified then this has to be funded in another way.

Any future repairs or capital investment in the property is dealt with by the council in the normal way. Any remaining equity after debts are cleared is generally paid to the owner. The owner then becomes a council tenant on standard terms and conditions. The council receives a subsidy from Scottish Government to cover the acquisition cost beyond that covered by ongoing rental income. The council also receive a £900 admin allowance in the subsidy grant.



To date the council has acquired 123 properties under the mortgage to rent scheme. The majority of these properties are former council houses on public sector housing estates. Houses have been acquired in all council wards since the scheme was introduced.

To date, the average subsidy received by the council has been 55% of the market value and the rental stream determined by reference to the Scottish Government benchmark rent. From April 2015, the level of government subsidy will be calculated with reference to local, rather than national benchmark rates. Although the scheme will remain financially neutral to West Lothian Council, this change could reduce the rent level charged to individual tenants and increase the government subsidy. As before, these houses become new supply social houses and therefore there will be no right to buy. In the majority of cases these arrangements have worked well, undoubtedly helping families in difficult situations and helping prevent homelessness. Where a tenant falls into arrears with a mortgage to rent property, standard action is progressed.

Given the pressures that are on the housing budgets it is proposed that the council should set criteria for acquiring houses under the mortgage to rent scheme. The main concern is that there should be no major additional cost to the council beyond what is provided for under the terms of the scheme. Therefore it is proposed that the council should continue to accept houses under the scheme unless there are major works required at the date of acquisition to achieve the Scottish Housing Quality Standard. It is recommended that the council should only accept properties requiring repairs costing in excess of the £8,500 allowed for under the revised scheme in exceptional circumstances.

At the Services for the Community PDSP in March, officers were asked to circulate information about how rents are established for mortgage to rent properties. This information was circulated to the panel on 9 March 2015. Since this information was circulated, Scottish Government has introduced a number of changes to the scheme. Purchase subsidies will no longer be calculated using national benchmark rents based on the number of bed spaces. Instead, these will be calculated using the average rental charges for social properties within each local authority area based on the number of apartments. This is a welcome change and in West Lothian is likely to result in more subsidy being awarded by Scottish Government and lower rents for tenants.

Having reviewed the issue of rent levels since the matter was raised at PDSP, and having regard to the terms of the revised scheme introduced by Scottish Government, officers consider that in cases where the Scottish Government benchmark rent was applied prior to 1 April 2015 that this rent level continues for current tenancies but for subsequent tenancies rents should be based on the average rental charges for social properties within West Lothian, based on the number of apartments. This process would ensure that the scheme remains affordable to West Lothian Council, allows existing tenants to remain in properties they previously purchased, but provides a more equitable arrangement for subsequent tenants. Through time, this will result in greater consistency in the rents applied to mortgage to rent properties.

Two other changes were introduced to the scheme on 1 April 2015. The complex formula for factoring in repairs to the property to determine the purchase price is being removed and social landlords will now pay the current market value. To help increase access to the scheme maximum thresholds within some areas will be uplifted to better reflect local authority market conditions.

## **E. CONCLUSION**

The mortgage to rent scheme provides a valuable safety net for a number of owner occupiers who, for a variety of reasons, get into serious financial difficulties. The government is continuing to invest significant resources into the scheme and this undoubtedly helps prevent homelessness and all the disruption and costs that are associated with this. The changes to the scheme introduced by Scottish Government on 1 April 2015 are welcomed.

## **BACKGROUND REFERENCES**

### **F. Services for the Community PDSP 3 March 2015**

Council Executive August 2012 - The Future of Right to Buy in Scotland; A Consultation.

Scottish Government web site "Homeowners Support Fund"

Appendices/Attachments: none

Contact Person: Colin Miller

Tel. 01506 281379 e-mail colin.miller@westlothian.gov.uk

Alistair Shaw,

Head of Housing, Construction and Building Services.

Date of meeting: 26 May 2015



## **COUNCIL EXECUTIVE**

### **UPDATE ON THE 1,000 NEW BUILD COUNCIL HOUSES PROGRAMME**

#### **REPORT BY HEAD OF HOUSING, CONSTRUCTION AND BUILDING SERVICES**

##### **A. PURPOSE OF REPORT**

The purpose of this report is to update Council, Executive on the 1,000 New Build Council Houses Programme.

##### **B. RECOMMENDATION**

It is recommended that Council Executive :

1. Notes that contractors have now been appointed for all five Lots within the Framework Agreement (950 houses); Lovell Partnerships is the successful contractor for Lots 1, 2, 3 and 5 and McTaggart Construction is the successful contractor for Lot 4.
2. Notes that tenders will be issued for 9 houses at Bathville and 8 houses at the Former Winchburgh Day Centre before the end of the year.
3. Notes that 6 houses are complete; 32 are under construction; and that starts are expected at all other sites before the end of this financial year.
4. Notes that the process of obtaining statutory consents is well underway but in some cases progress has been slower than expected, particularly regarding obtaining Scottish Water Technical Approvals.
5. Notes that three private sites require to be transferred from developers and that progress is being made with two of these sites with the third site the subject of a section 75a planning appeal to modify the existing planning obligation.
6. Notes the position set out in section D.6 of the report on the infrastructure projects which are required to facilitate parts of the new build programme.
7. Notes that based on the tender returns received to date and the projected costs for the remaining phases, the new build programme remains affordable.
8. Notes that it has been necessary to adjust the number of units for some of the sites in order to make the layouts acceptable; further changes may be necessary.
9. Agrees that the reserve site at Deans South is brought forward in to the programme for 9 units.

## C. SUMMARY OF IMPLICATIONS

<b>I Council Values</b>	<ul style="list-style-type: none"><li>• Focusing on our customers' needs;</li><li>• Being honest, open and accountable;</li><li>• Providing equality of opportunity;</li><li>• Making best use of our resources; and</li><li>• Working in partnership.</li></ul>
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	<p>The policy of building new council houses is covered in the West Lothian Local Housing Strategy.</p> <p>Some of the sites proposed for new build council housing are allocated for residential development in the adopted West Lothian Local Plan. Specialist legal advice has been sought on the procurement process.</p> <p>Environmental and equality assessments will be carried out as appropriate.</p>
<b>III Implications for Scheme of Delegation to Officers</b>	None.
<b>IV Impact on performance indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	<p>Our economy is diverse and dynamic and West Lothian is an attractive place to do business.</p> <p>We live in resilient, cohesive and safe communities.</p> <p>We make the most efficient use of our resources by minimising our impacts on the built and natural environment.</p>
<b>VI Resources - (Financial, Staffing and Property)</b>	<p>The Housing Capital Programme 2013/14 to 2017/18 approved by West Lothian Council on 29 January 2013 approved £90 million for the New Build Council Housing Programme.</p> <p>Taking account of Government Grant and other sources of funding, a total budget of £102.691m has been identified. The position will continue to be assessed for further developer contributions and government funding.</p> <p>Land to the value of £8.396m will be transferred from General Services to HRA to support the new build programme. Scottish Government has approved the transfer of 7 sites and the transfer of a further 7 has still to be approved.</p>
<b>VII Consideration at PDSP</b>	The Services for the Community PDSP considered reports on the new build programme on 7 February 2012, 17 June 2013, 8 April 2014

and 20 May 2014.

## **VIII Other consultations**

Planning & Economic Development, Finance and Estates, Legal Services.

### **D. TERMS OF REPORT**

#### **D.1 Background**

The council's Corporate Plan 2013 to 2017 commits the council to increasing the number of council houses available for rent through the New Build Council Housing Programme.

Council Executive approved an initial list of eight sites on 26 February 2013 with potential to accommodate 603 houses.

On 25 June 2013, Council Executive approved a further list of 14 sites capable of accommodating 371 houses.

On 15 April 2014, Council Executive approved a revised list of sites for the new build programme capable of accommodating 1,000 houses.

On 19 June 2014, Council Executive approved additional sites for the reserve list.

On 19 August 2014, Council Executive approved several changes to the programme.

The full list of approved sites is attached as Appendix 1.

#### **D.2 Tenders**

Contractors have now been appointed for all five Lots (950 houses). This is a significant milestone within the programme. Lovell Partnerships is the successful contractor for Lots 1, 2, 3 and 5 and McTaggart Construction is the successful contractor for Lot 4.

Tenders will be issued for 9 houses at Bathville and 8 houses at the Former Winchburgh Day Centre before the end of the year.

#### **D.3 Progress on site**

A site start has been made at West Main Street, Broxburn (18 units). The project is expected to complete in December 2015. A site start at Pumpherston old school (14 units) was made on 16 March 2015. This development is expected to be completed in December 2015.

The conversion of an existing property at 43-47 Adelaide Street to six flats was completed in September 2014.

#### **D.3 Statutory Consents**

Obtaining statutory consents, including planning permission, building warrant, Road Construction Consent (RCC) and Scottish Water Technical Approval, is critically important to the success of the programme and will determine when developments can start on site. An overview is provided below. Site specific information is contained in Appendix 1.

### Planning

36 planning permissions (including listed building consents) are required for the programme. 13 consents have been issued; 13 planning applications are currently under consideration; and 10 planning applications have still to be submitted.

At this stage, having regard to the complexity of some of the sites, progress is satisfactory. The fact that planning permission has been granted for the largest site in the programme at Kirkhill, Broxburn, is a highlight as the application was assessed as being significantly contrary to the development plan and had to be notified to Scottish Ministers.

It has been necessary to adjust the number of houses planned for some sites in order to obtain satisfactory layouts. The current number of units planned for each site is shown in Appendix 1. As the number of units on some sites is being reduced, it is proposed to bring forward the reserve site at Deans South for 9 units (see phase 2 site shown in Appendix 2). Further changes may be necessary as a number of the sites do not yet have the benefit of planning permission. There is capacity at the Deans South phase 2 site to accommodate additional units if the need arises.

### Building Warrant

32 building warrants are required for the programme. 3 warrants have been issued; 10 applications are currently under consideration; and 19 applications have still to be submitted.

At this stage, progress is satisfactory.

### Road Construction Consent (RCC)

25 RCCs are required for the programme. 2 consents have been issued; 8 applications are currently under consideration; and 15 applications have still to be submitted.

At this stage, progress is satisfactory.

### Scottish Water Technical Approval

30 technical approvals are required from Scottish Water. 2 approvals have been issued; 7 applications are currently under consideration; and 21 applications have still to be submitted.

Progress with obtaining Technical Approval from Scottish Water has thus far taken longer than expected. Positive discussions took place Scottish Water earlier this month and it is anticipated that the timescales for processing applications for Technical Approval will reduce going forward.

## **D.4 Deans South**

The transfer of 37 unsecured properties from Castle Rock Edinvar is progressing. A demolition contractor has been appointed to demolish 12 blocks at Deans South. Demolition is expected to commence in June, provided the unsecured properties are transferred within the next two weeks.

A further 3 blocks will be demolished once 19 secured properties are transferred to the council from Castle Rock Edinvar. It is anticipated that the transfer of the secured properties will be concluded within the next 2-3 months.

#### **D.5 Transfer of land via Affordable Housing Policy**

At the start of February 2015, a site at Raw Holdings for 17 new build houses was transferred to the council by the CDA developer, Walker Group (Scotland).

Three sites within the programme remain in private ownership and are required to be transferred to the council via planning obligations. The three sites are:

- Appleton Parkway, Livingston (10 units)
- Winchburgh CDA (41 units)
- Almondell, East Calder (36 units)

Gladman Developments has submitted a section 75a planning appeal which, if approved, would result in the affordable housing land at their site at Appleton Parkway not transferring to the council. It is expected that the outcome of the appeal will be known in the next 2-3 months.

The legal process to transfer land for 41 affordable houses at Winchburgh CDA has commenced. The CDA developer has obtained planning permission to carry out works to service the land. It is anticipated that these works will commence in June and be complete by November 2015.

A planning obligation is in place which requires the transfer of land for 36 affordable homes at Almondell (Calderwood). The legal process to transfer this land has commenced. Works are currently underway by the CDA developer to service the land. These works are expected to be complete by August 2015.

#### **D.6 Infrastructure update**

The new build programme requires several infrastructure projects, funded by the Local Infrastructure Fund, to be completed in order that development constraints are removed. An update is provided below:

Drumshoreland distributor road – planning permission has been granted. The anticipated completion date is October 2015.

Access road and drop off at Glasgow Road, Bathgate – planning permission has been granted. The anticipated completion date is August 2015.

St. Nicholas Primary School extension – work commenced at the start of May 2015. The additional classrooms are due to be completed by August 2015 and the new gym hall by December 2015.

Pumpherstons and Uphall Station Primary School extension – a planning application has been submitted. This project is expected to be complete by July 2016.

St. Anthony's Primary School extension – planning permission has been granted and the project is currently out to tender. The extension is expected to commence in June 2015 and be handed over by June 2016.

At this stage, the progress with infrastructure projects is acceptable.

## **D.7 Funding**

The financial model for the programme continues to be updated to reflect changed circumstances. At this stage, the programme remains affordable. A further update of the model will be undertaken when further tenders are returned.

## **E. CONCLUSION**

Excellent progress has been made with the tendering of the new build council houses programme. Contractors have been appointed for all Lots within the Framework Agreement and there has been no legal challenges resulting in delay.

Good progress is being made with obtaining statutory consents. The one area where there is some concern about progress is with obtaining Scottish Water Technical Approvals but it is anticipated that the timescales for processing applications will reduce going forward following positive discussions earlier this month.

The Deans South Reserve site requires to be brought forward in to the programme as a result of proposed changes to reduce the number of units on the site.

## **F. BACKGROUND REFERENCES**

New Build Council Housing Programme – Council Executive report 25 June 2013.

