



Council Executive

West Lothian Civic Centre
Howden South Road
LIVINGSTON
EH54 6FF

19 October 2016

A meeting of the **Council Executive** of West Lothian Council will be held within the **Council Chambers, West Lothian Civic Centre** on **Tuesday 25 October 2016** at **11:00am**.

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 11 October 2016 (herewith).

Public Items for Decision

5. APSE Annual Seminar 2016 - Refuge, Streetscene, Transport, Grounds and Parks 9-10 November 2016 - Report by Head of Operational Services (herewith)
6. CIH Excellence Awards 2016 Attendance - Report by Head of Housing, Customer and Building Services (herewith)
7. Proposed Transfer of Sports, Leisure and Cultural Facilities and Functions to the Modernised West Lothian Leisure - Report by Depute Chief Executive (herewith)

8. Consultation Response to Social Security in Scotland - Report by Head of Finance and Property Services (herewith)
9. Independent Review of the Council's Planning Service - Report by Head of Planning, Economic Development and Regeneration (herewith)
10. Winchburgh Community Council - Prescribed Number - Report by Head of Corporate Services (herewith)

Public Items for Information

11. Community Council Grants - Report by Head of Corporate Services (herewith)
12. Councillors' Local Disbursement Fund - Report by Head of Corporate Services (herewith)
13. Early Retiral and Voluntary Severance - 1April to 30 September - Report by Head of Corporate Services (herewith)
14. PRIVATE SESSION - The Clerk considers that the following business is likely to be taken in private (exempt under the relevant paragraphs of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973).

Private Items for Decision

15. The Supply and Delivery of a Document Records and Management System - Joint report by Head of Corporate Services and Head of Finance and Property Services

NOTE **For further information please contact Val Johnston, Tel No.01506 281604 or email 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 11 OCTOBER 2016.

Present – Councillors John McGinty (Chair), Cathy Muldoon, Frank Anderson, Tom Conn, David Dodds, Lawrence Fitzpatrick, Peter Johnston, Dave King, Danny Logue, Anne McMillan and George Paul

Apologies – Councillor Jim Dixon

1. DECLARATIONS OF INTEREST

- a) Agenda Item 15 (BLES Training) – Councillor George Paul declared a non-financial interest in that he was a member of the BLES Board therefore would not participate in the item of business;
- b) Agenda Item 10 (Public Health (Scotland) Act 2008 – Joint Health Protection Plan) – Councillor Peter Johnston declared a non-financial interest arising from his position as a non-executive director of NHS Lothian for which a specific exclusion applied; and
- c) Agenda Item 10 (Public Health (Scotland) Act 2008 – Joint Health Protection Plan) – Councillor Danny Logue declared a non-financial interest in that he was an NHS employee.

2. MINUTE

The Council Executive approved the Minute of its meeting held on 20 September 2016. The Minute was thereafter signed by the Chair.

3. RIVERLIFE: ALMOND & AVON PROGRAMME

The Council Executive considered a report (copies of which had been circulated) by the Head of Operational Services advising of progress of three West Lothian projects which were now included in the Riverlife: Almond & Avon Programme.

The Head of Operational Services explained that the River Forth Fisheries Trust had been awarded £1.65m from the Heritage Lottery Fund to help deliver a number of projects in the central belt of Scotland within the catchments of the Rivers Almond and Avon. The programme had been developed along with communities over the past year and would now be delivered over a four-year period from 2016-2020. The programme would focus on improving urban rivers whilst engaging communities using these rivers as a resource for recreation and learning whilst promoting sustainable stewardship.

The Riverlife: Almond & Avon Programme was made up of a number of projects which included :-

- Almond Barriers Project;
- Killandean Burn/Harwood Water Blue/Green Network Project;
- Bathgate Water Restoration Project;
- Upper Avon Restoration Project;
- Almond/Avon Invasive Non-Native Species Project; and
- Riverfly Monitoring Project

The report then provided a narrative on each of the projects noting that training and enabling community stewardship would be promoted with a number of learning opportunities for communities, primary and secondary schools delivered by the River Forth Fisheries Trust. Additionally parts of the work would be delivered via volunteering opportunities to allow communities to get involved and to be part of the decision-making process with some of the restoration projects. It was anticipated that over 500,000 in-kind hours would be provided through volunteering however five new jobs would be created within the Trust to deliver the project.

The Head of Operational Services continued to explain that in order to satisfy the requirements of the Heritage Lottery Fund, the River Forth Fisheries Trust had drafted a high-level Memorandum of Understanding to formalise a collaboration of West Lothian Council, The City of Edinburgh Council and the Trust to define respective roles in the project. And in order to deliver three of the key West Lothian-based projects under the programme and for the council to transfer some of the risk it would incur in accepting the funding from SEPA and the Scottish Government it was proposed that the council would enter into further agreements specifically for the management of each project.

In conclusion the ambitious programme being led by the Trust in partnership with the council and others was ground-breaking. If delivered successfully over the next four years it would render a significant improvement in the environmental quality of some of the most degraded watercourses in the Forth catchment.

It was recommended that Council Executive :-

1. Notes the progress being made with those projects forming part of the Riverlife: Almond & Avon Programme and located within West Lothian;
2. Authorises the Head of Operational Services to negotiate and enter into agreement(s) with The City of Edinburgh Council and River Forth Fisheries Trust in respect of the programme; and
3. Approves the proposal for a natural rock ramp at the Mid Calder weir instead of the Larinier fish pass which had previously been the preferred choice of the Council Executive.

Decision

To approve the terms of the report

4. 2016/17 WINTER SERVICE POLICY

The Council Executive considered a report (copies of which had been circulated) by the Head of Operational Services seeking approval for the Winter Service Policy 2016/17.

The report advised that in Scotland, councils statutory responsibilities regarding the Winter Service were defined in the Roads (Scotland) Act 1982, Section 34 which required that a road authority take such steps as it considered reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles over public roads.

The council current Winter Policy summarised in Appendix A to the report was well established and based on the Codes of Practice for Highway Maintenance 2005. Following the severe winters of 2009/10 and 2010/11 a full review of the Winter Service Policy was conducted and the Winter Service Policy was updated and approved by council in November 2011.

Following the 2015/16 winter, operational processes were reviewed and the following improvements were being implemented.

- Additional resources were being utilised from NET's, Land and Countryside Services to complement operatives providing a more robust and flexible rota.
- Domain based forecasting with separate forecasts being obtained for the north and south of the county. This would allow treatment plans to be more specific with resources being deployed appropriately providing an improved service to areas in most need.
- Route maps were being reviewed and updated to reflect any newly adopted streets. These route maps and further information on how the council prioritised gritting would be available on the council's website along with grit bin policy and self-help advice.

The report recommended that the Council Executive approve the Winter Service Policy 2016/17 as detailed in Appendix A.

Decision

To approve the terms of the report.

5. WEST LOTHIAN COUNCIL'S OPEN MARKET ACQUISITION SCHEME

The Council Executive considered a report (copies of which had been circulated) by the Head of Housing, Customer and Building Services advising of the outcome of a review of the council's policy on buying back

former council houses and to seek approval for changes to the policy.

The report advised that in 1997 the council agreed a policy of buying back former council houses. When the policy was first introduced, the purchase price was the original selling price and included reasonable legal costs of the transaction.

In June 2009, the policy was changed and it was agreed that the council would carry out a formal valuation of each property being considered for buy back. It was agreed that the offer would be the lesser of the actual selling price or 80% of the current market value.

When the policy was last reviewed the housing market was in decline due to the economic recession. With the improved market conditions, the council's offer to purchase at the lesser of the actual selling price or 80% was not attractive to owners and there had been no recent take up. Only three properties had been bought back using the policy since 2009.

The Head of Housing, Customer and Building Services explained that the demand for social rented housing remained high despite the large number of new council houses built in recent years. The Housing Need and Demand Assessment 2 (HNDA) for Edinburgh South East Scotland identified the need for 300 affordable housing units for West Lothian to be supplied each year between 2012 and 2032.

The council's new build programme and RSL programme would address part of the affordable housing shortage but would not meet the demand in full. Therefore a revised buy back policy would help to close the gap between demand and supply.

The report went on to provide examples of Buy Back Policies in other local authority areas.

In conclusion the report advised that the current buy back scheme had focused on buying back properties from owners in financial difficulty. It resulted in a small number of former local authority houses being acquired by the council. A review of the policy had been undertaken and changes were proposed to make the scheme more attractive to home owners and would result in more open market houses and flats being acquired.

Grant funding was available to support a programme of open market acquisitions which would make the revised scheme financially attractive to the council.

The revised scheme was likely to provide benefit to the council in terms of creating additional stock, easing the pressure on temporary accommodation for homeless applications, helping the council to become the majority owner within blocks of flats and reduce the number of empty homes.

The report recommended that the Council Executive:-

1. Note that since the council's buy back policy was last reviewed in 2009, three former council houses had been bought back under the

terms of the policy;

2. Approve the proposed changes to the policy which were intended to increase the number of houses bought back by the council;
3. Agree that the name of the policy should be changed to the “Open Market Acquisition Scheme”;
4. Note that grant of at least £450,000 was available during 2016/17 to support the Open Market Acquisition Scheme in West Lothian during 2016/17; and
5. Note that between 15 and 20 former local authority houses and flats would be purchased by March 2017 by accelerating expenditure of the remaining £1.3 million housing capital budget for homelessness and that the properties purchased would be used as temporary tenancies.

Motion

To approve the terms of the report.

- Moved by the Chair and seconded by Councillor Paul

Amendment

To approve recommendations 1, 3, 4 and 5 of the report and amend recommendation 2 to delete bullet points 1, 5 and 7 of the essential criteria.

- Moved by Councillor Anderson and seconded by Councillor Johnston

Decision

Following a vote the motion was successful by 9 votes to 2 and it was agreed accordingly.

6. RENT CONSULTATION STRATEGY

The Council Executive considered a report (copies of which had been circulated) by the Head of Housing, Customer and Building Services advising of the proposed rent consultation process by Housing, Construction and Building Services for year 2017/18.

The report advised that the council's Tenant Participation Strategy and best practice placed an obligation on the council as a local authority landlord to consult with tenants on rent setting. The Tenant Participation Strategy also provided that the minimum period of consultation was two months.

The Head of Housing, Customer and Building Services explained that taking into account these requirements, tenant consultation activities

would be scheduled between October 2016 and January 2017 which would include presentations to Housing Networks, The Financial Scrutiny meeting of the Tenants Panel and social media.

The report recommended that the Council Executive agree that officers commence a consultation with tenants on the implementation of the approved rent strategy.

Decision

To approve the terms of the report.

7. UPDATE ON EUROPEAN STRUCTURAL AND INVESTMENT FUNDS

The Council Executive considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration providing an update on the development of European Regional Development Fund (ERDF) and European Social Fund (ESF) programme activity in West Lothian.

The report recalled that previous reports on the subject had highlighted the slow progress in the development of the Structural and Investment Funds programme in Scotland. At the February 2016 meeting of the Development and Transport Policy Development and Scrutiny Panel it was noted that the Scottish Government had revised the timescales for approving Operation Applications for the 2014-2020 European Structural and Investment Fund. This decision followed unforeseen delays in the completion of the Management and Control System (MCS).

As a result a letter was sent to the Cabinet Secretary for Infrastructure, Investment and Cities (Keith Brown) from Councillor Muldoon, seeking a resolution on this matter and confirmation that project approval would be retrospective to allow activity and grant income to be drawn down from October 2015. A response was received, a copy of which was attached to the report at Appendix 1, confirming that retrospection was possible and indicating the intention to confirm approval of operational applications by 31 March 2016.

Since this time the EU Referendum had taken place and with regard to Structural Funds, Scottish Government officials had indicated that the Scottish Government had legally committed European funds to projects up to the end of 2018 and in some cases 2019.

The report then provided an overview of the projects being funded through the EDRF and ESF and included Business Competitiveness which it was hoped would help 482 businesses in West Lothian with intensive growth assistance, consultancy and access to specialist support and Employability Pipeline which would focus on tackling youth unemployment and targeting support towards inactive individuals with multiple barriers to employment.

Approval of the Operational Proposals was confirmed on 31 March 2016 and formal grant offers have been received.

The report continued that an additional social inclusion intervention had now been developed by West Lothian and had been submitted to the Scottish Government for consideration. This activity would be to provide additional support to address mental health issues experienced by the unemployed and those who were economically inactive, such as lone parents.

The report concluded that the Scottish Government had now confirmed approval for operational proposals under the two main ERDF and ESF Strategic Interventions applicable to council-led business development employability programmes and now required Council Executive approval.

It was recommended that the Council Executive :-

1. Notes that approval had been obtained for ERDF and ESF Operational proposals under Business Competiveness and Employability Pipeline in West Lothian; and
2. Formally accepts the grant offers for the EDRF Business Competiveness and ESF Employability Pipeline Operations.

Decision

To approve the terms of the report

8. PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008 - JOINT HEALTH PROTECTION PLAN 2016-18

The Council Executive considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration advising that the Joint Health Protection Plan for 2016-18, prepared by NHS Lothian, in collaboration with The City of Edinburgh, East Lothian, Midlothian and West Lothian Council officers had been update as required by the Public Heath, etc (Scotland) Act 2008. A copy of the updated plan was attached to the report.

The Head of Planning, Economic Development and Regeneration advised that the original plan for the NHS Lothian area, prepared in 2010 and updated in 2012 and 2014 had been further reviewed and updated by NHS Lothian's Consultant in Public Health Medicine in collaboration with Environmental Health Managers from The City of Edinburgh, East Lothian, Midlothian and West Lothian Councils.

The periodic review was to ensure that local authorities and health boards were aware of the contribution that joint working could deliver and to make sure that each was aware of the other's priorities.

The functions undertaken by Environmental Health complemented those undertaken by NHS, details of which were summarised in the report. An extended list of priorities and activities were detailed in the plan at Section 5.1.2. The refreshed plan also highlighted the contribution of physical surroundings to the health of those living in our most deprived areas.

The guidance accompanying the act suggested that the Joint Health Protection Plan be formally submitted to the NHS Board and relevant local authorities for sign-off.

It was recommended that the Council Executive considers and approves the Joint Health Protection Plan 2016-18.

Decision

To approve the terms of the report

9. ST MARY'S PRIMARY SCHOOL, BATHGATE - HALL AND OTHER ACCOMMODATION IMPROVEMENTS

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services to consider proposals to improve the school hall, create new changing rooms, improve accessibility, create a new entrance and reception area, together with planned improvements to mechanical and electrical systems at St Marys' School, Bathgate.

The report recalled that on 21 June 2016 Council Executive approved the General Services Capital Programme which included £800,000 for the improvement of sports facilities at St Mary's Primary School, Bathgate. The school had a single hall which was used both for PE and dining and whilst it was compliant in terms of statutory requirements the general layout and functionality of the accommodation could be improved.

The objective of the project was therefore to improve the suitability of the hall for physical education with investment programmed to commence during financial year 2016-17.

Officers had actively engaged and consulted school staff and the Parent Council to develop proposals that would fulfil the original aim of the project to improve the school hall to enable better utilisation for physical education (PE) activities. As a consequence of the active engagement, proposals had now been developed that would not only improve the hall utilisation for PE but dining accessibility would also improve along with the overall condition of the school.

The proposed works were shown on the illustration attached to the report at Appendix 1.

The next stages of the delivery of the programme were summarised in the report and it was noted that officers would continue to actively engage with the school and the Parent Council throughout the implementation of the works.

It was recommended that Council Executive instructs officers to progress the proposed project at St Mary's Primary School, Bathgate as outlined in the report.