New Build Council Housing Programme – Council Executive report 26 February 2013

New Build Council Housing Programme – Services for the Community PDSP 17 June 2013

Funding for Phase 3 of Council new build houses for rent – Services for the Community PDSP report 7 February 2012

2014/15 to 2017/18 General Services Capital Programme update

New Build Council Housing Programme – Services for the Community PDSP report 8 April 2014

New Build Council Housing Programme – Council Executive Report 15 April 2014

New Build Council Housing Programme – Services for the Community PDSP report 20 May 2014

New Build Council Housing Programme – Council Executive 19 June 2014

New Build Council Housing Programme – Council Executive 19 August 2014

Appendices/Attachments: Two

Contact Person: Colin Miller, Housing Strategy and Development Manager, 01506 281379

Email: [colin.miller@westlothian.gov.uk](mailto:colin.miller@westlothian.gov.uk)

**Alistair Shaw**

**Head of Housing, Construction and Building Services**

**26 May 2015**



## Appendix 1 - New build council housing update

Site	Ward	Comment
Nelson Park, Armadale (26 units)	Armadale and Blackridge	Contract awarded to Lovell Partnerships. Planning application submitted. A new grass pitch is to be provided at Watson Park to compensate for the loss of the grass pitch as Nelson Park. The General Services Capital Programme has funding identified for this purpose in 2016/17.
Mayfield, Armadale (22 units)	Armadale and Blackridge	Contract awarded to Lovell Partnerships 27 April 2015.
Bathville Cross, Armadale (18 units)	Armadale and Blackridge	Four phases of new build are proposed. Planning permission has been granted for phases 1, 2 and 3 and a planning application has been submitted for phase 4. Phases 1-3 will be developed by West Lothian Council Building Services. Phase 4 will be tendered in October 2015.
Wester Inch, Bathgate (86 units)	Bathgate	Contract awarded to Lovell Partnerships. Planning permission granted.
Glasgow Road, Bathgate (9 units)	Bathgate	Contract awarded to Lovell Partnerships. Planning permission granted.
West Main Street, Broxburn (18 units)	Broxburn, Uphall and Winchburgh	Contract awarded to Lovell Partnerships. Under construction. Due for completion December 2015.
Kirkhill, Broxburn (230 units)	Broxburn, Uphall and Winchburgh	Contract awarded to Lovell Partnerships. Planning permission in principle has been granted for 230 houses. Planning permission has been granted for a first phase of 45 units. A Matters Specified in Conditions application for 185 houses has been submitted.

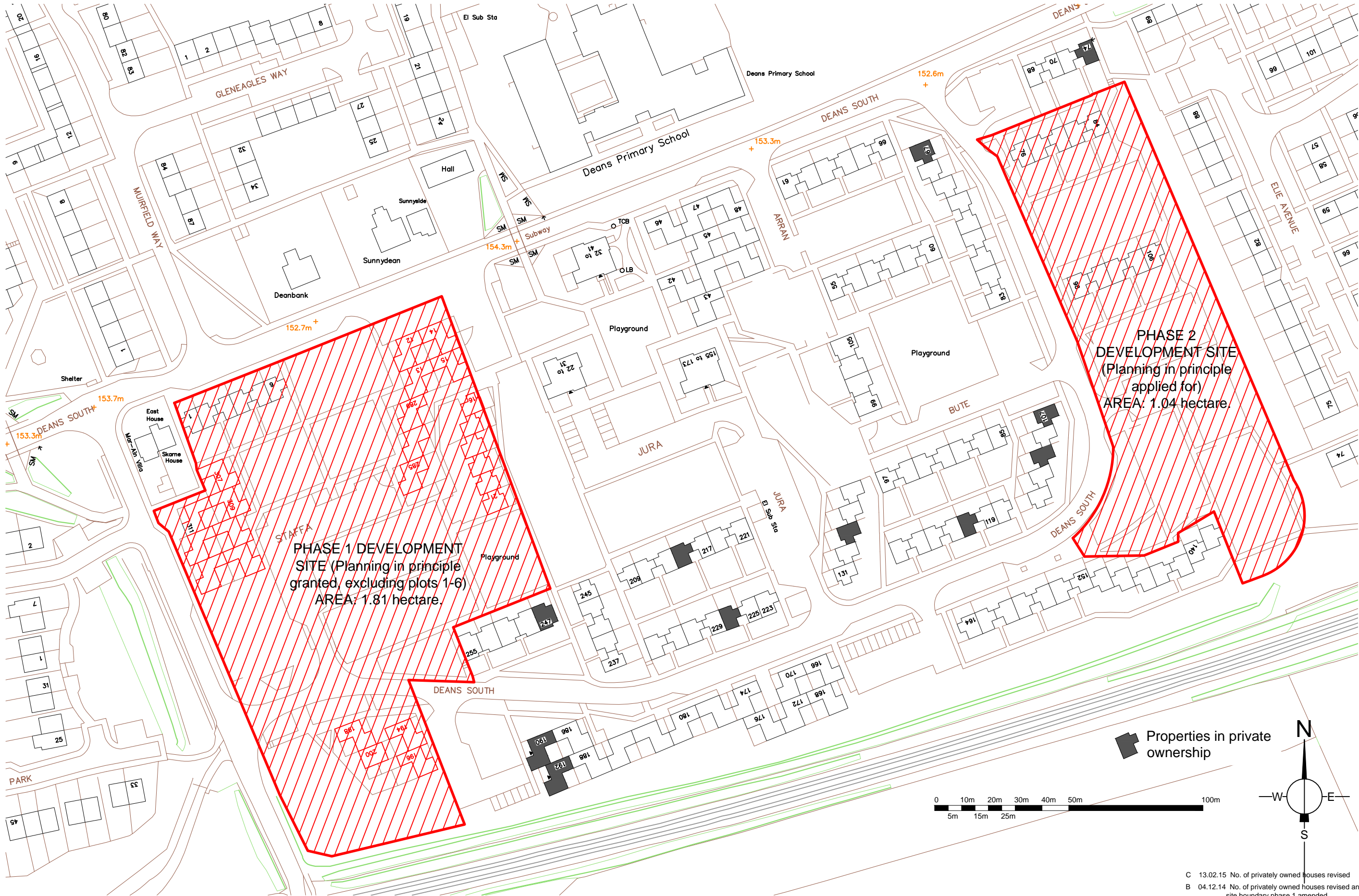
## Appendix 1 - New build council housing update

Winchburgh CDA (41 units)	Broxburn, Uphall and Winchburgh	Contract awarded to McTaggart Construction. Planning application submitted.
Former Day Centre, Winchburgh (8 units)	Broxburn, Uphall and Winchburgh	Planning application submitted.
Adelaide Street, Livingston (6 units)	East Livingston and East Calder	Complete
Almondell, East Calder (36 units)	East Livingston and East Calder	Contract awarded to Lovell Partnerships 27 April 2015.
Raw Holdings, East Calder (16 units)	East Livingston and East Calder	Contract awarded to Lovell Partnerships 27 April 2015. Number of units reduced from 17.
Former school site, Pumpherston (14 units)	East Livingston and East Calder	Contract awarded to Lovell Partnerships. Development commenced 16 March. Due for completion December 2015.
Drumshoreland, Pumpherston (86 units)	East Livingston and East Calder	Contract awarded to McTaggart Construction. Planning application to be submitted in May 2015. Number of units reduced from 90.
Eastfield, Fauldhouse (40 units)	Fauldhouse and Breich Valley	Contract awarded to Lovell Partnerships. Planning application submitted.
Mill Road, Linlithgow (15 units)	Linlithgow	Contract awarded to McTaggart Construction. Planning application submitted.
Auldhill, Bridgend (5 units)	Linlithgow	Contract awarded to McTaggart Construction. Planning application submitted.
Philpstoun Bowling Green, Bridgend (5 units)	Linlithgow	Contract awarded to Lovell Partnerships 27 April 2015.

## Appendix 1 - New build council housing update

Deans South Phase 1 (46 units)	Livingston North	Contract awarded to McTaggart Construction. Planning applications for phases 1a and 1b submitted. Number of units increased from 42.
Deans South Phase 2 (9 units)	Livingston North	Reserve site proposed for inclusion in the programme subject to Council Executive approval.
Appleton Parkway, Livingston (10 units)	Livingston North	Contract awarded to Lovell Partnerships 27 April 2015.
Former Lammermuir site, Livingston (62 units)	Livingston South	Contract awarded to Lovell Partnerships. Planning application submitted.
Almond Link Road, Livingston (20 units)	Livingston South	Contract awarded to Lovell Partnerships. Planning application submitted.
Trim Track, Livingston (36 units)	Livingston South	Contract awarded to Lovell Partnerships 27 April 2015. Number of units reduced from 40.
Almondvale Stadium, Livingston (36 units)	Livingston South	Contract awarded to Lovell Partnerships 27 April 2015. Number of units reduced from 40.
Redhouse, Blackburn (100 units)	Whitburn and Blackburn	Contract awarded to Lovell Partnerships. Planning permission granted.





Construction Services  
Construction Design  
West Lothian Civic Centre  
Howden South Road,  
Livingston EH54 6FF



PROJECT :

Deans South - New Housing

• all dimensions to be checked on site

DRAWING :

APPENDIX 1  
Current Status Plan

• do not scale from drawings

C		13.02.15	No. of privately owned houses revised	
B		04.12.14	No. of privately owned houses revised and site boundary phase 1 amended	
A		04.12.14	No. of privately owned houses revised	
issue	date	details	scale(s)	drawn
1	26.11.2014		1:1250 @ A3	BS
2				BS
3				C
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## **COUNCIL EXECUTIVE**

### **NEW MODEL OF CUSTOMER SERVICE DELIVERY**

#### **REPORT BY HEAD OF AREA SERVICES**

##### **A. PURPOSE OF REPORT**

This report advises the Council Executive of plans being progressed through the Delivering Better Outcomes “Modernising services on the frontline” project that will modernise the way frontline customer services are delivered in the future. The report seeks approval of the Council Executive to the proposed hierarchy of service delivery and the agreement to amend opening hours within libraries to match demand.

##### **B. RECOMMENDATIONS**

The Council Executive is asked to:

1. note the progress made with the project “Modernising Services on the frontline”;
2. agree that Area Services modernises its service delivery model based on the hierarchy described in appendix 1 in order to achieve the agreed savings;
3. note that an organisational change programme will be developed to deliver the agreed services subject to consultation with key stakeholders and an update report to be submitted to the Culture & Leisure PDSP prior to being submitted to the Council Executive for approval;
4. agree that the proposed library opening hours are adopted as detailed in appendix 2; and
5. note that further modernisation of other front line services will be explored as the hierarchy approach develops.

##### **C. SUMMARY OF IMPLICATIONS**

I.	Council Values	Focusing on our customers' needs. Being honest, open and accountable. Making best use of our resources.
II.	Policy and Legal	The EQIA relevance assessment concluded that the particular impact on equality issues of this measure will be low to nil given that services will continue to be available locally.
III.	Implications for Scheme of Delegations to Officers	None.

IV.	Impact on performance and performance indicators	Performance within CIS, Community Facilities, Libraries and Registration will be monitored as changes are implemented.
V.	Relevance to Single Outcome Agreement	Enabling activity.
VI.	Resources (Financial, Staffing and Property)	Savings for Customer Services/Community Facilities from DBO project Managing our Relationship with Customers, identifies total savings of £798,000 for 2015-18.
VII.	Consideration at PDSP	The Culture and Leisure PDSP considered this report at an additional meeting on 14 May 2015. The PDSP recommended that the Council Executive agreed the recommendations 1,2,4 and 5 as outlined in the report. The PDSP amended recommendation 3 to allow for further discussion with key stakeholders.
VIII.	Details of consultations	Executive Management Team, Housing, Construction and Building Services, Corporate Services (HR) and Finance and Estates Services. Trade unions and staff will be consulted on the proposed new structures within Area Services in accordance with the Organisational Change Policy. Management Committees will be consulted on the implications of the changes for the operation of community centres. Delivering Better Outcomes community consultation feedback has been considered in developing these plans.

## **D TERMS OF REPORT**

### **D1**

#### **Background**

In 2011, following the creation of Area Services, the council brought together a number of frontline customer facing services in the Customer Service Development unit. This included Library, Heritage, Customer Information Services (CIS) and Registration services. The Community Facilities service is also managed as part of Area Services.

The services are currently structured around ten senior managers and a cluster arrangement based on geography. There are six integrated CIS/ branch library clusters, two registration offices and two clusters of community centres. The services are delivered from 56 locations, including: Bathgate, Fauldhouse and Strathbrock Partnership Centres.

Since 2011, the service structure has been refined with the development of generic job roles which, in turn, has streamlined front line services, making them more efficient and focused on the needs of the customer.



The continued modernisation of front line services through proposals within the DBO project, “Modernising services on front line”, will bring additional efficiencies, with further service review and modernisation of the Customer Service Development and Community Facilities units.

The success of the DBO project, “Modernising Services on the front line” is reliant on achieving a range of approaches promoted through other DBO projects which, in turn, will mean more efficient service delivery.

At its meeting on 29 January 2015 the council agreed its budget for 2015/16 and a range of measures that would ensure the council balanced its budget over the coming three years.

The impact of these measures on frontline service delivery is detailed in the table below.

<b>Measure</b>	2015/16	2016/17	2017/18	Total
	£	£	£	£
Maintain cash collection facility in key offices	20,000	40,000	40,000	100,000
Integrating and modernisation of frontline services	186,000	149,000	103,000	438,000
Library book fund/mobile libraries and opening hours	260,000	0	0	260,000
<b>Total</b>	<b>466,000</b>	<b>189,000</b>	<b>143,000</b>	<b>798,000</b>

To ensure that the future provision of services meets the needs of communities, it is proposed that the council introduces a hierarchy of provision through a staged approach based around the council’s partnership centre model.

## **D2 Changing Customer Expectations**

A key driver for change is changing customer expectations. Customers want to be treated as individuals and they expect the council to know basic information about them. Our customers are increasingly empowered, connected and informed. The council needs to develop greater insight into our customers’ needs and preferences. As part of the development of the Customer Services Strategy 2015-17 customer personas were developed using customer insight to enable services to develop needs-led services. The ongoing integration of frontline services has been scrutinised during the Customer Service Excellence inspections over the last three years and found to be delivering high quality service and meeting customer needs and expectations.

During feedback from the Delivering Better Outcomes consultation carried out by the council in 2014, customers clearly expressed a view that they wanted to be able to use technology to access services. They said there should be a cost effective method to allow customers to contact the council including the provision of self-service online solutions. This includes developing the website to provide customer friendly online self-service options, improved website navigation to allow customers to access service information and the increased use and effectiveness of email communication.

Overall, there were 1303 comments relating to customer service and the way the council interacts with customers. Of these, 1113 were supportive of the approach and 190 were not supportive. The council is committed to offering a range of access channels across West Lothian to ensure that customers can use council services in ways that best suit them.

### **D3 Proposals for new service delivery model**

The council has a history of developing integrated service models in a number of key buildings such as Fauldhouse and Bathgate Partnership Centres, and the future commitment to this strategy is clear with new, modernised front-line service models planned for an additional six locations: Armadale, Blackburn, East Calder, Linlithgow, Winchburgh, and Whitburn. In addition, it is proposed that Broxburn library is moved into Strathbrock to ensure service delivery can be integrated.

The success of this approach is evident. For example, there has been a 30% increase in footfall recorded in Bathgate Partnership Centre beyond that originally anticipated. This has been achieved through the ability to join up services and provide one stop access to services for customers. It is anticipated that future expansion of this approach will continue to promote excellent joined up services and maximise access for increasing numbers of customers.

The project aims to provide both the future vision for front-line service development and a more co-ordinated approach that will explore options for co-located or integrated service provision with partners and others.

The models and the structure for delivering the changes will be developed in a systematic way based on localised customer demand and need, and in accordance with West Lothian Council's partnership centre approach. The project scope focuses on the modernisation of services within key towns and villages, reviewing provision where it is already in place and implementing it where it is not already established, with a prioritisation on more deprived communities. The aim is to increase access to services by harnessing the benefits of using technology for front line delivery arrangements. Working within the council's partnership centre approach it is proposed that services will be designed around a Neighbourhood Management Cluster Model consisting of four clusters supported from main locations in Bathgate, Broxburn, Livingston, and Whitburn/Armadale, delivering a hierarchy of services from Community Hubs.

Appendix 1 details description of locations and within each proposed cluster. A worked example of services available in each cluster is in appendix 1a.

The levels and types of service within each element of the hierarchy is explained below.

#### ***Community hubs***

These service points will have the greatest range of services available in one location and will be based on need. Provision will be as follows;

- Face to face enquiry/ advice service (CIS, Library, Access2Employment (A2E), ABE, Advice Shop, CLD) will be available from 8.30am to 5pm. Other services such as Housing and Revenues will be negotiated on a site by site basis.
- Extended opening hours for the community centre and library elements.
- Payment provision – either cash office or via technology.

#### ***Connected***

These service points will be located in main settlements.

- Opening hours of buildings will be based on community and partner need.
- Face to face engagement with council services including the library will be available between 10am – 3pm. Surgeries held by Advice Shop, and A2E.
- No payments facility.
- Reliance on technology when face to face staff are unavailable – self-help terminals and guided to online provision.

#### ***Access points***

- No face to face provision for dealing with customer enquiries.
- Reliance on technology such as public access PCs or phone.
- Staff will continue to support service delivery in community centres.

In addition there will continue to be a range of properties that will continue to be utilised where there is no enhancement to service.

#### **D4 Library Opening hours**

The project proposes to implement service change on a phased basis. Initially library opening hours will be altered to reflect demand. The new proposed hours are included in appendix 2. Following feedback with staff and customers the hours have been revised to ensure that young people in particular are able to access the libraries after school as agreed at the Culture and Leisure PDSP on 14 May 2015.

In addition, the mobile library service will be changed to ensure outlying communities are provided with a “pop-up” library service, working with the community to deliver this; primary schools are supported through the school librarians and outreach service from the branch libraries; and elderly or vulnerable customers receive their books through the homebound service. These elements were agreed as part of the Council’s budget setting meeting on 29 January 2015.

#### **D5 Staffing implications of the new delivery model**

There are currently 160FTE staff employed within Area Services that would be affected by this change. This comprises: Customer Information Services (CIS), Libraries, Registration, Community Facilities and Partnership Centres.

In order to achieve this new service delivery model a new staffing structure will be put in place. This would see new management and cluster based staffing arrangements based on the four neighbourhoods. The new structure would adopt the generic customer service job descriptions. Various professional roles will be required to ensure development and quality across service disciplines such as librarian, systems analyst etc.

The Culture and Leisure PDSP which met on 14 May 2015 agreed that consultation with key stakeholders on the implications of these changes would be undertaken prior to a further report being submitted to the PDSP and Council Executive.

## **D6 Benefits of the new service delivery model**

The benefits of this proposal are:

1. A strategic model including community hubs and a localised neighbourhood approach based on community needs.
2. Identifying key locations to ensure areas of greatest need are resourced appropriately.
3. Identifying new delivery models for shared services in order to deliver a modern, integrated frontline customer service.
4. Identifying how we can work better with partners and others.
5. Reduction in frontline staff numbers linked to an integration of frontline service and minimising duplication with a new staffing structure.
6. Re-provisioning of services through the partnership centre model resulting in more efficient use of assets.
7. Matching service delivery to meet demand patterns.

## **E CONCLUSION**

West Lothian Council's vision is to develop integrated frontline services that are designed to be relevant to communities, connecting with more people and engaging directly with the needs of citizens. In turn the council will deliver an integrated service based on customer need within a reduced resource base.

The timing of decisions and implementation of proposals is crucial to ensure that the significant changes required to deliver the vision can be executed as efficiently and effectively as possible.

## **F. BACKGROUND REFERENCES**

Revenue Budget 2015/16 to 2017/18 – West Lothian Council 29 January 2015  
Culture and Leisure PDSP 14 May 2015

Appendices/Attachments: Two

Description of locations within each cluster  
Proposed library opening hours

Contact Person. Karen Cawte, Customer Services Development Manager

Steve Field, Head of Area Services

Date: 26 May 2015

## **Appendix 1**

### **Description of locations within each cluster**

#### **Neighbourhood Management Cluster : One**

**Community Hub** : Bathgate Partnership Centre

**Connected** : Blackburn Partnership Centre

**Access Point** : Boghall, Seafield, Torphichen, Wester Inch

#### **Neighbourhood Management Cluster : Two**

**Community Hub** : Strathbrock Partnership Centre

**Connected** : Linlithgow Partnership Centre

**Access Point** : Bridgend, Philpstoun, Uphall, Winchburgh,

**Continued service delivery:** Dechmont, Ecclesmachan Linlithgow Bridge, Newton, Uphall Station

#### **Neighbourhood Management Cluster : Three**

**Community Hub** : West Lothian Connected

**Connected** : Almonbank Centre, Carmondean, East Calder, Lanthorn, West Calder

**Access Point** : Forrestbank, Kirknewton, Livingston Station, Mid Calder, Mosswood. Polbeth,

**Continued service delivery:** Bellsquarry, Carmondean Community Centre, Crofthead, Murieston, New Yearfield Farm

#### **Neighbourhood Management Cluster : Four**

**Community Hub** : Whitburn Partnership Centre, Armadale Partnership Centre

**Connected** : Fauldhouse Partnership Centre,

**Access Point** : Addiewell, Blackridge, Stoneyburn,

**Continued service delivery:** East Whitburn

## Appendix 2a

### Worked example of new service delivery Neighbourhood Management Cluster : Three

Tier	Location	Services available
<b>Community hub</b>	WL Connected	CIS Business Gateway Jobcentreplus Access2Employment Advice Shop Registration
<b>Connected</b>	Almondbank Centre	Library CIS Access2Employment CAB Daisy Drop-in WLDAS Craigshill Good Neighbourhood network
	Carmondean	Library CIS Housing Access2Employment CLD-adults MacMillan Cancer Advice shop
	East Calder	Library Registration Access2Employment CLD-adults Advice shop Community centre
	Lanthorn	Library Access2Employment CLD-adults Advice shop Community centre
	West Calder	Library CIS Housing Access2Employment Advice Shop Community Centre
<b>Access Point</b>	Forrestbank Kirknewton Livingston Station Mid Calder Mosswood Polbeth	Community centres with additional technology such as touch screen data points or direct phones to CSC.

<b>Continued service delivery</b>	Bellsquarry Crofthead Murieston New Yearfield Farm Carmondean Community Centre	No change
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## Appendix 2

### Proposed revised opening hours for libraries from 1 July 2015

Library	Mon	Tues	Wed	Thurs	Fri	Sat	Total proposed hours	Current hours
Partnership centres								
Bathgate	8.30am-8pm	8.30am-8pm	8.30am-8pm	8.30am-8pm	8.30am-8pm	9am-5pm	64.5	64.5
Fauldhouse	8.30am- 8pm	8.30am-8pm	8.30am-8pm	8.30am-8pm	8.30am -8pm	9am-5pm	64.5	64.5
Library Branches								
Almondbank	9am – 6pm	9am-6pm	9am-6pm	9am-7pm	9am-6pm	9am-1pm	50	53
Armadale	10am – 3pm	11am – 6pm	10am -3pm	10am – 7pm	10am- 5pm	9am- 1pm	37	50
Blackburn	9am- 3pm	10am- 5pm	10am-3pm	10am- 7pm	10am- 4pm	10am-1pm	36	46
Blackridge	Open as per community centre	2pm-6.30pm	9.30-12.30 and 1.30-4.30	2pm-6.30pm	Open as per community centre	Open as per community centre	15	15
Broxburn	10am-5pm	10am-5pm	10am-3pm	10am-7pm	10am- 3pm	9am-1pm	37	50
Carmondean	10am – 5pm	10am-7pm	11am – 5pm	10am-7pm	10am-5pm	9am-1pm	43	51
East Calder	10am – 5pm	10am – 3pm	11.00 – 4pm	12pm- 7pm	10am – 5pm	10am-1pm	34	49.5
Lanthorn	10am – 3pm	11am – 5pm	11.00 – 4pm	10am- 7pm	11am – 5pm	9am-1pm	35	51
Linlithgow	9am- 5.00pm	9am– 7pm	9am- 3.00pm	9am-7pm	9am-5.00pm	9am-1pm	46	54
Pumpherstoun	2pm-5pm	School library	2.30-4.30pm	2pm-6pm	School library	Closed	9	9
West Calder	10-4pm	10-7pm	11-4pm	11-6pm	10-3pm	10am-1pm	36	49.5
Whitburn	10am – 3pm	11am – 5pm	10am -3pm	10am- 7pm	11am – 5pm	9am-1pm	35	49.5
							<b>542</b>	<b>656</b>





## **COUNCIL EXECUTIVE**

### **BROXBURN LIBRARY RELOCATION TO STRATHBROCK PARTNERSHIP CENTRE**

#### **REPORT BY HEAD OF AREA SERVICES**

##### **A. PURPOSE OF REPORT**

This report seeks the approval of the Council Executive to relocate the existing Broxburn Library to Strathbrock Partnership Centre and to declare surplus the library building.

##### **B. RECOMMENDATION**

The Council Executive is asked to:

1. note the content of the report;
2. agree that the relocation of Broxburn Library to Strathbrock Partnership Centre is progressed in consultation with users; and
3. agree the library building is declared surplus to the council's requirements and officers are authorised to carry out an appraisal of the options for future use and disposal including marketing the library for sale or lease; and
4. agree a further report is tabled at the Council Executive about the future of the library building once the appraisal is complete.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs. Being honest, open and accountable. Making best use of our resources.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	The EQIA relevance concluded that the particular impact on equality issues of this measure will be low to nil given that all services will continue to be available locally.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	The number of library and CIS users is likely to increase.
<b>V Relevance to Single Outcome Agreement</b>	The continued investment in the integration of Library and Customer Information Services and the partnership centre will support a number of single outcome agreement performance measures. The primary impact is that we make the most efficient and effective use of resources

by minimising our impact on the built environment.

**VI Resources - (Financial, Staffing and Property)**

Project costs will be managed within existing resources identified in the General Services Capital Programme for 2015/16.

Staff required for the management of the project will be provided from existing available resources.

Vacated library building will be subject to the council's surplus property procedures.

**VII Consideration at PDSP**

This report was considered at an additional meeting of the Culture and Leisure PDSP on 14 May 2015.

The PDSP agreed the recommendations.

**VIII Other consultations**

The stakeholders will be consulted on the detail of the relocation.

**D. TERMS OF REPORT**

**D1 BACKGROUND**

Strathbrock Partnership Centre was opened in 2002 and was one of the first of its type in Scotland. West Lothian has since developed the partnership centre model and created centres in Fauldhouse and Bathgate. A further six partnership centres are proposed / in development across the county.

Currently, Strathbrock houses a medical practice, pharmacy, café, CIS office and a range of council services such as housing and social policy. The community centre is adjacent but accessed separately.

The library in Broxburn extends to 329sq.m. It also houses a small community museum. There are currently 297 linear metres of shelving within the library and six public access PCs.

Broxburn library has 5667 active users. The areas in which they live have been mapped and this shows the majority live to the west of the area, therefore Strathbrock would be closer to them. There are around 3830 visits per month to the library. The library issues approximately 3996 books per month.

**D2 PROPOSED RELOCATION WORKS**

The project will primarily consist of internal reconfiguration and decoration works within both the ground and upper floors at Strathbrock to relocate housing and social policy. These works will deliver modern and flexible accommodation, reflecting the Council's adopted corporate design ethos. The ground floor will be opened up to create a combined library / CIS space. The cash office will be replaced by a cash kiosk. In addition, it is proposed that the community centre and main building are more effectively linked internally.

Whilst the works and staff relocations are ongoing there may be some disruption to service delivery, however, officers will endeavour to ensure that these are kept to a minimum. This will include mitigation measures such as undertaking elements of work at weekends and after hours when the partnership centre is closed or less busy.

Designs are in the process of being developed. Initial proposed layouts ensure that there will be no adverse impact on the existing café facility. It is likely that the proximity of the library will increase the use of the café as more customers use the library.

Following the design stage, detailed costs will be finalised. Initial investigations and appraisals have identified that projected costs can be managed within approved resources identified within the General Services Capital Programme 2015/16 to 2017/18 for Community Property Integration and Modernisation.