Decision

To approve the terms of the report

10. INDUSTRIAL OPEN STORAGE LAND 1.1HA (2.9 ACRES) WHITRIGG, EAST WHITBURN - PROPOSED SALE TO TRUSTEES OF CPP-MCCORMICK TRUST

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services seeking approval for the sale of 1.18ha (2.9 acres) of industrial open storage land at Whitrigg, East Whitburn.

The land at Whitrigg, East Whitburn was on the site of the former Whitrigg Colliery. The land was allocated in the West Lothian Local Plan for uses falling within planning use class 6 (storage or distribution) and was suitable for open storage.

Solicitors on behalf of the Trustees of CPP-McCormick Trust, the pension scheme of the owners of Redhouse Fencing, had offered £125,000 for the heritable interest in the land. It was proposed that Redhouse Fencing (Scotland) Limited, currently located at pond Industrial Park, Whitburn Road, Bathgate would occupy the land.

The main terms and conditions of the sale were summarised in the report.

It was recommended that the Council Executive :-

1. Approves the sale of 1.18ha of land at East Whitburn to the Trustees of CPP-McCormick Trust; and
2. Authorises the Head of Finance and Property Services to carry out further negotiations with the purchaser in respect of the transaction, including any required alteration to the sale price, on the basis that any revised terms and conditions still represented the highest capital receipt available to the council.

Decision

To approve the terms of the report

11. 260m² SOUTH OF MAIN STREET, EAST CALDER - PROPOSED SALE TO PERSIMMON HOMES (EAST SCOTLAND) LIMITED

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services seeking approval for the transfer of land extending to 260m² or thereby south of Main Street, East Calder from Housing Revenue Account (HRA) to General Services account at nil cost to assist in the delivery of a new vehicular access at St Paul's RC Primary School, East Calder and to obtain approval for the sale of 260m² or thereby south of Main Street,

East Calder to Permission Homes (East Scotland) Limited in accordance with the details set out in the report.

The Head of Finance and Property Services explained that the Core Development Areas at Almondell and Raw Holdings in East Calder were served by St Paul's RC Primary School and as new housebuilding continued in these key development areas demand on existing facilities would continue to grow. Therefore based on current housebuilding projections the Head of Education (Development) anticipated that an extension to St Paul's would be required by 2022.

The existing vehicular access into St Paul's had long been considered to be problematic and there was no current solution to the issue due to the physical constraints in the surrounding area and the existing access would not be compliant in terms of servicing the extended school. Accordingly any future extension to St Paul's would require both additional land upon which to build the extension and also an entirely new means of vehicular access to service the extended school.

Persimmon Homes (East Scotland) Limited proposed to develop a parcel of land in East Calder and as part of the development Persimmon wished to acquire from the council a section of disused railway embankment extending to 260m² or thereby south of Main Street. This land was currently held on the council's Housing Revenue Account (HRA). Persimmon wished to acquire the land in order to construct a new section of road which would provide access to the wider development including St Paul's Primary School, land for affordable housing as well as those areas for private housing.

Persimmon's wish to acquire the land presented an opportunity for the council to address the impending need to extend St Paul's and to also resolve the school's ongoing access problem.

The matter had been discussed in detail between the parties and the main Heads of Term had been agreed in principle and these were summarised in the report.

The transfer of a 260m² area south of Main Street, East Calder to Persimmon Homes (East Calder) Limited for £1 would result in the council receiving a package of strategically key infrastructure benefits that would assist in the delivery of corporate objectives. It was therefore recommended that the Council Executive :-

1. Approve the transfer of land extending to 260m² or thereby south of Main Street, East Calder from HRA to General Services account at nil cost to assist in the delivery of a new vehicular access at St Paul's Primary School, East Calder;
2. Approve the sale of that 260m² or thereby south of Main Street, East Calder to Persimmon Homes (East Scotland) Limited for £1 on the following terms :-
 - a) Ownership of an area of land extending to 1.02 Ha. (2.53

acres) or thereby as identified on the attached plan would transfer from Persimmon Homes (East Scotland) Limited to the council for £1. This land would be used by the council to facilitate a future extension to St. Paul's RC Primary School, East Calder.

- b) Persimmon Homes (East Scotland) would, at no cost to the council, construct a new access road (built to adoptable standard) along the route indicatively shown on the attached plan. That road would include a bus turning circle, bus lay-by, car parking area and a new junction/entrance to serve St. Paul's RC Primary School, the details of which would be subject to the terms of Persimmon's finalised Roads Construction Consent. That new road would service Persimmon's own residential development and it would also serve as the designated means of vehicular access to and from St. Paul's RC Primary School.
 - c) The new access road (including the bus turning circle, lay-by, car parking area and entrance/junction onto St. Paul's) would be completed to the council's satisfaction prior to detailed planning permission for the proposed school extension being secured or within one year of full planning permission being issued for Persimmon's proposed development, whichever date is the later.
 - d) Ownership of the council's 260m² area would only transfer to Persimmon on formal completion of the new access road.
3. Authorises the Head of Finance and Property Services to carry out any further negotiations with the purchaser in respect of the sale of land on the basis that any revised terms and conditions still represented the best consideration that could reasonably be obtained in accordance with the requirements of Section 74 of the Local Government (Scotland) Act 1973.

Decision

To approve the terms of the report

12. CALL FOR EVIDENCE ON THE DRAFT BUDGET 2017/18

The Council Executive considered a report (copies of which had been circulated) by the Head of Finance and Property Services seeking approval for a submission in response to a call for evidence on the draft budget 2017-18.

The Head of Finance explained that the Scottish Parliament's Local Government and Communities Committee had issued a call for views on the Scottish Government draft budget for 2017-2018 on 20 September 2016. As part of the committee's examination of the annual Scottish Government budget, the impact of budget reductions on council services

would be scrutinised.

The questions would focus on a number of issues including the impact of budget reductions to date, the extent to which local authority spending decisions prioritised funding on areas which would reduce inequalities, how councils used General Fund balances and the ability of increased subsidy levels to support new development.

It was anticipated that the Scottish Government's draft budget for 2017-18 would not be published until later in 2016, therefore the time available for the Local Government and Communities Committee to consider evidence on the draft budget would be constrained.

The proposed response to the call for evidence was attached to the report at Appendix 1.

It was recommended that Council Executive agrees the proposed response to the Scottish Parliament's Local Government and Communities Committee.

Decision

To approve the terms of the report

13. BLES TRAINING

The Council Executive considered a report (copies of which had been circulated) by the Head of Education (Learning, Policy and Resources) advising of the contribution of BLES Training to achieve positive outcomes for young people and the funding arrangements for the organisation.

The report explained that BLES Training was a voluntary charitable organisation established in 1982 to support young people in West Lothian aged 16 to 24. They offered a wide variety of training in the construction industry by experienced and dedicated staff. Training was provided in joinery, painting & decorating, plumbing, basic electrical work and wet trades such as bricklaying. Young people were supported to develop their core skills as well as life and employability skills.

The funding stream for BLES was The Employability Fund operated by Skills Development Scotland (SDS) on behalf of the Scottish Government. Training providers could access an annual allocation of funds from Skills Development Scotland which was drawn down on a monthly basis depending on the number of young people commencing training each month. BLES offered Stage 2 and Stage 3 training programmes which were funded through the Employability Fund.

Recently there had been a significant reduction in the Employability Fund allocations from SDS to training providers leading to fewer Stage 2 funded programmes. BLES had therefore projected that they would go into negative cash status in February 2017 as a consequence of the reduction of Employability Funded programmes

The report continued that Education Services and West Lothian Schools had for a number of years contracted BLES Training to run short bespoke courses to support the development needs of young people usually in the last year of school. BLES were also a key training provider for the Schools Vocational Programme which was a programme designed to give students who were in the last year of education additional experience and qualifications.

The report concluded that BLES had a long standing working relationship with schools and the central Education Service and any reduction or removal of training opportunities provided by BLES would have a significant detrimental impact on supporting vulnerable young people.