### **D3 BROXBURN LIBRARY BUILDING**

Relocation of the library service would mean that the existing library building would not be needed for direct service delivery. Officers would carry out an assessment of the options for the use of the building, prior to reporting to the Council Executive in accordance with the approved surplus property procedures. Options may include the sale or lease of the building. There are a number of groups who may have an interest in the building. As part of any particulars of sale / lease interested parties would be provided with guidelines to indicate what the council would deem acceptable uses for the building.

### **D4 CONSULTATION**

Stakeholder engagement will be undertaken on the detail of the relocation of the library. This will include library users, users within Strathbrock Partnership Centre and key partners such as the medical practice and community centre management committee.

### **E. CONCLUSION**

The proposed relocation of the library to Strathbrock Partnership Centre will reflect the integrated approach to service delivery that has been developed elsewhere in West Lothian and will be implemented as part of new partnership centre and modernisation projects.

### **F. BACKGROUND REFERENCES**

None.

Appendices/Attachments: None.

Contact Person:

Karen Cawte, Customer Services Development Manager, Area Services

Tel: 01506 281082

Email: [karen.cawte@westlothian.gov.uk](mailto:karen.cawte@westlothian.gov.uk)

**Steve Field**  
**Head of Area Services**

Date: 26 May 2015





## **COUNCIL EXECUTIVE**

### **PUBLICATION OF ELECTED MEMBERS REMUNERATION, EXPENSES AND ALLOWANCE INFORMATION 2014/15**

#### **REPORT BY HEAD OF CORPORATE SERVICES**

##### **A. PURPOSE OF REPORT**

To inform the Council Executive of the levels of Elected Members Remuneration, Allowances and Expenses paid from 1 April 2014 to 31 March 2015 and to provide details of training undertaken during this period.

##### **B. RECOMMENDATION**

To note the terms of the report and to display the attached schedules as per the Appendices on the Council's website.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Being honest, open and accountable.
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	The Council has a legal obligation to publish payments made to individual members by 1 June each year.
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	None
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	None
<b>VII</b>	<b>Consideration at PDSP</b>	None
<b>VIII</b>	<b>Other consultations</b>	Internal only.

## **D. TERMS OF REPORT**

In accordance with the Local Government (Allowances and Expenses) (Scotland) Amendment Regulations 2010, Councils are required to record and publish details of the payments made to Elected Members in the previous year from 1 April to 31 March, no later than 1 June each year,

A copy of the records of payments made in accordance with the Regulations from 1 April 2014 to 31 March 2015 is set out in Appendix 1. All amounts are stated gross before any deductions for Income Tax and National Insurance.

While the levels of salary are fixed depending on the designation, the amounts of travel, subsistence and expenses claimed vary between Elected Members depending on their activities and duties throughout the year.

The analysis includes "other expenses" which must be disclosed under the scheme. This relates to receipted expenditure incurred by the Provost or Depute Provost on civic duties and the costs of conferences and seminars which are paid for directly by the council.

In addition to the levels of payments made, the regulations also require the council to publish details of training undertaken during the reporting period. Attendance at learning events is reported in Appendix 2.

## **E. CONCLUSION**

The Council will discharge its legal obligations by publishing the schedules contained in the Appendices.

## **F. BACKGROUND REFERENCES**

The Local Government (Allowances and Expenses) (Scotland) Amendment Regulations 2010.

Appendices/Attachments: 2

Contact Person: Katrina Daly, Interim HR Manager – Operations

Email: [katrina.daly@westlothian.gov.uk](mailto:katrina.daly@westlothian.gov.uk)

Tel: (01506) 281402

**Julie Whitelaw**

**Head of Corporate Services**

**Date of meeting: 26 May 2015**

ELECTED MEMBERS  
2014/2015

Appendix 1

NAME		POSITION HELD	COMMITTEE RESPONSIBILITIES	SALARY	CAR AND VAN MILEAGE EXPENSES	COST OF USING POOL CAR	OTHER TRAVEL	SUBSISTENCE EXPENSES ACCOMMODATION	SUBSISTENCE EXPENSES MEALS	TELEPHONE & INFORMATION COMMUNICATION TECHNOLOGY (ICT) EXPENSES	OTHER ALLOWANCES AND EXPENSES	COST OF TRAINING, CONFERENCES & SEMINARS	TOTAL EXPENSES	SALARY & EXPENSES TOTAL
(A)				(C)	(D1)	(D2)	(D3)	(E1)	(E2)	(F)	(G1)	(G2)	(H)=D+E+F+G	(I)=C+H
				£	£	£	£	£	£	£	£		£	£
Frank	Anderson	Councillor		16,560.00	1,736.10	0.00	202.49	60.00	2.20	38.07	2,050.11	450.00	4,538.97	21,098.97
Stuart	Borrowman	Councillor		16,560.00	1,737.90	0.00	0.00	0.00	0.00	210.98	70.00	0.00	2,018.88	18,578.88
Tony	Boyle	Senior Councillor	Licensing Committee	24,842.04	46.26	0.00	0.00	0.00	0.00	14.47	0.00	0.00	60.73	24,902.77
Willie	Boyle	Councillor		16,560.00	0.00	0.00	0.00	0.00	0.00	0.37	0.00	0.00	0.37	16,560.37
Diane	Calder	Councillor		16,560.00	693.39	0.00	0.00	0.00	0.00	22.70	0.00	0.00	716.09	17,276.09
Janet	Campbell	Councillor		16,560.00	0.00	0.00	0.00	0.00	0.00	41.23	0.00	0.00	41.23	16,601.23
Harry	Cartmill	Senior Councillor	Audit and Governance Committee	24,842.04	885.60	39.31	0.00	0.00	0.00	183.84	30.00	0.00	1,138.75	25,980.79
Tom	Conn	Senior Councillor	Environment Development Management Committee	24,842.04	0.00	0.00	0.00	0.00	0.00	65.15	0.00	0.00	65.15	24,907.19
Alex	Davidson	Senior Councillor		24,842.04	552.60	47.96	0.00	0.00	0.00	0.00	0.00	0.00	600.56	25,442.60
Martin	Day	Councillor		16,560.00	0.00	0.00	0.00	0.00	0.00	63.85	0.00	0.00	63.85	16,623.85
Robert	De Bold	Councillor		16,560.00	609.75	0.00	0.00	0.00	0.00	327.76	35.00	0.00	972.51	17,532.51
Jim	Dickson	Councillor		16,560.00	2,116.80	0.00	0.00	0.00	0.00	20.09	35.00	0.00	2,171.89	18,731.89
Mary	Dickson	Councillor		16,560.00	1,361.70	0.00	0.00	0.00	0.00	1.90	35.00	0.00	1,398.60	17,958.60
Jim	Dixon	Senior Councillor	Voluntary Organisation	24,842.04	1,502.10	0.00	14.75	0.00	0.00	73.37	35.00	0.00	1,625.22	26,467.26
David	Dodds	Councillor		16,560.00	1,089.45	0.00	75.75	0.00	0.00	10.76	0.00	0.00	1,175.96	17,735.96
Lawrence	Fitzpatrick	Senior Councillor	Education	24,842.04	913.05	0.00	38.15	0.00	0.00	155.18	35.00	0.00	1,141.38	25,983.42
Isabel	Hutton	Councillor		12,984.55	0.00	0.00	288.00	0.00	0.00	0.00	0.00	0.00	288.00	13,272.55
Carl	John	Councillor		16,560.00	1,432.80	0.00	0.00	0.00	0.00	49.83	35.00	0.00	1,517.63	18,077.63
Peter	Johnston	Councillor		16,560.00	1,822.50	0.00	1,187.80	220.00	0.00	113.86	0.00	450.00	3,794.16	20,354.16
Tom	Kerr	Provost	Civic Head	24,842.04	2,410.20	3,296.16	0.00	0.00	0.00	244.90	1,139.04	0.00	7,090.30	31,932.34
Dave	King	Senior Councillor (Depute Provost)	Culture and Leisure	24,842.04	1,025.55	619.05	0.00	0.00	0.00	39.83	738.00	0.00	2,422.43	27,264.47
Sarah	King	Councillor		250.91	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	250.91
Danny	Logue	Senior Councillor	Social Policy	24,842.04	0.00	0.00	0.00	0.00	0.00	132.28	0.00	0.00	132.28	24,974.32
Greg	McCarra	Councillor		16,560.00	580.50	0.00	8.00	0.00	0.00	134.55	0.00	0.00	723.05	17,283.05
John	McGinty	Leader of the Council		33,123.00	0.00	0.00	0.00	0.00	0.00	34.04	0.00	450.00	484.04	33,607.04
Anne	McMillan	Senior Councillor	Health and Care	24,842.04	0.00	0.00	5.50	0.00	0.00	48.20	35.00	0.00	88.70	24,930.74
Andrew	Miller	Councillor		16,560.00	0.00	25.63	0.00	0.00	0.00	127.56	0.00	0.00	153.19	16,713.19
Angela	Moohan	Councillor		16,560.00	0.00	0.00	0.00	0.00	0.00	18.81	0.00	450.00	468.81	17,028.81
John	Muir	Councillor		16,560.00	0.00	0.00	0.00	0.00	0.00	0.84	0.00	0.00	0.84	16,560.84
Cathy	Muldoon	Senior Councillor	Development and Transport	24,842.04	284.40	0.00	0.00	0.00	0.00	112.90	35.00	450.00	882.30	25,724.34
George	Paul	Senior Councillor	Services for the Community	24,842.04	1,502.10	0.00	15.80	0.00	0.00	713.52	0.00	718.80	2,950.22	27,792.26
Barry	Robertson	Councillor		16,560.00	291.60	0.00	0.00	0.00	0.00	0.42	3,110.48	0.00	3,402.50	19,962.50
Frank	Toner	Councillor		16,560.00	562.22	0.00	0.00	0.00	0.00	93.27	0.00	0.00	655.49	17,215.49
Jim	Walker	Councillor		16,560.00	705.60	0.00	0.00	0.00	0.00	312.99	35.00	0.00	1,053.59	17,613.59
<b>TOTALS</b>				<b>659,102.94</b>	<b>23,862.17</b>	<b>4,028.11</b>	<b>1,836.24</b>	<b>280.00</b>	<b>2.20</b>	<b>3,407.52</b>	<b>7,452.63</b>	<b>2,968.80</b>	<b>43,837.67</b>	<b>702,940.61</b>

		Payment	Amount
Frank	Anderson	APSE	2050.11
Tom	Kerr	Civic Expenses	1128.22
Dave	King	Civic Expenses	738.00
Barry	Robertson	Joint Board	3075.48

DATA LABEL - PUBLIC





## **Learning Events Attended by Elected Members from April 2014 to March 2015**

The list includes Core Training and Ongoing Personal Development.

Members attended topics relevant to their role and individual learning requirements.

<b>Learning Event</b>	<b>Attendees</b>
Corporate Governance	12
Local Development Planning	6
Community Health Champions	5
Licensing Board	6
Community Council scheme	7
Code of Conduct	13
Placement in Schools Appeals	6
Employee Appeals	6
IPAD Training	14
Housing Partnership Allocations	9
Equality Impact Assessment	13
Health & Social Care Integration	23
Social Media Training	10
Register of Declared Interests	21
Local Business Improvement Training	5
Child Protection Procedures	32





## **COUNCIL EXECUTIVE**

### **EARLY RETIRAL AND VOLUNTARY SEVERANCE – 1 OCTOBER 2014 TO 31 MARCH 2015**

#### **REPORT BY HEAD OF CORPORATE SERVICES**

##### **A. PURPOSE OF REPORT**

To advise the Council Executive of the number of employees who were granted early retiral / voluntary severance or flexible retiral from the council during the 6 month period from 1 October 2014 to 31 March 2015.

##### **B. RECOMMENDATION**

The Council Executive is asked to note the content of the report which has been prepared in accordance with the reporting requirements of the council's policy on Early Retiral and Voluntary Severance.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs
	Being honest, open and accountable
	Providing equality of opportunities
	Developing employees
	Making best use of our resources
	Working in partnership
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	The council's policy on Early Retiral and Voluntary Severance requires early retiral and severance cases to be reported to Council Executive on a regular basis.
<b>III Implications for Scheme of Delegations to Officers</b>	None
<b>IV Impact on performance and performance Indicators</b>	None
<b>V Relevance to Single Outcome Agreement</b>	None

<b>VI Resources - (Financial, Staffing and Property)</b>	Each early retiral / voluntary severance reported has been approved on the basis of a robust business case and has been approved in accordance with council policy.
<b>VII Consideration at PDSP</b>	None
<b>VIII Other consultations</b>	Consultation has taken place with the Head of Finance and Estates and Lothian Pension Fund.

#### **D. TERMS OF REPORT**

The council's policy on Early Retiral and Voluntary Severance requires that reports on the application of the policy are submitted regularly to Council Executive. This report records cases of early retiral / voluntary severance and flexible retirals approved during the period 1 October 2014 to 31 March 2015.

In accordance with the Policy, all cases approved during this period were dependant on the establishment of a business cases which ensured that costs of releasing the employee were recovered within the stipulated timescales. Of the 17 cases approved all fell within a 3 year payback period.

Details of these cases are provided in Appendix 1.

#### **E. CONCLUSION**

All instances of early retiral / voluntary severance and flexible retirals recorded in Appendix 1 to the report have been approved in accordance with council policy.

The Council Executive is asked to note the content of the report which has been prepared in accordance with the reporting requirements of the Council's Policy on Early Retiral and Voluntary Severance.

#### **F. BACKGROUND REFERENCES**

Policy on the Application of Early Retiral and Voluntary Severance.