It was recommended that Council Executive :-

1. Note the contribution that BLES Training made to achieving positive outcomes for young people and developing local skills for the construction industry; and
2. Council Executive advises of any further actions required.

Motion

“Council Executive notes the very positive contribution that BLES Training makes to achieving positive outcomes for West Lothian’s young people and views with grave concern the organisations current funding difficulties arising from a cut in funding.

Council Executive recalls that for over 30 years BLES has worked hard to develop excellent training programmes with accredited qualifications, great work experience opportunities, progression to further education, full time employment and modern apprenticeships for young people across West Lothian, and commends the West Lothian Trade Union Council and West Lothian communities for raising concern over the threat to BLES.

Council Executive therefore agrees to write to the First Minister and to Keith Brown MSP calling upon them to immediately reinstate the funding for BLES to provide the organisation with the financial security that they need to continue operating, to ensure that BLES is adequately funded in future years to provide a secure future for the organisation, to instruct Council officers to continue to work closely with BLES, and to copy the Council letter to all West Lothian Constituency MP and MSPs and all Lothian list MSPs.”

- Moved by the Chair and seconded by Councillor Muldoon

Amendment

“Council Executive agrees to seek what financial assistance West Lothian Council can provide to BLES to support positive outcomes for our young people”.

- Moved by Councillor Johnston and seconded by Councillor

Anderson

Decision

Following a vote the motion was agreed by 8 votes to 2 and was agreed accordingly.

14. NOTE THE ACTION TAKEN IN TERMS OF STANDING ORDER 31 (URGENT BUSINESS)

Council Executive noted the action taken in terms of Standing Order 31 (Urgent Business) to approve the submission of an application for a grant of £500,000 for Energy Efficient Standard for Social Housing (EESH) as recommended in the by the Head of Housing, Customer and Building Services.



COUNCIL EXECUTIVE

APSE ANNUAL SEMINAR 2016 – REFUGE, STREETSCENE, TRANSPORT, GROUNDS AND PARKS FROM 9TH – 10TH NOVEMBER 2016

REPORT BY HEAD OF OPERATIONAL SERVICES

A. PURPOSE OF REPORT

The report seeks approval from the Council Executive for the attendance of the Executive Councillor for the Environment, or a nominated substitute, at the APSE Annual Seminar 2016: refuge, streetscene, transport, grounds and parks from 9th – 10th November in Stratford-Upon-Avon.

B. RECOMMENDATION

It is recommended that the Council Executive:

1. Notes that Liam Brown, a NETS, Land and Countryside apprentice has been selected as a finalist for the APSE environmental services apprentice of the year awards 2016 in the category of Horticulturist;
2. Approves the attendance of the Executive Councillor for the Environment, or a nominated substitute, at the APSE Annual Seminar 2016: refuge, streetscene, transport, grounds and parks from 9th – 10th November 2016 in Stratford-Upon-Avon.

C. SUMMARY OF IMPLICATIONS

I Council Values	developing employees; making best use of our resources; working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	None.
III Implications for Scheme of Delegations to Officers	None.
IV Impact on performance and performance Indicators	None.
V Relevance to Single Outcome Agreement	None.
VI Resources - (Financial, Staffing and Property)	Financial: £408 for 1 delegate inclusive of accommodation.

	Staffing:	None.
	Property:	None.
VII Consideration at PDSP	This report has not previously been considered by the Environment PDSP.	
VIII Other consultations	None.	

D. TERMS OF REPORT

The annual seminar and the APSE service awards will be exploring excellence in frontline services, the programme of events includes the opportunity for delegates and supplies to network and share ideas in an informal setting.

On the 9th and 10th November 2016 a trade show will showcase the latest in local government developments. Delegates will get the opportunity to hear keynote speakers from across the UK local government covering topics like:-

Frontline Services

- Refuse, recycling and street scene
- Fleet and Transport
- Street Cleansing
- Grounds Maintenance and Parks.

Policy Developments

- Innovations in Waste Management
- Centralisation of fleet and transport
- Developing new income streams in parks
- Developing new methodology for delivering street cleansing

The seminar provides a unique opportunity to participate in discussion around key issues affecting a range of front line services.

A significant part of this seminar is the annual apprentice awards ceremony and this year Liam Brown, a NETs, Land and Countryside apprentice has been selected as a finalist in the Horticulturist category.

E. RECOMENDATION

It is recommended that the Executive Councillor for the Environment, or a nominated substitute, attends the seminar along with the NETS, Land and Countryside Manager.

F. BACKGROUND REFERENCES

None.

Appendices/Attachments: Copy of the Seminar Programme.

Contact Person: Jim Jack, Head of Operational Services, 01506 776601

Jim Jack
Head of Operational Services
25th October 2016



COUNCIL EXECUTIVE

CIH EXCELLENCE AWARDS 2016 ATTENDANCE

REPORT BY HEAD OF HOUSING, CUSTOMER AND BUILDING SERVICES

A. PURPOSE OF REPORT

The purpose of the report is to seek approval from the Council Executive for the attendance of appropriate elected member(s) to attend the CIH Scotland Excellence Awards Ceremony on Friday 11th November 2016.

B. RECOMMENDATION

It is recommended that Council Executive approves that both Executive Councillors for Services for the Community and Social Policy, or their substitutes, may attend the CIH Scotland Excellence Awards 2016.

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities; developing employees; working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	None.
III Implications for Scheme of Delegations to Officers	None.
IV Impact on performance and performance Indicators	None.
V Relevance to Single Outcome Agreement	None.
VI Resources - (Financial, Staffing and Property)	It is proposed that the Council purchase a table of 10 for attendance at the CIH Excellence Awards 2016 at a cost of £925.00 (excluding VAT).
VII Consideration at PDSP	None.

D. TERMS OF REPORT

D1 Background

The CIH Excellence Awards is a prestigious award acknowledged throughout the sector. It is an achievement to be shortlisted and to be given recognition for our projects.

At this year's CIH Scotland Excellence Awards West Lothian Council has been shortlisted for two awards:

- 'Apprentice of the Year' - Jamie Edwards from Building Services
- 'Excellence in Health and Wellbeing' - Rosemount Gardens, Bathgate

The 2016 CIH Scotland Excellence Awards Dinner will take place on Friday 11 November at the Glasgow City Hotel, Cambridge Street, Glasgow.

D2 Associated Costs

The cost associated with attending this event is £925.00 excluding VAT for a table of ten.

E. Conclusion

In conclusion it is proposed that West Lothian Council purchase a table of ten to attend the CIH Scotland Excellence Awards at the Glasgow City Hotel, Cambridge Street, Glasgow.

F. Background References

CIH Scotland Excellence Awards 2016 <http://www.cih.org/excellenceawards>

Appendices/Attachments: None

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Alistair Shaw

Head of Housing, Customer and Building Services

25th October 2016



West Lothian
Council

COUNCIL EXECUTIVE

**PROPOSED TRANSFER OF SPORTS, LEISURE AND CULTURAL FACILITIES AND
FUNCTIONS TO THE MODERNISED WEST LOTHIAN LEISURE**

REPORT BY DEPUTE CHIEF EXECUTIVE

A. PURPOSE OF REPORT

This report seeks to update elected members on proposals for modernised trust model arrangements in West Lothian and obtain approval of the recommendations detailed below.

B. RECOMMENDATION

The Council Executive is asked to:

1. Approve the transfer of sports, leisure and cultural facilities and functions to the modernised West Lothian Leisure (WLL) by 1 April 2017, as proposed in Appendix 1 to this report.
2. Note officers' consideration of matters relevant to the implementation of the transfer proposals, as outlined in Appendix 2 to this report, and the development of an associated plan which identifies the necessary actions/activities for implementation.
3. Agree that a pre-requisite of implementation of the proposed transfers is the amendment of WLL's Articles of Association, as outlined in Sections 2.3, 2.5 and 2.6 of Appendix 2 to this report.
4. Agree to delegate authority to the Depute Chief Executive to progress and conclude, in partnership with WLL, all necessary actions to implement the proposed transfers by 1 April 2017, other than council representation on WLL Board and the management fee, both of which will be reported to members for determination.
5. Note the development of a communication and engagement plan to ensure key stakeholders are aware of the transfer proposals, informed how the changes may affect them and provided opportunities to give their views and feedback.
6. Note the key implementation risks and associated mitigating actions identified by the Project Team, as outlined in Appendix 3 to this report.
7. Note that an update on WLL Board's consideration of the transfer proposals will be provided at the meeting.
8. Agree that regular progress updates on the above matters be reported to the Culture and Leisure PDSP and WLL Advisory Committee, as appropriate.

C. SUMMARY OF IMPLICATIONS

I Council Values	<ul style="list-style-type: none">• Focusing on customer need;• Being honest, open and accountable;• Providing equality of opportunities;• Developing employees;• Making best use of our resources; and• Working in partnership.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Policy and legal considerations are set out in Appendix 2 to this report.
III Implications for Scheme of Delegations to Officers	The scheme of delegation will be amended in accordance with recommendation 5 in Section B of this report.
IV Impact on performance and performance indicators	None.
V Relevance to Single Outcome Agreement	SOA4 – We live in resilient, cohesive and safe communities. SOA7 - We live longer, healthier lives and have reduced health inequalities.
VI Resources (Financial, Staffing and Property)	<p>Scottish Government grant funding is not sufficient to meet the increasing costs and demands for council services. As a result, the council has to deliver £20.955 million of budget saving measures in 2016/17 and 2017/18 to ensure that the council can achieve a balanced revenue budget position for these years.</p> <p>£532,000 of savings must be delivered through modernised trust model arrangements by 1 April 2017, as agreed by the council on 29 January 2015 as part of the three-year revenue budget strategy for 2015/16 to 2017/18.</p> <p>Council Executive on 21 June 2016 agreed that the fees, charges and concessions, agreed by the council for the period up to and including financial year 2017/18, for the facilities and functions proposed for transfer, would be maintained up to and including financial year 2017/18.</p>
VII Consideration at PDSP	Partnership and Resources PDSP on 19 June 2016.
VIII Other consultations	Corporate Services; Finance and Property Services; Education and Planning Services; Operational Services; and West Lothian Leisure.

D TERMS OF REPORT

D.1 Introduction

The Delivering Better Outcomes (DBO) consultation carried out by the council in 2014 showed that 85% of respondents supported a review of culture and leisure services. Following this a specific measure to extend the remit of West Lothian's trust model to include non-sports provision was agreed as part of the council's three-year revenue budget strategy for 2015/16 to 2017/18. It was noted that such a model could provide access to funding and cost savings which would not otherwise be available to the council.

Indeed, there is a national trend of local authorities increasingly working with trust models to deliver some, or all, of their physical recreation services, and with remits also being extended to include a wider range of non-sports provision.

Working in partnership with locally established trust models allows local authorities to seek to sustain its investment in sports, leisure and cultural provision, and achieve necessary financial efficiencies, at a time when Scottish Government grant funding is not sufficient to meet the increasing costs of, and demands for, services. Following are examples of trust model development in other local authority areas:

- Scottish Borders - recent agreement to move towards an integrated sport and cultural trust on 1 April 2016, with an associated TUPE transfer of circa 100 staff.
- Renfrewshire - trust remit extended in 2015 to include arts, culture and other non-facility physical activity provision, with an associated TUPE transfer of circa 250 staff.
- Dundee - trust remit includes arts, culture, outdoor education and operation of secondary school sports and leisure facilities.
- Perth and Kinross - trust remit extended on 1 April 2016 to include two outdoor activity centres, with TUPE transfer of staff delivering outdoor activities and associated services.

Such developments closely align with the Scottish Government's emphasis on working with trusts to maximise participation. They also reflect the view of other national bodies, such as sportscotland, that the more we work in partnership, identifying opportunities to join up thinking and delivery, the more likely we are to make our existing resources go further.

The option appraisal reported to the Council Executive in June 2016 demonstrated that widening the remit of WLL and strengthening the existing council-WLL partnership, could deliver positive outcomes for West Lothian's communities, at the same time as reducing costs. WLL could do this by continuing to draw on the expertise and knowledge from within the organisation, its board of directors, staff, partners and wider national and local networks, to deliver economies of scale by creating a more efficient and joined up delivery model. With its charitable status, it could also deliver financial benefits through tax savings and attract external funding not available to the council or other partners.

The options appraisal also drew on experiences from other local authority areas where organisations had been set up, or further developed, in order to deliver some or all of the facilities and functions for which transfer proposals were to be prepared.

Those experiences show that whilst trust models and remits differed, each one had been finely tuned to align its provision to local priorities and contribute significantly to

the fulfilment of appropriate outcomes for individuals and communities. The already strong council-WLL partnership gives an excellent foundation for this approach to be applied to the facilities and functions now proposed for transfer.

The transfer proposals in Appendix 1 to this report, along with the previous options appraisal, demonstrate the rationale for the proposed transfers and how the experience of the current organisation can be harnessed in its future development and expansion. However, the main tasks of developing strategic and operational plans, implementing the transfers and fully embedding the modernised trust model will follow if the general rationale is accepted and the specific functions and facilities proposed for transfer agreed.

Although further work will be required in the event that the transfer proposals are approved, it can be confirmed at this stage that any staff identified for TUPE transfer to WLL will not experience any detriment to their pay, terms and conditions by virtue of the transfer. Also, given WLL has admitted body status to Lothian Pension Fund, appropriate arrangements will be agreed with the Fund to ensure membership of any transferring employees is unaffected.

Furthermore, through the implementation of any approved transfers, the council and WLL will be seeking to ensure that any changes to facility or service provision would be driven by improving the experience for community stakeholders and customers, and, ultimately, the delivery of better outcomes.

D.2 Recent Council Executive decisions

In March 2016, the Council Executive agreed that the council would become Sole Member of West Lothian Leisure (WLL) in the event that it converted to a Company Limited by Guarantee, having been asked by WLL Board to consider this. In June 2016, WLL Board formally resolved to progress with its conversion.

The work required to implement such a conversion has been progressed in line with the decisions of the Council Executive in March 2016 and WLL Board in June 2016, and all appropriate documentation was submitted to the Financial Conduct Authority and Companies House. The conversion was confirmed on 17 August 2016.

At its meeting held on 21 June 2016, the Council Executive agreed:

- That the Chief Executive develop proposals to transfer certain sports, leisure and cultural facilities and functions to the modernised WLL, and that such proposals be reported back to the Council Executive for approval prior to implementation.
- The high-level scope of facilities and functions for potential transfer to the modernised WLL, for which the transfer proposals were to be developed.
- That the Chief Executive explore with WLL the potential to have a trade union representative on its Board following implementation of the approved transfer proposals, and its position on compulsory redundancies.

D.3 Transfer proposals

Since that time, officers from appropriate council services have further developed the transfer proposals. The proposals are outlined in Appendix 1 and are recommended for approval.

Prior to implementation, the transfer proposals would also require to be formally approved by WLL Board. It should be noted that WLL Board's consideration of the

transfer proposals has been aligned to that of the Council Executive's to ensure that, if approved, the implementation phase can commence without undue delay.

As such, an update on WLL Board's consideration of the transfer proposals will be provided at the meeting.

D.4 Implementation considerations

If the transfer proposals are approved by the Council Executive and WLL Board, it will be necessary for appropriate officers to progress work on a number of legal, governance, finance, property and human resources matters.

Appendix 2 to this report identifies the key matters in each of these areas which will require to be given further consideration and be addressed throughout the implementation phase and prior to the actual transfers being effected.