Appendices/Attachments: Early Retiral / Voluntary Severance Summary 1 October 2014 to 31 March 2015

Contact Person: Katrina Daly, Interim HR Manager - Operations  
Email: [Katrina.daly@westlothian.gov.uk](mailto:Katrina.daly@westlothian.gov.uk)  
Tel: 01506 281402

**Julie Whitelaw**

**Head of Corporate Services**

**Date: 13 May 2015**

Early Retiral / Voluntary Severance Summary 1 October 2014 to 31 March 2015

	Area Services	CHCP - Social Policy	Chief Executive, Finance & Estates	Corporate Services	Education Services		Housing, Construction & Building Services	Operational Services	Planning & Economic Development	Total
					Non Teaching	Teaching				
<b>No of Employees</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>17</b>
<b>Category</b>										
Early Retiral										
Flexible Retirement		1	1		3		4			9
Reduced Severance										
Voluntary Severance	3	2				1	2			8
<b>Total</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>17</b>
<b>Estimated Payback Period</b>										
Less than 1 year	1	2	1		2	1	6			13
1-2 years	2	1			1					4
2 -3 years										0
<b>Total</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>17</b>
<b>Added Years Granted</b>										
Nil (Enhanced Lump Sum)	3	3	1	0	1	1	5	0	0	14
1 year										
2 years					2		1			3
3 years										
4 years										
<b>Total</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>17</b>

**Cost Summary**

Service Area	Number of Employees	Net Salary Savings	Total Exit Costs
Area Services	3	101,211	104,686
CHCP- Social Policy	3	45,651	30,854
Chief Exec, Fin & Estates	1	18,770	
Corporate Services	0		
Education Services Non Teaching	3	196,616	182,500
Education Services Teaching	1	55,138	31,635
Housing-Constr & Building	6	82,854	37,835
Operational Services	0		
Planning & Economic Development	0		
<b>Total</b>	<b>17</b>	<b>500,240</b>	<b>387,510</b>





## **COUNCIL EXECUTIVE**

### **COUNCILLORS' LOCAL DISBURSEMENT FUND**

#### **REPORT BY HEAD OF CORPORATE SERVICES**

##### **A. PURPOSE OF REPORT**

To advise the Council Executive of expenditure from the Councillors' Local Disbursement Fund for the period 1 April 2014 to 31 March 2015.

##### **B. RECOMMENDATION**

To note the expenditure from the Councillors' Local Disbursement Fund for the period 1 April 2014 to 31 March 2015.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Being honest, open and accountable, focusing on our customer's need, working in partnership
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	<p>The guidelines for the operation of the Local Members' Disbursement Fund were established by the Policy and Resources Committee in 1996.</p> <p>New forms and procedures were introduced as a result of the council's implementation of "Following the Public Pound" in October 2005 and were further revised in 2007.</p> <p>The name of the Fund was changed in April 2007</p>
<b>III Implications for Scheme of Delegations to Officers</b>	None
<b>IV Impact on performance and performance Indicators</b>	None
<b>V Relevance to Single Outcome Agreement</b>	None
<b>VI Resources - (Financial, Staffing and Property)</b>	The budget for 2014/15 was £92,358
<b>VII Consideration at PDSP</b>	Not required
<b>VIII Consultations</b>	None

#### **D. TERMS OF REPORT**

The guidelines for the operation of the Fund, which were approved by the Policy and Resources Committee in 1996, include a requirement for a summary report of expenditure from the Fund to be submitted to the Council Executive every six months.

The budget for the Fund for 2014/15 was £92,358.00. Members receive regular information about sums allocated by them and balances remaining, or can ask for that information at any time.

The budget was divided amongst the 33 elected councillors. All members disbursed their entire allocation during the year. Although there arose a casual vacancy and there was a by-election during the year, the allocation was preserved and was used in full by the outgoing and incoming councillors between them.

Members are reminded that for a disbursement to come within the guidelines for the scheme there should be some evidence in the application of a benefit to the community rather than a benefit only to an individual.

The budget for 2015/2016 is unchanged at £92,358, or £2,798.72 per elected member. That information has already been passed to all members.

#### **E. CONCLUSION**

The Council Executive is asked to note the expenditure from the Councillors' Local Disbursement Fund and the funds available for the coming financial year.

#### **F. BACKGROUND REFERENCES**

Policy and Resources Committee - 23 April 1996

Policy Partnership & Resources Committee - 20 June 2001, 25 October 2005, 5 December 2006 and 6 February 2007

Appendices: None

Contact Person: James Millar, Solicitor/Committee Services Manager

01506 281613, [James.Millar@westlothian.gov.uk](mailto:James.Millar@westlothian.gov.uk)

Julie Whitelaw

Head of Corporate Services

Date: 26 May 2015





**COUNCIL EXECUTIVE**

**COMMUNITY COUNCIL GRANTS 2014/15**

**REPORT BY HEAD OF CORPORATE SERVICES**

**A. PURPOSE OF REPORT**

To inform the Council Executive of the administration and special project grants which have been paid to community councils during the year from 1 April 2014 to 31 March 2015.

**B. RECOMMENDATION**

To note the payments made from the Community Council administration and special project grants budgets during the financial year 2014/2015.

**C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs, being honest, open and accountable, working in partnership
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Section 22 of the Local Government (Scotland) Act 1994 Conditions for administration grants are set out in the council's Scheme of Community Councils
<b>III Implications for Scheme of Delegations to Officers</b>	None
<b>IV Impact on performance and performance Indicators</b>	The timescales for awarding community council administration grants are monitored and recorded through Covalent
<b>V Relevance to Single Outcome Agreement</b>	None
<b>VI Resources - (Financial, Staffing and Property)</b>	The combined community council administration grant and special project grants budget for 2014/2015 was £26243.
<b>VII Consideration at PDSP</b>	None.
<b>VIII Other consultations</b>	None.

## **D. TERMS OF REPORT**

At the meeting of the Council Executive on 4<sup>th</sup> May 2010, members asked for a report on the special project grant payments made during 2009/10. A report detailing these grants was provided on 18<sup>th</sup> May 2010, arising from which it was agreed that bi-annual reports on community council funding should be brought to the Council Executive for information.

Administration grants are paid automatically to community councils upon submission of satisfactory audited accounts. Administration grants are paid at a fixed rate per 100 of the population, or £250, whichever is the greater. An additional payment of £35 is also paid with the administration grant to cover the cost of community councils registering with the Information Commissioner to comply with the terms of the Data Protection Act 1998. Furthermore, grants have been topped up in recent years in accordance with Council Executive and West Lothian Council decisions to top up voluntary organisation grant levels.

Appendix 1 shows the level of grant available to each community council for the last financial year, audited accounts that were received and when grants were awarded.

The special project grant scheme continued in financial year 2014/15 and allows community councils to carry out projects in their areas such as production of newsletters, environmental improvements, park benches, etc. Community councils can apply for a maximum of £750 special project funding in each financial year. There is no minimum grant. Applications are dealt with on a first come first served basis. Community councils which retain more than £75 of their administration grant from the previous financial year are expected to contribute 10% towards the project.

Appendix 2 details the special project grants which were awarded during last financial year.

Community Council secretaries are made aware through the Scheme and by email reminders throughout the year of the availability of both administration and special projects grants.

## **E. CONCLUSION**

The report ensures that elected members are aware of the grants which have been paid to community councils in their wards.

## **F. BACKGROUND REFERENCES**

Minutes of Meeting of the Council Executive held on 4<sup>th</sup> May 2010 and 18<sup>th</sup> May 2010

Appendices/Attachments:      Appendix 1 – Breakdown of Administration Grants  
   Appendix 2 – Breakdown of Special Project Grants

Contact Person: Lorraine McGrorty, Committee Services (01506 281609)  
([lorraine.mcgrorty@westlothian.gov.uk](mailto:lorraine.mcgrorty@westlothian.gov.uk))

**Julie Whitelaw**

**Head of Corporate Services**

Date: 26<sup>th</sup> May 2015

**APPENDIX 1**  
**ADMINISTRATION GRANTS (1 APRIL 2014 – 31 MARCH 2015)**

<b>COMMUNITY COUNCIL</b>	<b>GRANT PAYABLE 2014/15</b>	<b>DATE GRANT CLAIMED</b>	<b>DATE SENT TO FINANCE</b>	<b>DATE GRANT ISSUED</b>
Addiewell/Loganlea Community Council	316	17/3/15	17/3/15	14/4/15
Armada Community Council	1013	17/10/14	17/10/14	11/11/14
Bathgate Community Council	1788	26/2/15	26/2/15	10/3/15
Bellsquarry Community Council	316	22/8/14	26/8/14	4/9/14
Blackburn Community Council	496	14/5/14	14/5/14	£481 paid on 4/6/14. £15 top up due to population increase paid 25/6/14.
Blackridge Community Council	316	10/2/15	11/2/15	10/3/15
Breich Community Council	316	Not claimed		
• Bridgend Community Council	316	Not in operation		
Broxburn Community Council	903	20/11/14	3/12/14	18/12/14
• Carmondean Community Council	491	Not in operation		
Craigshill Community Council	602	1/9/14	1/9/14	19/9/14
• Deans Community Council	451	Not in operation		
Dechmont Community Council	316	28/11/14	18/12/14	7/1/15
Dedridge Community Council	662	24/2/15	25/2/15	10/3/15
East Calder & Wilkieston Community Council	485	10/10/14	10/10/14	11/11/14
Ecclesmachan & Threemiletown Community Council	316	25/6/14	26/6/14	9/7/14
Eliburn	542	18/3/15	18/3/15	14/4/15
Fauldhouse Community Council	453	Not claimed		
• Howden Community Council	316	Not in operation		
Kirknewton Community Council	316	10/10/14	15/10/14	28/10/14
Knightsridge Community Council	419	Not in operation		
Ladywell Community	560	10/3/15	12/3/15	14/4/15

<b>COMMUNITY COUNCIL</b>	<b>GRANT PAYABLE 2014/15</b>	<b>DATE GRANT CLAIMED</b>	<b>DATE SENT TO FINANCE</b>	<b>DATE GRANT ISSUED</b>
Council				
Linlithgow & Linlithgow Bridge Community Council	1289	11/5/14	14/5/14	£1197 paid 4/6/14. £92 top up due to population paid 25/6/14.
Livingston Village Community Council	316	16/4/14	7/5/14	4/6/14
Longridge Community Council	316	25/6/14	26/6/14	9/7/14
Mid Calder Community Council	324	20/3/15	20/3/15	31/3/15
Murieston Community Council	520	26/6/14	26/6/14	2/7/14
Newton Community Council	316	19/3/15	23/3/15	14/4/15
Philpstoun Community Council	316	30/3/15	30/3/15	14/4/15
Polbeth Community Council	316	Not claimed		
Pumpherstoun Community Council	316	13/3/15	13/3/15	1/1/15
Seafeld Community Council	316	19/1/15	20/1/15	11/2/15
Stoneyburn Community Council	316	12/5/14	13/5/14	4/6/14
Torphichen Community Council	316	22/5/14	3/6/14	18/6/14
Uphall Community Council	443	3/7/14	3/7/14	5/8/14
Uphall Station Community Council	316	15/12/14	16/12/14	5/1/15
West Calder & Harburn Community Council	322	31/3/15	31/3/15	31/3/15
Westfield & Bridgehouse Community Council	316	30/9/14	1/10/14	28/10/14
West Lothian Association of Community Councils	1122	27/11/14	28/11/14	Grant accrued pending re-establishment of WLACC or similar.
Whitburn & Greenrigg Community Council	1069	12/3/15	12/3/15	31/3/15
Winchburgh Community Council	316	14/7/14	29/7/14	18/8/14
Total	20590			

## APPENDIX 2

### COMMUNITY COUNCIL SPECIAL PROJECTS (1 APRIL 2014 – 31 MARCH 2015)

Community Council Name	Project	Amount Requested	Amount Awarded
Linlithgow & Linlithgow Bridge CC	To produce a map of the perambulation of the Marches.	675	675
Torphichen CC	To continue publication of the Torphichen News Newsletter	750	675
Pumpherston CC	To purchase and install a community council noticeboard	750	750
Uphall CC	To continue publication of the Uphall Community Council Newsletter	450	450
Blackridge CC	To continue publication of the Blackridge Community Council Newsletter	600	450
	Total Budget 2014/15	3000	
	Total spent	3000	





## **COUNCIL EXECUTIVE**

### **ST JOHN'S HOSPITAL STAKEHOLDER GROUP**

#### **REPORT BY DEPUTE CHIEF EXECUTIVE, COMMUNITY HEALTH AND CARE PARTNERSHIP**

##### **A. PURPOSE OF REPORT**

To update members on the business and activities of St John's Hospital Stakeholder Group.

##### **B. RECOMMENDATION**

To note the terms of the minutes of meetings of St John's Hospital Stakeholder Group held on 25 March 2015 in the appendix to this report.

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs
	Being honest, open and accountable
	Working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Council requires the activities of certain outside bodies to be reported to elected members on a regular basis, as part of its Code of Corporate Governance.
<b>III Resources - (Financial, Staffing and Property)</b>	None.
<b>IV Consultations</b>	None required.

##### **D. TERMS OF REPORT**

On 29 June 2010 the Council Executive decided that the activities of certain outside bodies should be reported within the council to ensure all elected members are aware of the business of those bodies and to help to ensure their activities are more effectively scrutinised.

In accordance with that decision the business of St John's Hospital Stakeholder Group was to be reported to this meeting by the production of its minutes. The relevant documents are produced as appendices to this report.

#### **E. CONCLUSION**

This report ensures that members are kept apprised of the activities of St John's Hospital Stakeholder Group as part of the council's Code of Corporate Governance.

#### **F. BACKGROUND REFERENCES**

West Lothian Council Code of Corporate Governance.