Given the further detailed work which would be required of senior officers in both organisations through the implementation phase, and in order to deliver the proposed transfers in as efficient manner as possible, it is recommended that authority be delegated to the Depute Chief Executive to progress and conclude, in partnership with WLL, all necessary actions to implement the proposed transfers by 1 April 2017, other than council representation on WLL Board and the management fee, both of which will be reported to members for determination.

This would include effecting the negotiation and conclusion of all necessary property, financial, strategic, management, operational and service level agreements, subject to any required due diligence, and in conjunction with appropriate Heads of Service.

In line with the considerations in Appendix 2 to this report, a plan has been developed by the Project Team which identifies the necessary actions/activities for implementation. Initial implementation actions/activities would include:

- Identification of all posts and employees within transfer scope.
- Identification of all key stakeholders and commencement of planned engagement activity.
- Obtaining approvals for amendments to WLL Articles of Association.
- Identification of all existing contractual and other arrangements relating to transferring facilities and functions.
- Joint development of operational/business plans and service level agreements.
- Development of facility lease / licence agreements.
- Commencement of statutory TUPE consultation exercise.
- Finalising budget schedules for transferring facilities and functions and establishing associated management fee.

As outlined in Sections 2.3, 2.5 and 2.6 of Appendix 2 to this report, there a number of amendments to WLL's Articles of Association which are essential prior to any of the proposed transfers taking effect. As such, it is recommended that a pre-requisite of implementation of the transfer proposals is that these amendments are agreed by WLL Board.

In order to ensure that the council has an appropriate level of representation in the modernised trust model going forward, reflective of the additional facilities and functions proposed for transfer, one proposed amendment to the articles would be to increase the maximum number of council directors which could be appointed to WLL Board from the current number of three.

The maximum number of council directors, however, could not be a majority of the total maximum allowable number across all categories of director. Indeed, the Office of the

Scottish Charity Regulator (OSCR) requires to consent to the proposed amendments to WLL's objects and will also seek to ensure, as it does currently, that WLL operates with sufficient independence from the council.

In addition, in order to build on the position agreed at the Council Executive in June 2016, in terms of trade union representation, another proposed amendment would be to allow for a maximum of one trade union representative to be appointed to WLL Board.

It is the intention that through further discussions with WLL, considerations will be also be given to other necessary amendments to the articles in order to appropriately define:

- The other categories of directors.
- Any restrictions which would be required in terms of appointing to the role of Chairperson from any given category of director.
- The level at which the quorum for directors meetings should be set.

D.5 Communications and engagement

A communications and engagement plan has been developed to ensure key stakeholders – customers, staff, trade unions and other external stakeholders – are aware of the proposed transfer of functions and facilities and informed of how the changes may affect them.

The approaches and methods to be utilised will be specifically tailored depending on stakeholder grouping. The feedback and views from key stakeholders obtained through planned communication and engagement activity will be given due consideration by the Project Team and used to inform the implementation of the proposals, where possible and appropriate.

Initial briefings on the transfer proposals have been delivered to staff and Trade Unions with initial staff questions being addressed. In accordance with the council's agreed processes for managing change, a regular meeting between Trade Union representatives and appropriate managers has also been established, and this approach will continue throughout the implementation phase.

D.6 Implementation risks

The Council's corporate approach to risk management has been adopted for this project. Through this approach, relevant risks and issues will continue to be identified, assessed and monitored during the project, with the aim of managing exposure to unwanted outcomes.

Given the partnership nature of the work which would be required to successfully implement the proposed transfers if approved, it is appropriate and necessary for WLL to be closely involved in the risk management process going forward.

The key implementation risks and associated mitigating actions, as identified by the Project Team, are outlined in Appendix 3 to this report.

E. CONCLUSION

The report sets out proposals to transfer certain sports, leisure and cultural facilities and functions to the modernised WLL. The proposed transfer would result in a number of customer, operational, organisational and financial benefits and would strengthen further the partnership between the Council and WLL for the benefit of the wider West Lothian community.

If the proposals are agreed then they would need to be implemented by 1 April 2017 to ensure that agreed budget savings required can be achieved. If this is not achieved then alternative savings would require to be identified.

Update reports on progress would be brought to Culture and Leisure PDSP and the WLL Advisory Committee, as appropriate.

F. BACKGROUND REFERENCES

1. Report to Council Executive – 29 March 2016 – Proposed Conversion of West Lothian Leisure Legal Model.
2. Report to Council Executive – 21 June 2016 – Shared Services Delivery (Culture) Future Management of Sports, Leisure and Cultural Services and Functions.

Appendices/Attachments:

- Appendix 1 - Transfer proposals
- Appendix 2 - Implementation considerations
- Appendix 3 - Risk management

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Elaine Cook, Depute Chief Executive

Date: 25 October 2016

Delivering Better Outcomes - Partnership Working

Appendix 1 - Proposals for the transfer of sports, leisure and cultural facilities and functions to West Lothian Leisure

1. Introduction

On 21 June 2016 the Council Executive agreed, in view of the external legal advice received and an options appraisal which had been undertaken, that the Chief Executive develop proposals for the transfer of the facilities and functions set out in the report to West Lothian Leisure (WLL) and report back to the Council Executive for approval prior to implementation.

Having been developed by officers from appropriate service areas, and through initial dialogue with WLL, this document presents proposals for the future management of specific sports, leisure and cultural facilities and functions by WLL, which are recommended for approval by the Council Executive.

2. Background and Context

The overall aims of the West Lothian Community Planning Partnership and the council are to tackle inequality in our society and to improve the quality of life for everyone living, working and learning in West Lothian. This is outlined in the Single Outcome Agreement for West Lothian (2013/23) and the council's Corporate Plan (2013/17). In support, the Council's Corporate Plan has agreed eight priorities with the community through consultation that are believed to be the most critical factors to positive change:

1. Delivering positive outcomes and early interventions for early years
2. Improving the employment position in West Lothian
3. Improving attainment and positive destinations for school children
4. Improving the quality of life for older people
5. Minimising poverty, the cycle of deprivation and promoting equality
6. Reducing crime and improving community safety
7. Delivering positive outcomes on health
8. Protecting the built and natural environment

Investment in sports, leisure and cultural provision can make a lasting and sustainable impact on the eight priorities, with partners working together within the framework of the Community Planning Partnership to help improve the health and wellbeing of West Lothian residents. Although the health of the country as a whole is improving, some health inequalities continue to widen. As such, accessible and affordable sports, leisure and cultural provision remains an important component of local strategies to address such inequalities in society.

The council has to deliver budget savings measures of £20.955 million in 2016/17 and 2017/18. To deliver the best possible outcomes for communities and citizens, the council needs to continue to develop new ways of delivering services with a strong focus on partnership working.

The option appraisal reported to the Council Executive in June 2016 demonstrated that widening the remit of WLL and strengthening the council-WLL partnership, could deliver positive outcomes for West Lothian's communities, at the same time as reducing costs. WLL could do this by continuing to draw on the expertise and knowledge from within the organisation, its board of directors, staff, partners and wider

national and local networks to deliver economies of scale by creating a more efficient and joined up delivery model. With its charitable status, it could also deliver financial benefits through tax savings and attract external funding not available to the council or other partners.

The options appraisal also drew on experiences from other local authority areas where organisations had been set up, or further developed, in order to deliver some or all of the facilities and functions for which transfer proposals were to be prepared. Those experiences show that whilst trust models and remits differed, each one had been finely tuned to align its provision to local priorities and contribute significantly to the fulfilment of appropriate outcomes for individuals and communities. The already strong council-WLL partnership gives an excellent foundation for this approach to be applied to the facilities and functions now proposed for transfer.

The transfer proposals in this document, along with the previous options appraisal, demonstrate the rationale for the proposed transfers and how the experience of the current organisation can be harnessed in its future development and expansion. However, the main tasks of developing strategic and operational plans, implementing the transfers and fully embedding the modernised trust model will follow if the general rationale is accepted and the specific functions and facilities proposed for transfer agreed.

3. Facilities and Functions Proposed for Transfer

The Council Executive agreed on 21 June 2016 that proposals to transfer the following facilities and functions to West Lothian Leisure be developed:

- Howden Park Centre.
- Low Port Centre including Outdoor Education.
- Sports, leisure and cultural accommodation, and ancillary facilities, at all West Lothian secondary schools.
- Golf facilities at Polkemmet Country Park.

Further details on the specific facilities and functions proposed for transfer are set out below.

3.1 Howden Park Centre

Howden Park Centre (HPC) in Livingston is currently owned, managed and operated by the council. It is West Lothian's principal arts centre and accommodates a year-round programme of professional arts performances, exhibitions, classes and events.

The venue is licensed and comprises a 300 seat auditorium, three multi-function studios, a meeting room, an art gallery, two art studios, a café/bar and kitchen facilities. The auditorium and multi-functional spaces can be hired for a variety of community and social events including performances, meetings and weddings.

HPC is also the operational base for Firefly Arts, a charitable company providing youth theatre and associated services for children and young people in West Lothian. Firefly Arts currently leases office accommodation and studio theatre space in HPC from the council.

It is proposed that the management and operation of HPC be transferred to WLL, along with the reception/admin, soft facilities management, venue, technical, marketing and ticketing functions which are directly associated with the management

and operation of the facility.

It is further proposed that this transfer be conditional on Firefly Arts' continued use of office accommodation and studio theatre space, in line with the terms of its existing lease agreement.

HPC is currently the office base for the council's arts team. The main functions and programmes managed and delivered by the team are:

- Youth Music Initiative
- Arts and Learning
- Arts and Wellbeing
- Public Art
- Supporting the Voluntary Arts Sector and Arts Grants

Part of this team's remit relates to HPC, but as the team also delivers the above noted programmes and functions out with HPC, the arts team it is not proposed for transfer to WLL.

3.2 Low Port Centre and Outdoor Education

Low Port Centre (LPC) in Linlithgow is currently owned, managed and operated by the council. It is the premier Outdoor Education centre in central Scotland and benefits from its close proximity to Linlithgow Loch. It is one of the few local authority operated outdoor facilities in Scotland. The others are now either operated by the charitable or private sectors, or have been decommissioned.

The venue provides facilities for school, community and private use including a games hall, climbing wall, meeting room, general purpose room, outdoor education lab, 36-bed residential facility and full catering kitchen. The venue also has maintenance space and internal/external storage for a wide-range of equipment.

The Outdoor Education team is based at the LPC and provides an extensive programme of Outdoor Education experiences and activities, as well as related first aid, training and learning and development programmes. Outdoor programmes are delivered at the centre and in the surrounding woodlands, loch, canal network, lowland hillsides, ski centres and rivers of central Scotland. The functions of this team are considered to have a significant operational association with the facility.

It is proposed that the management and operation of Low Port Centre be transferred to WLL, along with the reception/admin, soft facilities management, domestic and catering, venue, technical, equipment maintenance, activity programming/booking and marketing functions directly associated with the management and operation of the facility, and all functions delivered by the Outdoor Education Team.

The functions of Sports Development, Community Sports Hub delivery/development, non-WLL pitches/pavilions and sporting grants, whilst previously delivered by the same service area as Low Port Centre and Outdoor Education, are not proposed for transfer to WLL. These functions, along with Active Schools, will be delivered by the council's Active Schools and Community Sports team.

3.3 Community High Schools and Community and Leisure

Community and Leisure (C&L) provides sport, leisure, adult learning and under-5s child care services in Deans Community High School (Deans CHS) and Inveralmond Community High School (Inveralmond CHS).

Inveralmond CHS is council owned, managed and operated, whilst Deans CHS forms part of the PPP3 contract currently fulfilled by Kajima Partnership Ltd.

To contribute to the aims of promoting health and wellbeing, enabling personal development and building community capacity, C&L supports access to the following accommodation and facilities in DCHS and ICHS for individuals, families, groups and clubs:

- *Deans CHS* - including sports/gym halls, fitness studio, swimming pool, sauna, dance studio, external pitches, cycling studio, tennis courts, basketball courts, changing rooms, café, auditorium, related stores and associated instruction, training and general purposes space.
- *Inveralmond CHS* - including sports/gym halls, fitness studio, swimming pool, dance studio, drama studio, meeting room, assembly space, external pitches, changing rooms, café, assembly hall, related stores and associated instruction, training and general purposes space.

It is proposed that the management and operation of the listed sports, leisure and cultural accommodation at Deans CHS and Inveralmond CHS, be transferred to WLL along with the reception/support, booking of activities and events, sports and leisure programming, public access swimming and café provision functions currently delivered by C&L.

It is further proposed that these transfers be conditional on the Council (the schools in practice) securing priority access to the accommodation and facilities for educational and extra-curricular purposes.

The C&L adult learning and under-5s child care functions of C&L are not proposed for transfer to WLL. Soft facilities management (such as cleaning), excluding café provision, is also not proposed for transfer to WLL and current operational and management arrangements for such provision would be unchanged by virtue of the proposed transfer.

3.4 Other secondary schools

It is proposed that the sports, leisure and cultural accommodation and facilities listed for the following secondary schools be transferred to WLL:

1. Those currently owned, managed and operated by the council:

- *The James Young High School* - including sports/gym halls, swimming pool, dance studio, external pitches, auditorium, changing rooms, related stores and associated instruction, training and general purposes space.
- *Linlithgow Academy* - including sports/gym halls, fitness studio, swimming pool, dance studio, external pitches, external courts, changing rooms, related stores and associated instruction, training and general purposes space.
- *St Kentigern's Academy* - including sports/gym halls, fitness studio, swimming pool, external pitch, changing rooms, related stores and associated instruction, training and general purposes space.
- *St Margaret's Academy* - including sports/gym halls, fitness studio,

swimming pool, external pitches (including off-site synthetic pitch), changing rooms, related stores and associated instruction, training and general purposes space.

- *West Calder High School* - including sports/gym halls, swimming pool, dance studio, external pitches, changing rooms, related stores and associated instruction, training and general purposes space.
2. Those forming part of the PPP1 contract currently fulfilled by Alpha Schools (West Lothian) Ltd:
- *Bathgate Academy* - including sports/gym halls, swimming pool, dance studio, external pitch, changing rooms, related stores and associated instruction, training and general purposes space.
 - *Broxburn Academy* - including sports/gym halls, swimming pool, dance studio, external pitches, assembly hall, changing rooms, related stores and associated instruction, training and general purposes space.
 - *Whitburn Academy* - including sports/gym halls, fitness studio, swimming pool, external pitches, changing rooms, related stores and associated instruction, training and general purposes space.
3. The other secondary school forming part of the PPP3 contract currently fulfilled by Kajima Partnership Ltd:
- *Armadale Academy* - including sports/gym halls, fitness studio, swimming pool, dance studio, external pitches, changing rooms, related stores and associated instruction, training and general purposes space.

It is further proposed that these transfers be conditional on WLL's agreement to the council (the schools in practice) securing priority access to the accommodation and facilities for educational or extra-curricular purposes.

In line with the proposal for the community high schools, soft facilities management is not proposed for transfer to WLL and current operational and management arrangements for such provision would be unchanged by virtue of the proposed transfer.

3.5 Golf Facilities at Polkemmet Country Park

Polkemmet Country Park has a 9-hole golf course, a 15-bay floodlit driving range and putting green which are currently owned, managed and operated by the council. The course measures 3253 yards, with two Par 5s and one Par 3, and is suitable for beginners, juniors and more experienced golfers. The driving range provides high quality range balls and mats, and includes various short game targets, target greens and accurate yardage markers.

Polkemmet is also a Club Golf location, providing children with the opportunity to experience golf through a structured programme supporting early development as golfers.

Associated reception, marketing, tickets sales and club hire functions for the golf course and driving range are currently delivered by the council's NETs, Land & Countryside Services.