Council Executive, 29 June 2010

Appendices/Attachments: 1

Minute of meeting of the St John's Hospital Stakeholder Group held on 25 March 2015

Contact Person: Jim Forrest, Depute Chief Executive, CHCP

01506 281977

Jim.Forrest@westlothian.gov.uk

Date:



## DRAFT

### ST JOHN'S HOSPITAL STAKEHOLDER GROUP

Minutes of the Meeting held on Wednesday 25 March 2015 at 2.30pm in Board Room 1, St John's Hospital, Howden South Road, Livingston, West Lothian EH54 6PP (and by video conference call from Waverley Gate)

#### Present:

Mr Brian Houston	Chairman, Non-Executive Lay Member of NHS Lothian (Chair)
Professor John Iredale	Non-Executive Stakeholder Member, NHS Lothian
Mr Alex Joyce	Employee Director, Non-Executive Member NHS Lothian
Councillor John McGinty	Leader West Lothian Council
Councillor Anne McMillan	West Lothian Council Livingston North Ward
Councillor Frank Toner	West Lothian Council East Livingston & East Calder
Mrs Maureen Anderson	Patient Representative

#### In Attendance:

Mr Jim Crombie	Director of Scheduled Care, NHS Lothian
Mr Jim Forrest	Director of West Lothian CHCP
Ms Agnes Ritchie	St John's Hospital Site Chief Nurse, NHS Lothian
Ms Margot McCulloch	Senior Nurse Practitioner, NHS Lothian
Mr Tim Morse	Consultant in Acute Medicine, NHS Lothian
Mr Chris Graham	Secretariat, NHS Lothian
6 members of the public	

#### Apologies:

Mr Chris Stirling	St John's Hospital Site Manager, NHS Lothian
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#### Declaration of Financial and Non-Financial Interest

The Chair reminded members they should declare any financial and non-financial interests they had in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

Councillor Frank Toner declared a non-financial interest as a non-Executive Director of Lothian Health Board and as Chair of the West Lothian Community Health and Care Partnership.

#### Opening Remarks

*Mr Houston welcomed those present to the meeting, including Ms McCulloch and Mr Morse who were attending for the item on Hospital Working at Weekends. The Chair asked the Group to introduce themselves.*

#### 1. Notes of Previous Meeting

- 1.1 The Minutes of the previous meeting held on 18 February 2015 were agreed as an accurate record.

## **2. Matters Arising**

- 2.1 NHS Lothian Strategic Plan - The Chair reported that the circulated plan was the latest version of the full plan which had been to the Board. However there were additional items relating to the Strategic Plan that had been to the Board in February and these would help to outline developments moving forward. The additional items incorporated the consultation results and gave an update on where the component propositions were at. These additional items would be circulated electronically after the meeting.

**CG**

- 2.1.1 The Chair added that he would be happy for to take comments on the Plan and would welcome further discussion around the other papers at the next meeting. Cllr McGinty stated that these papers would be useful and would help for better understanding of where St John's Hospital would sit in the broader context.
- 2.1.2 The Chair pointed out that the full Strategic Plan was a dynamic document and will change; therefore any further revisions that go to the Board would come back to the Group also.

## **3. Hospital Working at Weekends Update**

- 3.1 The Group noted the update report. Ms McCulloch stated that the establishment of Hospital Working at Weekends had been driven to help existing medical workforce by providing weekend support through the use of nurse practitioners and clinical support workers, who were carrying out less specialised tasks to free up medic time. Physiotherapy was also benefiting from this.
- 3.2 Ms McCulloch added that the project had been a huge success and feedback to date had been very positive with senior medics stating that weekends in the hospital 'feel' safer. Junior doctors are also aware of the support on the St John's site. It was noted that Psychiatry were also now on board with hospital at night and weekend rotas.
- 3.3 There was still work to do on the Friday to weekend handover and proper TRAK handover as per nights was needed. Work on a TRAK weekend workbench was ongoing.
- 3.4 Mr Morse stated that it was planned to carry out an exercise to compare mortality data at the weekend before the implementation of Hospital Working at Weekends to now.
- 3.5 Cllr Toner asked how many medical staff had been on the rota before implementation of the service in 2013 and now. Mr Morse confirmed that the number of medical staff had not changed and that the service augmented what was already there. Whilst there had been no increase in the number of doctors, the service was organised by a clinical co-ordinator to avoid a high number of bleeps per shift.
- 3.6 Cllr Toner asked what the average number of medical staff was during the week/weekend on the site. Mr Morse stated he did not have access to this information.
- 3.7 Mr Crombie stated that this information was available and he would provide this information for the whole site to be included as part of the minute of the meeting.

**JC**

- 3.8 Cllr McGinty asked if there had been an impact on the team's staff numbers and if this service could be replicated in other parts of the hospital. Ms McCulloch stated that the team numbers had not changed since the service launched, however the number of calls had been higher than initially anticipated. It would be good to replicate the service in the evenings when there is less cover on site.
- 3.9 Cllr McGinty asked about training/skills people may need as part of the service. Ms McCulloch pointed out that all weekend practitioners are required to complete an honours level clinical decision making course. In terms of extra skill sets Ms McCulloch stated that specialist advice is always sought and that the knowledge base of information is used to get in contact with the right specialist quickly if required.
- 3.10 The positivity of the staff involved with the service was noted. There was discussion on how the clinical and patient impact was evaluated. Mr Morse reported that staff surveys had been undertaken as well as recent patient satisfaction survey and interviews.
- 3.11 The Chair stated that he was amazed that there was not yet any comparative data on the impact of the service and welcomed future updates on this.

*The Chair thanked Ms McCulloch and Mr Morse for their update and they left the meeting.*

#### **4. Acute University Hospitals & Support Services Division Update**

- 4.1 Mr Crombie reported on the plans to amalgamate unscheduled and scheduled care under the banner of NHS Lothian University Hospitals and Support Services Division. It was noted that Mr Crombie had been successfully appointed as the Chief Officer. The Group also noted that there would be some Pan Lothian directorates that would be maintained such as women and children, obstetrics and labs, diagnostic imaging and theatres. It was agreed that Mr Crombie would give a presentation to the next Group meeting offering further details of the changes.

JC

#### **5. Paediatric Services Update**

- 5.1 Mr Crombie reported that following the sign off of the Business Case for the new NHS Lothian Royal Hospital for Sick Children and DCN, ground had now been broken and the capital development work was underway. Entry date for the new development has been advised as February 2017. There will be major development for paediatrics within Lothian and working will begin with the teams across Lothian to establish the best pathways and models of care.
- 5.2 Cllr McGinty asked about the timescales in relation to the review of paediatrics. Mr Crombie advised that the intention was to now pull together the construct of the review following completion of the business case. He would be meeting key individuals over the coming months, including the paediatric teams at St John's and the Sick Kids to look at areas such as timeline; scope and membership. These discussions would frame what the proposed review would look like. Mr Crombie would bring a more formal update to the April Group meeting.

JC

- 5.3 Cllr Toner asked about the intended use for the new development. Mr Crombie stated that there was absolutely clarity within the Business Case of what the building will be capable of delivering. A lot of work has been done around the development of the building. The concept would be for better, more effective use of day surgery and free up clinicians for more specialist tasks. However it was not just the new development to consider but the entire NHS Lothian model of paediatric care, including how to maximise facilities on the St John's Hospital campus and also to consider the community based paediatric services.
- 5.4 Cllr Toner raised the issue of the potential need for new consultant contracts covering the move from the current Sick Kids to the new development and whether this would provide the opportunity to have a more generic Lothian wide consultant job description rather than a site specific one, so that rota cover could be provided across all sites.
- 5.5 Mr Crombie stated that a number of options had previously been considered within job plans and the right plan was still to be found. There was desire to use the opportunity to review the paediatric model in totality, not just the consultants' contracts but also the use of paediatric nurse practitioners; new processes and technologies.
- 5.6 There had been a historic model of employing paediatric doctors on a St. John's Hospital job plan and this had led to an inability to appoint substantive workforce to cover all sessions. This had evolved to the current team having to provide more cover.
- 5.7 Professor Iredale pointed out that there was a contractual issue of where people work depending on what was included in their job plan. Also that by moving paediatric consultants from one site to another would lead to gaps as there is currently not a pool of suitable new consultants to appoint. This problem was not unique to NHS Lothian.
- 5.8 The Chairman added that this may be correct but did not take away Cllr Toner's point. If consultants at the moment are contracted to a location, and this will need to be flexed as part of the move to the new Royal Hospital for Sick Children and DCN, this might allow more flexibility to provide rota cover at St John's Hospital.
- 5.9 Mr Crombie confirmed that the St John's Paediatric Rota for April was now covered and secure at this point. The rota is covered by the consultant team working extra shifts.
- 5.10 Cllr McGinty asked how the public would be able to feed into the Paediatric Review. Mr Crombie stated that the review would comply with the requirements of the Board's Strategic Plan and would encourage as much input as possible from stakeholders and members of the public. There would also be external input from the appropriate colleges. Further detail of the arrangements would be reported by Mr Crombie at the April Group meeting.
- JC**
- 5.11 Cllr McGinty welcomed the opportunity to maximise specialist services at St. John's. He added that there would not be support for reductions in paediatric services. Mr Crombie accepted the service fragility at St John's and stated that NHS Lothian remains committed to the continued provision of specialist services on the campus. Cllr McGinty added that continued provision of services was critical and that St John's should be a place where services come to rather than just coming from.
- 5.12 The Chair assured the Group that in relation to the St. John's site, every option on how to best utilise the site was being considered and that sustainability of a comprehensive service was part of this, the caveat being that this has to be what is best in relation to the priorities of clinical outcomes, patient care and patient pathways.

## **6. Key Quality Indicators**

- 6.1 Ms Ritchie spoke to the paper. It was suggested that the Group take away the report and consider which performance areas they would like future reports to cover and Ms Ritchie could then also include a more detailed briefing of what the figures were reporting.
- 6.2 Ms Ritchie confirmed that St John's continued to perform well against the clinical quality indicators and was achieving the standards against the key quality indicators. It was noted that hand hygiene compliance was 96-99%.
- 6.3 The Chair thanked Ms Ritchie for her update and suggested that Group members take the report away and feed back any views on the data set moving forward to Ms Ritchie by Friday 10<sup>th</sup> April.

**ALL**

- 6.4 Cllr Toner added that there had been a paper to the recent Board Healthcare Governance Committee on how information is presented which could be circulated for reference.

**CG**

## **7. Work Plan**

- 7.1 The Work Plan was noted. Cllr McGinty stated that he would email the list of workplan items to the Group administrator for inclusion, the items to be spread out over upcoming meetings.

**JMc/CG**

## **8. Any Other Competent Business**

- 8.1 There were no other items.

## **9. Date of Next Meeting**

- 9.1 It was noted that the next meeting of the Stakeholder Group would be held on Wednesday, 29 April 2015 in Boardroom 1 at St John's Hospital.

## **10. Remaining Dates in 2015**

27 May	24 June	22 July	26 August
23 September	21 October	25 November	16 December





**COUNCIL EXECUTIVE**

**WEST LOTHIAN COMMUNITY HEALTH AND CARE PARTNERSHIP BOARD**

**REPORT BY DEPUTE CHIEF EXECUTIVE, COMMUNITY HEALTH AND CARE PARTNERSHIP**

**A. PURPOSE OF REPORT**

To update members on the business and activities of West Lothian Community Health and Care Partnership (CHCP) Board.

**B. RECOMMENDATION**

To note the terms of the minutes of meeting of West Lothian CHCP Board on 3 February 2015 in the Appendix to this report.

**C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs
	Being honest, open and accountable
	Working in partnership.
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Council requires the activities of certain outside bodies to be reported to elected members on a regular basis, as part of its Code of Corporate Governance.
<b>III Implications for Scheme of Delegations to Officers</b>	None.
<b>IV Impact on performance and performance Indicators</b>	None.
<b>V Relevance to Single Outcome Agreement</b>	None.
<b>VI Resources - (Financial, Staffing and Property)</b>	None.
<b>VII Consideration at PDSP</b>	None.
<b>VIII Other consultations</b>	None required.

#### **D. TERMS OF REPORT**

On 29 June 2010 the Council Executive decided that the activities of certain outside bodies should be reported within the council to ensure all elected members are aware of the business of those bodies and to help to ensure their activities are more effectively scrutinised.

In accordance with that decision the business of West Lothian CHCP Board was to be reported to this meeting by the production of its minutes. The relevant documents are produced as appendices to this report.

Please note that the appended minute was approved subject to noting that Alison Mitchell had tendered her apologies for the meeting.

#### **E. CONCLUSION**

This report ensures that members are kept apprised of the activities of West Lothian CHCP Board as part of the council's Code of Corporate Governance.

#### **F. BACKGROUND REFERENCES**

West Lothian Council Code of Corporate Governance.

Council Executive, 29 June 2010

Appendices/Attachments: 1

- 1 Minute of meeting of West Lothian CHCP Board held on 3 February 2015

Contact Person: Jim Forrest, Depute Chief Executive, CHCP

01506 281977

Jim.Forrest@westlothian.gov.uk

Date:



MINUTE of MEETING of the WEST LOTHIAN COMMUNITY HEALTH AND CARE PARTNERSHIP BOARD of WEST LOTHIAN COUNCIL held within STRATHBROCK PARTNERSHIP CENTRE, 189 (A) WEST MAIN STREET, BROXBURN EH52 5LH, on 3 FEBRUARY 2015.

Present – Frank Toner (Chair), Brian Houston, Jane Houston, John McGinty, Anne McMillan, Ed Russell-Smith

Apologies – Janet Campbell

Absent – Alison Mitchell

In Attendance – Jim Forrest (CHCP Director), Marion Christie (Head of Health Services), Carol Mitchell (Assistant Director of Finance, NHS Lothian), Dr Elaine Duncan (Clinical Director); Ian Buchanan (PPF)

1. ORDER OF BUSINESS

The Chair ruled in terms of Standing Order 13.2 that Agenda Item 12 (Clinical Governance) would be taken in private at the end of the meeting, since its consideration may involve disclosure of sensitive personal information regarding the general practice concerned.

2. DECLARATIONS OF INTEREST

Councillor Frank Toner declared a non-financial interest as he was the council's appointment to the Board of NHS Lothian as Non-Executive Director.

3. MINUTE

The Board approved the minute of its meeting held on 9<sup>th</sup> December 2014 as a correct record.

4. CHCP RUNNING ACTION NOTE

The Board considered the Running Action Note (which had been circulated).

Decision

To note and agree the Running Action Note.

5. NOTE MINUTE OF MEETING OF THE CHCP SUB-COMMITTEE

The Board noted the minute of the CHCP Sub-Committee held on 9<sup>th</sup> October 2014.

6. MINUTES OF MEETINGS OF THE PRIMARY CARE JOINT MANAGEMENT GROUP

The Board noted the minute of meeting of the Primary Care Joint Management Group held on 13<sup>th</sup> November 2014.

7. HEALTH AND SOCIAL CARE INTEGRATION

The Board considered a report (copies of which had been circulated) by the Community Health and Care Partnership Director presenting the draft West Lothian Integration Scheme that had been produced in line with the Public Bodies (Joint Working) (Scotland) Act 2014 for information and providing an update on activity to progress the consultation exercise on to the draft Scheme.

The report recalled the background to the Public Bodies (Joint Working) Scotland Act 2014 which established the legal framework for integrating health and social care in Scotland. It also provided an overview of the requirements on local authorities and health boards to delegate some of their functions to the Integration Authority.

The Act allowed local authorities and health boards to integrate health and social care services in two ways; Option 1 Corporate Body or Option 2 Lead Agency. The draft Integration Scheme for West Lothian had been developed on the basis of Option 1, which was the preferred approach being taken in almost all areas across the country.

The report explained that the minimum local authorities and health boards had to delegate was broadly adult social care services, adult community health services and a proportion of adult acute services. The Act prescribed what health and social care services must and may be integrated under the legislation. The Act limited the functions in the must do list to services provided to people over the age of 18. The Draft Integration Scheme for West Lothian had been prepared on the basis that only the prescribed functions and services would be delegated. Separate governance arrangements would have to be agreed for those services not delegated.

The Draft Integration Scheme had been approved to go out to consultation by the Council Executive on 22 December 2014 and by Lothian NHS Board on 14 January 2015. The Draft Integration Scheme would now undergo a period of consultation with a prescribed list of consultees as set out in the regulations. The consultation period would run from 15 January to 20 February 2015.

Following the consultation period, the revised Integration Scheme would be brought back to Council Executive and Lothian NHS Board prior to formal submission to the Scottish Government by 31 March 2015 for approval by Scottish Ministers.

Decision

To note the draft Integration Scheme and consultation exercise underway relating to it.

#### 8. INTEGRATION JOINT STRATEGIC PLAN

The Board considered a report (copies of which had been circulated) by the Community Health and Care Partnership Director advising of the requirement on the Integration Joint Board to develop a Strategic Plan and outlining the process to be followed.

The report recalled the requirements of the Public Bodies (Joint Working) (Scotland) Act and explained how the regulations required the Integration Joint Board to establish a strategic planning group, which would be involved throughout the process of developing, consulting on and finalising a Strategic Plan.

The development of the Strategic Plan must be clear about the national and local outcomes to be delivered and must include the formal establishment of locality arrangements for the partnership area. The arrangements would draw together professionals, staff, the third and independent sectors, carers and services users to lead the planning and delivery of services for their local community, based on their experience and knowledge of local needs and feed the detail into the Strategic Plan.

The report emphasised that the Integration Joint Board would not assume responsibility for the planning, resources and operation delivery of all integrated services until such time as the Strategic Plan and locality arrangements had been prepared and were considered fit for purpose by the Health Board and Local Authority. To avoid unnecessary delay, the Strategic Planning Group would be established at the earliest opportunity.

#### Decision

To approve the contents of the report.

#### 9. INTEGRATED CARE FUND

The Board considered a report (copies of which had been circulated) by the Community Health and Care Partnership Director advising of the West Lothian partnership submission to the Scottish Government's Integrated Care Fund.

The report recalled that the Scottish Government had announced that additional resources of £100m would be made available to health and social care partnerships in 2015-16 to support delivery of improved outcomes from health and social care integration, help drive the shift towards prevention and further strengthen the approach to tackling inequalities. The resource would build upon the Older People Challenge Fund which would continue as planned until April 2015. The allocation to West Lothian from the additional resources would be £2.85m; which

represented an increase of more than £1m in the Older People Change Fund.

The new Integrated Care Fund would be accessible to local partnerships to support investment in integrated services for all adults. Funding would help partnerships to support investment in integrated services for all adults and allow them to focus on prevention, early intervention and care and support for people with complex and multiple conditions, particularly in those areas where multi-morbidity was common in adults under 65, as well as in older people. The Integrated Care Fund would include strands that would lead to reduced demand for hospital emergency hospital activity and hospital admissions.

Like the Older People Change Fund, the Scottish Government expected local partnerships comprising NHS, local authorities, third sector and independent sector to develop a local Integrated Care Fund plan and to oversee its delivery. The Integrated Care Fund Plan for West Lothian, which was based on the Reshaping Care for Older People partnership, was provided as an appendix to the report.

The partnership proposed to take a programme management approach to the Integrated Care Fund Plan. Information on the four main work streams that would be used to develop and implement strategic change were listed in the report. The work streams would review current arrangements and performance with a view to advising on the short term investments to be made within the Integrated Care Fund and making recommendations on the most efficient way to ensure critical activity could be sustained following the end of the Integrated Care Fund. The report emphasised that expenditure for many of the activities within the programme budget were supplemented from mainstream revenue budgets.

The Board noted that arrangements for monitoring and scrutiny of progress and performance would be developed in line with the review of integration structures and processed and would be embedded within community and locality planning mechanisms.

#### Decision

To note the terms of the report.

### 10. REVIEW OF LOTHIAN UNSCHEDULED CARE SERVICE

The Board considered a report (copies of which had been circulated) by the Head of Health Services inviting consideration of the Review of Lothian Unscheduled Care Service report published by NHS Lothian in August 2014.

The report had been commissioned to understand how Lothian Unscheduled Care Service contributed to unscheduled care delivery and identify opportunities to develop the role. The report explained that a previous review had focussed on an aspiration for further integration and

how in contrast, the August 2014 review had pragmatically suggested a rebranding and a focus on core business, with core business being defined as providing urgent medical care in the Out of Hours period, i.e. a Primary Care Out of Hours Service.

The report explained how LUCS provided out of hours care for 70% of the week yet there was a lack of recognition and engagement in decisions made about the out of hours period. At the heart of the review was the changing nature of Primary Care in hours, and national and local GP shortages. A range of actions were proposed to differentiate NHS Lothian and strengthen the value of career development of urgent medical care out of hours to address that. New national standards for Primary Care Out of Hours services would provide a valuable benchmark. There was a pressing need to strengthen clinical management structures in LUCS. There was also a requirement to consider whether the service could continue to sustain the number of four day weekends, with consideration to be given to ending the four day weekend and introducing a separate one day holiday.

The report provided the board with an overview of the consultation that had taken place including extensive engagement with staff and internal stakeholders. Three general staff meetings had also been held to discuss the findings of the review. A summary of the points raised by staff were given within the report.

The Board was asked to consider the conclusions arising from the report which were listed in the report and to note that the review would be discussed in the appropriate governance bodies including all CHP Sub Committees and that a final report would be submitted to the East Lothian Sub Committee following that.

#### Decision

1. To approve the terms of the report.
2. To note that the review would be discussed in the appropriate governance bodies including all CHP Sub Committee and that a final report would be submitted to the East Lothian Sub Committee following that.
3. To note that a report would be brought back to the Board at the conclusion of that project.

#### 11. CARE GOVERNANCE

The Board considered a report (copies of which had been circulated) by the Head of Social Policy outlining the grades achieved by Children & Family services during the period January to December 2014.

The Board noted that the Care Inspectorate graded services as part of fulfilling their duty under section 4(1) of the Regulation of Care (Scotland) Act 2001 and published inspection reports to provide information to the public about the quality of care services. A list of the key principles which

the Care Inspectorate must exercise was provided in the report.

The report provided the board with an overview of the current grading scheme for inspections which had been introduced during April 2008 and explained the six-point grading system where scores ranged from 6 (Excellent) to 1 (Unsatisfactory).

A list of the Children & Families Services which had been inspected during the last year was provided in the report. An appendix to the report provided a breakdown of the grades achieved by each service.

The report concluded that the inspection had confirmed how well the council delivered social work services. The grades demonstrated a positive performance and gave reassurance that the needs of service users were being well met by high performing services.

### Decision

To note the good performance, high standards and positive inspection reports for Children & Family services during the period January to December 2014.

## 12. FINANCIAL GOVERNANCE – 2014/15 REVENUE BUDGET – MONITORING REPORT AS AT 31 DECEMBER 2014

The Board considered a report (copies of which had been circulated) by the Head of Social Policy and Head of Health Services providing a joint report on financial performance in respect of West Lothian Community Health and Care Partnership (WLCHCP) based on figures for the period 31 December 2014.

The report advised that the anticipated out-turn for the CHCP council services was forecast to breakeven and the CHCP health services was forecast to have an overspend of £265,000.

### Decisions

1. To note the information in the report regarding financial performance in the CHCP to 31 December 2014.
2. To note that the CHCP Council services outturn for the year was forecast to breakeven.
3. To note that the CHCP health services outturn for the year was expected to have an overspend of £265,000.
4. To note that service managers were taking management action to address areas of financial pressure within their own service area to ensure spend was contained within the budget available.

## 13. STAFF GOVERNANCE

The Board considered a report (copies of which had been circulated) by the Head of Social Policy and the Head of Health Services providing an update on staff issues within the CHCP.

The report explained that the council worked continuously to support employees to achieve and maintain health working lives which was illustrated through the attainment of the gold standard in the Scotland's Health Working Lives Initiative. The council promoted active health initiatives and encouraged effective management and support of employees who were experiencing ill health. The council, through elected members and the senior management team, accepted responsibility as an employer for the health, safety and welfare of its employees whilst at work.

The main activities to be undertaken in 2013/17 to achieve this priority outcome were provided in the report. In order to progress the activities, services were currently pulling together health profiles for staff within their area to ensure a more preventative approach could be taken to promote healthy lifestyles and reduce sickness absence.

The report then moved on to provide the Board with an update on the implementation of the NHS Lothian Smoke Free Policy which would be implemented from 31 March 2015. From that date, there would be no provision for smoking tobacco on any of NHS Lothian's grounds. The policy adhered to the core principles of smoke-free, a commitment to providing a health environment and protecting people from the harmful effects of passive smoking. The policy did not restrict the individuals' choice of whether to continue to smoke or not; it only restricted where and when people smoked.

In line with national guidance, Electronic Nicotine Delivery Systems (ENDS also known as E-cigarettes and vaporisers) that resembled cigarettes, cigars or pipes would be treated as if they were tobacco-containing products and banned from NHS grounds. Balancing the current evidence and seeking to uphold current smoking restrictions, the use of ENDS that did not resemble cigarettes would be permitted in grounds at a reasonable distance from buildings.

The policy would be made available on NHS Lothian HR Online and staff and the public would be informed of changes through an agreed publicity campaign. Staff would be able to discuss what the changes meant locally through road shows and local newsletters.

Finally, the report concluded with information on the Mentally Healthy Workplace Training for managers which was designed to encourage good practice in promoting positive mental health and wellbeing. The programmes were highly interactive and held over one day.

### Decision

To note the information provided in relation to:-

#### 1. Council Staff Health Profiles

2. Smoke Free Lothian proposals

3. Mentally Healthy Workplace

14. DIRECTOR'S REPORT

The Board considered a report by the CHCP Director (copies of which had been circulated) providing an update on key areas of work in which the partnership had been involved since the last meeting of the Board.

Decision

To note the information and work undertaken in relation to:-

- a) The Scottish Government timescales relating to the future model for Community Justice delivery.
- b) New 'Food for Thought' course.
- c) Re-ablement and Crisis Care Inspection.
- d) Award Winning Work.

15. PRIVATE SESSION

In accordance with the Chair's earlier ruling, the remaining item of business was taken in private.

16. CLINICAL GOVERNANCE

The Board considered a report by the Clinical Director providing details of a current situation with a General Practice in West Lothian.

The report advised that in September the West Lothian CHCP was notified of issues regarding the performance of a partner in a West Lothian GP practice. The issues centred on clinical practice and known health issues which could be affecting the doctor's performance. The CHCP had investigated the points raised and found the concerns to be valid. It also found practice systems to be poorly organised hampering the efficient running of the practice. In addition to the performance issues and health concerns, there had been a breakdown in the working relationships with other doctors at the practice and the remaining partner had submitted their resignation in December 2014.

Discussion had been held to discuss the future of the practice, which had circa 5000 patients. Continuity of care and patient safety were key to the discussions. Given the issues, consideration had been given to whether or not the doctor could continue to meet his contractual requirements. Although mechanisms for the withdrawal of a GP's contract existed, they were not straightforward and legal advice had been sought.



The CHCP had undertaken further work to assess the practice and had identified a development plan to support the improvements required. The doctor recognised the development needs of the practice and due to his personal circumstances, he had been considering a number of options for both himself and the future of the practice.

In order to facilitate his return to work, NHS Lothian had offered a package of support which would enable the doctor to return to project work and supported clinical practice when he was fit to do so. NHS Lothian would transfer the practice to section 2c status (management under the CHCP) for a period of time with a view to returning the practice to GMS (General Medical Standards) status after the development work had been carried out. The Lead GP for West Lothian and the West Lothian Practice Manager trainer would provide support to the practice on an in-house consultancy basis. The locum doctors at the practice had indicated that they would be prepared to stay on at the practice on salaried contracts with the CHCP which would ensure continuity of care and stability, allowing practice development work to progress.

#### Decision

1. To note the terms of the report.
2. To be assured that West Lothian CHCP, Primary Care Contracts Organisation, Central Legal Office and HR were working in collaboration to achieve the best outcome in the complex situation.





West Lothian  
Council

## **COUNCIL EXECUTIVE**

### **PROCUREMENT – MONTH 12 OUT-TURN REPORT 2014/15**

#### **REPORT BY HEAD OF FINANCE AND ESTATES**

##### **A. PURPOSE OF REPORT**

To provide Council Executive with an out-turn report on procurement activities.

##### **B. RECOMMENDATION**

It is recommended that the Council Executive notes:

1. The contracts let from January to March 2015 and the overall procurement savings achieved in 2014/15.
2. The community benefits gained as part of the procurements from January to March 2015

##### **C. SUMMARY OF IMPLICATIONS**

<b>I Council Values</b>	Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities; making best use of our resources; working in partnership
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	All contracts must be advertised in accordance with Standing Orders of West Lothian Council and the Public Contracts (Scotland) Regulations 2012.
<b>III Implications for Scheme of Delegations to Officers</b>	None
<b>IV Impact on performance and performance Indicators</b>	Effective procurement can offer significant savings opportunities.
<b>V Relevance to Single Outcome Agreement</b>	None
<b>VI Resources - (Financial, Staffing and Property)</b>	Potential savings from collaborative procurement opportunities are investigated as part of the contract strategy creation process.
<b>VII Consideration at PDSP</b>	None
<b>VIII Other consultations</b>	The Corporate Finance Manager and appropriate Service Managers are consulted during contract strategy creation.

## **D. TERMS OF REPORT**

### **Introduction**

As part of the agreed governance arrangements, quarterly monitoring reports on procurement activities are provided to the Council Executive.

A five year Procurement Strategy was approved at Council Executive in June 2013 and five year procurement delivery plans are in place covering planned procurement activity over 2013/14 to 2017/18. Annual delivery plans for 2014/15 were agreed with all service areas and were reported to Partnership and Resource Policy Development and Scrutiny Panel on 12 March 2014.

### **Activity in Quarter four of 2014/15**

Work was carried out in provision of new contracts to assist in increasing the percentage of contracted spend, resulting in 66 contracts being let or adopted in the final quarter of 2014/15. A list of the contracts is provided in Appendix 1.

Further work to identify and input contracts not included in the Corporate Contract Management System (CCMS) resulted in 90% of spend being captured, making the target of 90% for the year.

### **Savings Targets**

As a result of the contract management approach, closer working relationships are being developed with service areas to identify and deliver savings through better contracting practices. Procurement savings in 2014/15 matched the annual target of £935,000.

### **Progress Against Procurement Review and Strategy**

A Procurement Improvement Plan is in place to deliver the six outcomes of the five year Procurement Strategy which was agreed in June 2013. There are 15 activities within the plan of which ten actions are complete and five actions are in progress.

The procurement capability assessment score was 62% in 2014/15, equal to the Scottish average. The assessment regime has been revised by Scottish Government with a new scoring methodology being designed. The final question set and scoring methodology is due to be released to public bodies by June 2015. The first round of this new assessment is due to commence in January 2016.

### **Collaborative Arrangements**

As well as the collaborative contract opportunities at national, regional, and local level, there are a number of other opportunities for collaboration. The work by Corporate Procurement Unit in developing a medium term plan for each procurement category will allow discussions to take place with other local authorities to develop the possibility of collaboration in the future.

### **Improving Procurement Capabilities and Capacity**

Training on aspects of procurement including Standing Orders, spend thresholds, and the use of electronic procurement systems such as Quick Quote, the Scottish Government Tool for low value procurement, continues to be delivered for service areas that carry out procurement. More than 250 employees now use the Quick Quote system for carrying out the procurement of low value items.

## **Community Benefits**

The Corporate Procurement Unit continues to successfully incorporate Community Benefits Clauses into contracts in line with the Community Benefits in Procurement Procedure. A list of Community Benefits incorporated in contracts let between January and March 2015 is attached in Appendix 2. Procurement will continue to promote community benefits

## **Meet The Buyer Event**

In conjunction with Economic Development, a Meet The Buyer event is being organised to promote procurement to the local business and voluntary sector organisations. This event will allow the suppliers who attend an overview of the procurement plans for 2015/16 which details all the procurement exercises which is planned. Procurement will also deliver training sessions on our electronic tender system and electronic quick quote systems. A prior information notice has been published to ensure transparency and allow these organisations to plan for the event. An e-mail invitation will be sent to all voluntary sector organisations and local businesses via Economic Development and by the Federation of Small Business.

## **E. CONCLUSION**

It is the aim of the Corporate Procurement Unit to lead significant improvements in procurement performance over the coming years through the implementation plans that are in place. The quarterly report will provide regular updates on this progress and in future will focus on presenting new and updated information.

## **F. BACKGROUND REFERENCES**

A copy of the current Corporate Contract Management System (CCMS) output report is available from the Corporate Procurement Unit.

Appendices/Attachments: Two

Appendix 1 – List of contracts let since January to March 2015

Appendix 2 – List of Community Benefits planned & achieved since January to March 2015

Contact Person: Christine Leese-Young, Corporate Procurement Manager

Email: [Christine.leeseyoung@westlothian.gov.uk](mailto:Christine.leeseyoung@westlothian.gov.uk)

Tel: 01506 283259

**Donald Forrest**

**Head of Finance and Estates**

26 May 2015

## **Appendix 1 – List of contracts let Januray to March 2015 for use by West Lothian Council**

<b>CPU Category Area</b>	<b>Contract Reference</b>	<b>Contract Name</b>	<b>Contract Start Date</b>
Construction and Building Svs	CC4728	Electrical Materials mini competition	01/01/2015
Construction and Building Svs	CC4705	Electrical materials mini competition	01/01/2015
Education and Social Policy	CC4748	Telecare and Telehealth Technologies	01/01/2015
Construction and Building Svs	CC4580	Clerk of Works Mini Competition	05/01/2015
Operational Services	CC3287	Lighting Improvements Nelson Avenue, Howden (LED)	05/01/2015
Operational Services	CC4726	SXL Street Lighting Materials Lot 7 mini competition	05/01/2015
Operational Services	CC4724	SXL Street Lighting Lot 6 mini competition	05/01/2015
Construction and Building Svs	CC4440	Environmental Improvements Brucefield House, Turner Street & Moore Various Locations	05/01/2015
Construction and Building Svs	CC4458	Environmental Improvements Ladywell	05/01/2015
Construction and Building Svs	CC3972	Environmental Improvements North Reeve Place Whitburn	05/01/2015
Operational Services	CC4727	MiniCompetition / Broxburn Academy	08/01/2015
Operational Services	CC4735	Dedridge Primary School 5928	08/01/2015
Operational Services	CC4799	H623: Home to school transport	16/01/2015
Construction and Building Svs	CC4787	Architectural services - Wet Floor Showers	19/01/2015
Operational Services	CC4678	Starlaw West To Boghall Roundabout Cyclepath	22/01/2015
Operational Services	CC4807	Carriageway Patching on the C19 south of Bridgend	22/01/2015
Construction and Building Svs	CC4469	Managing Agent for delivery of HEEPS:ABS Programmes in West Lothian	22/01/2015
Construction and Building Svs	CC4783	Structural Engineering Services at Various 2015/16 Planned Improvement Projects	26/01/2015
Construction and Building Svs	CC4836	Polkemmet PS Lighting and Ceiling replacements	29/01/2015
Construction and Building Svs	CC4777	Extension to Pumpherston and Uphall CPS	30/01/2015
Construction and Building Svs	CC4778	Extension to Pumpherston and Uphall CPS	30/01/2015
Construction and Building Svs	CC4776	Extension to Pumpherston and Uphall CPS	30/01/2015
Construction and Building Svs	CC4780	Extension to Pumpherston and Uphall CPS	30/01/2015
Operational Services	CC4860	Home to school transport 5929	02/02/2015

<b>CPU Category Area</b>	<b>Contract Reference</b>	<b>Contract Name</b>	<b>Contract Start Date</b>
Operational Services	CC4865	SXL Signage Materials Lot 7 Posts and Accessories mini comp NON CORE	05/02/2015
Operational Services	CC5102	Hire of Planer	05/02/2015
Construction and Building Svs	CC4502	Supply of Door Access Equipment	05/02/2015
Operational Services	CC4764	Supply and delivery of 2 Waste storage containers for reusable electrical items	09/02/2015
Operational Services	CC5150	C31 Hartwood Road West Calder	11/02/2015
Operational Services	CC5112	H625: Home to school transport from Ladywell to Balbardie Primary for a homeless pupil	12/02/2015
Operational Services	CC5114	B9080 Edinburgh Rd Linlithgow	12/02/2015
Operational Services	CC4859	SXL Signage Materials Lot 5 Street Name Plates	13/02/2015
Operational Services	CC5132	DRT TB 22	13/02/2015
Corporate	CC4594	Unix Servers with Support and Maintenance	16/02/2015
Corporate	CC4742	Provision of Firewalls Education 3	16/02/2015
Construction and Building Svs	CC4525	Framework for New Build Council Housing Programme Lot 3 Mini Comp 2	16/02/2015
Construction and Building Svs	CC5108	Structural Engineering Services in connection with Conversion of Former Beecraigs	17/02/2015
Operational Services	CC5138	Home to school transport from Stoneyburn	17/02/2015
Operational Services	CC5144	medical032 Home to school transport from Winchburgh to Armadale Academy	17/02/2015
Operational Services	CC5145	Broxburn to Murrayfield Additional Supports Needs Pupils 5932	17/02/2015
Construction and Building Svs	CC5107	M&E Services at Various 2015/16 Planned Improvement Projects	18/02/2015
Construction and Building Svs	CC5155	Structural/Civil (Lot 11) Consultancy services Toronto PS	24/02/2015
Construction and Building Svs	CC5154	M&E (Lot 10) Consultancy services Toronto PS	24/02/2015
Construction and Building Svs	CC4608	Toilets refurbishments	24/02/2015
Operational Services	CC4385	Supply and Distribution of Janitorial Products	01/03/2015
Construction and Building Svs	CC3216	Office and Domestic Removal Services	01/03/2015
Corporate	CC5254	Lot 1 First Aid Kits and Consumables	09/03/2015
Corporate	CC5255	Lot 2 Personal Care Supplies	09/03/2015
Corporate	CC5194	Provision of First Aid and Personal Care Supplies	09/03/2015
Corporate	CC5256	Lot 3 AEDs/Defibrillators and accessories	09/03/2015

<b><u>CPU Category Area</u></b>	<b><u>Contract Reference</u></b>	<b><u>Contract Name</u></b>	<b><u>Contract Start Date</u></b>
Operational Services	CC5293	West Lothian College School Link for a two day period	16/03/2015
Operational Services	CC5308	H631 Provide Homeless transport	16/03/2015
Operational Services	CC5294	H630 Home to school transport for homeless pupils	18/03/2015
Construction and Building Svs	CC4015	MUGA Installation Framework	21/03/2015
Construction and Building Svs	CC5217	CDMC Consultancy Services Games Hall Extension to Peel Carmondean and Broxburn PS	23/03/2015
Construction and Building Svs	CC5216	Architectural CS Games Hall Extension to Peel Carmondean and Broxburn PS	23/03/2015
Construction and Building Svs	CC5220	Structural/Civil CS Games Hall Extension to Peel Carmondean and Broxburn PS	23/03/2015
Construction and Building Svs	CC5218	Mechanical and Electrical CS Games Hall Extension to Peel Carmondean and Broxburn PS	23/03/2015
Construction and Building Svs	CC5219	Quantity Surveying Games Hall Extension to Peel Carmondean and Broxburn PS	23/03/2015
Operational Services	CC5356	SL-06 Pupils from St Kentigern's to attend West Lothian College School Link	23/03/2015
Corporate	CC5287	Provision of Enterprise version of Antivirus Software	25/03/2015
Corporate	CC4411	Public Access Wifi for WLC Community Buildings	31/03/2015
Education and Social Policy	CC4455	Psychological Therapies Service	01/04/2015
Education and Social Policy	CC4480	Analytical Services	01/04/2015



**Appendix 2 – List of Community Benefits incorporated in contracts let between January and March 2015.**

<b>Contract Reference</b>	<b>Category Area</b>	<b>Contract Start Date</b>	<b>Contract Name</b>	<b>Supplier</b>	<b>Community Benefits</b>
CC4705	Housing, Construction and Building Services	1 Jan 2015	Electrical Materials Mini Competition	Edmundson Electrical	<ul style="list-style-type: none"> <li>• Employ at least one new Modern Apprentice.</li> <li>• Provide at least one work experience placement.</li> <li>• Free of charge training for council engineers on new and innovative energy saving products and the correct method of installation.</li> </ul>
CC4728	Housing, Construction and Building Services	1 Jan 2015	Electrical Materials Mini Competition	Ross Electrical	<ul style="list-style-type: none"> <li>• Employ at least one modern apprentice from West Lothian on the delivery of the contract.</li> <li>• Provide at least one work experience placement.</li> <li>• Free of charge property lighting designs.</li> <li>• Free of charge property energy surveys</li> <li>• Energy saving and installation training provided to council electrical engineers.</li> </ul>
CC4469	Housing, Construction and Building Services	22 Jan 2015	Managing Agent for delivery of HEEPS: ABS Programmes in West Lothian	Changeworks	<ul style="list-style-type: none"> <li>• Commitment to Barnardo's Works East employability programme that supports unemployed 16-24 year old young people into sustainable employment.</li> <li>• Running of volunteer projects to help householders make their homes warmer and more energy efficient and also to reduce and recycle waste.</li> <li>• Promote environmental awareness to suppliers, contractors and within the local community.</li> <li>• Changeworks facilitate many other social and economic community benefits through their appointed contractors. These are currently being finalised and will also be offered as part of this contract from May 2015 onwards.</li> </ul>

Contract Reference	Category Area	Contract Start Date	Contract Name	Supplier	Community Benefits
CC4525	Housing, Construction and Building Services	16 Feb 15	New Build Council Housing: Lot 3 - Mini Competition 2	McTaggart Construction	<p>Minimum Community Benefits targets:</p> <ul style="list-style-type: none"> <li>• 12 - Work Placement (16 plus years)</li> <li>• 4 - Work Placement (14-16 years)</li> <li>• 6 - Construction Curriculum Support</li> <li>• 1 - Graduates</li> <li>• 7 - Apprentice Starts</li> <li>• 6 - Existing apprentices</li> <li>• 4 - Apprentice Completions</li> <li>• 6 - Jobs created on construction projects</li> <li>• 8 - S/NVQ Starts for Subcontractors</li> <li>• 7 - S/NVQ Completions for Subcontractors</li> <li>• 5 - Training Plans for Subcontractors</li> <li>• 5 - Supervisor Training for Subcontractors</li> <li>• 3 - Leadership and Management Training for Subcontractors</li> <li>• 5 - Advanced Health and Safety Training for Subcontractors</li> </ul>