It is proposed that the management and operation of the golf course, driving range, and putting green, including the associated functions listed above, be transferred to WLL.

The grounds maintenance functions for the golf course and driving range are not proposed for transfer to WLL and current management and operational arrangements for such provision would be unchanged by virtue of the proposed transfer.

4. Consideration for transfer

The specific facilities and functions proposed for transfer, as defined above, are considered by officers to meet one or more of the following criteria:

- Evidence that the function works elsewhere within existing trust or a comparator trust.
- Potential for new or stronger partnerships.
- Opportunities to increase participation.
- Opportunities to increase community usage of facilities.
- Scope to impact positively on delivery of better outcomes.
- Scope to reduce duplication and optimise use of resources.
- Potential for rates relief benefits to be achieved.
- Potential for other associated savings.

5 Collaborative Working

If the transfer proposals are approved for implementation, the existing WLL liaison officer responsibilities would be widened to reflect the widening of WLL's remit and to ensure appropriate officer-level monitoring of the service/financial agreements which would be in place relating to the newly transferred facilities and functions.

To further ensure joined up and effective delivery of all public sports, leisure and cultural facilities and functions in West Lothian, towards locally agreed priority outcomes, WLL and the council will require to work in an increasingly collaborative manner.

As such, if the transfer proposals are approved for implementation by the Council Executive and WLL Board, key collaborative working priorities would be to develop joint service planning mechanisms, prepare shared delivery plans, prepare appropriate service level agreements, align relevant management, operational and administrative arrangements, explore co-location potential and engage in joint liaison with key partners and stakeholders.

Joint consideration would also be given to shared service opportunities for areas such as payroll, facility maintenance, training and development, health and safety compliance/advice, external funding searches and applications, EFQM advice and submission preparation, finance, human resources (including continuity arrangements for long termed unplanned absence of key personnel), design services, and information and communications technology.

6. Conclusion

The council-WLL partnership has been characterised by a joint focus on improving opportunities for the people of West Lothian to participate in health-enhancing physical

activity leading to longer, healthier lives and the reduction of health inequalities.

Sports, leisure and cultural facilities and functions can play a vital role in improving the health and wellbeing of local communities. Ongoing provision and investment in these areas can help to tackle unhealthy lifestyles, address the social determinants of health and ultimately deliver improved outcomes for communities and individuals. The council and community planning partners in West Lothian recognise that to deliver such outcomes, new ways of delivering services need to be developed with a strong focus on partnership working.

The transfer proposals contained in this document seek to strengthen the existing partnership between the organisations in order to continue to deliver these and wider outcomes for the benefit of West Lothian's communities.

Officers are recommending that the Council Executive agrees to seek to transfer the facilities and functions, as proposed in section 3 of this document, to WLL on or before 1 April 2017. This date aligns to the date for delivery of the budget savings associated with the modernised trust model, agreed by the council on 29 January 2015, as part of its three year budget strategy for 2015/16 to 2017/18.

It should be noted that the transfer proposals also require to be approved by WLL Board, prior to progressing to the implementation phase.

Delivering Better Outcomes - Partnership Working

Appendix 2 - Transfer proposal implementation considerations

1. Introduction

If the transfer proposals are approved by the Council Executive and WLL Board, it will be necessary for appropriate officers to progress work on a number of legal, governance, finance, property and human resources matters.

As such, this document identifies the key matters in each of these areas which will require to be given further consideration and addressed throughout the implementation phase and prior to the actual transfers being effected.

2. Legal and Governance

This section outlines the key legal and governance matters and includes considerations relating to procurement, state aid and charity requirements, together with structural governance considerations and specific legislative requirements.

2.1 Procurement Requirements

The law relating to EU procurement and State Aid, and its application to transfer proposals of this nature, is complex. There is a need to balance the requirements of charity law and procurement to address key risks which may arise from the potential transfer of additional services to WLL. The proposed transfer arrangements would likely be structured as a services contract whereby services would be provided by WLL in return for payment by the Council. As the Council is a contracting authority, it requires to follow EU procurement requirements in commissioning those services.

The analysis of the proposed arrangements as involving a supply of services contract is complex having regard to the nature of certain activities, where payment would come partly from the Council and partly from members of the public. In these circumstances, such an arrangement would fall within the category of a "Services Concession" under EU legislation.

The principles established through the *Teckal* case – which allow a contracting authority to enter into arrangements for the supply of services by a body controlled by that authority, providing certain requirements are met - provide a reasonably robust solution to the identified procurement issues.

The *Teckal* decision principles may be seen as running counter to the requirements associated with securing charitable status; in particular the duty which the Scottish charities legislation imposes on charity trustees to exercise independent judgement, and in a manner which prioritise the interests of the charity as compared with the interests of the body (in this case, the Council) which appointed them to the board. Having regard to the requirements of charity law, the Office of the Scottish Charity Regulator (OSCR) is concerned with the concept of "control" at board level, rather than the "corporate control" where a local authority is the sole member of a charity.

While it is impossible to state the legal position with absolute certainty, the conversion

of WLL to a company limited by guarantee with the Council as the sole member, with board members appointed by the Council, represents a reasonable basis upon which to proceed.

2.2 State Aid

State aid considerations in such circumstances generally relate to the principle that, under EU law, it is not legitimate for a party which operates in a commercial marketplace to receive any financial or other advantage from the state or from state resources, on the basis that this distorts competition within the EU. Where state aid is held to be unlawful, the European Commission can order the public body to recoup the financial support it has given

The matters arising from state aid considerations can be addressed by making use of the principles established by the *Altmark* case. This would promote the use of a Services Agreement which imposed clearly specified public service obligations on WLL. Payments by the Council to WLL would require to be structured in a way to ensure that the level of payments did not exceed what was necessary to provide the services in addition to a reasonable profit margin.

To comply with *Altmark*, the Services Agreement requires to set out a monitoring framework with appropriate provisions for restricting the level of future payments and/or clawback where appropriate. This would ensure that “over - compensation” (within the meaning of the *Altmark* judgment) is avoided.

2.3 Charitable Status

WLL has maintained charitable status since its incorporation as an Industrial and Provident Society and through its recent conversion to a Company Limited by Guarantee (“CLG”), with the council as sole member. Following conversion and prior to any transfer proposals taking effect, if approved, amended Articles of Association will require to be notified to and considered by OSCR.

Amendments would be essential to widen the defined remit of WLL in order to support the potential transfer of additional services. If WLL is to retain charitable status in light of its amended Articles of Association, OSCR will require to be satisfied that the requirements for charitable status are fulfilled.

The structure and governance arrangements for the expanded trust are of key importance and are discussed in more detail in the sections below.

2.4 Best Value

In deciding whether to transfer facilities and functions to WLL, the Council is obliged, under the Local Government in Scotland Act 2003, to be satisfied that the delivery of those services by WLL would demonstrate best value. If a transfer takes place, monitoring would be required to ensure that provision of the services by WLL continues to evidence best value in the future.

2.5 WLL Articles of Association

On 29 March 2016, the Council Executive had agreed to become sole member in the event of WLL’s conversion to a company limited by guarantee and considerations as to

the Council's position as sole member of the modernised WLL were outlined in the report considered by the Council Executive at that time. In line with best practice identified by OCSR, a set of formal arrangements have been developed which set out the Council's powers as sole member and which regulate their use.

On 17 August 2016, the conversion of WLL from an Industrial and Provident Society (IPS) to a Company Limited by Guarantee, with charitable status and with the Council as sole member, was confirmed.

WLL's Articles of Association set out its powers and regulate how it is to be run. The articles include provisions relating to the objects of the company; its charitable purposes; appointment and removal of directors; powers and responsibilities of directors; and decision making by directors.

WLL's articles currently only relate to its existing remit, so if the transfer proposals are approved by the Council Executive and WLL Board for implementation, WLL would require to amend its articles before the proposed transfer. This would be in order to meet the requirements of OSCR and maintain its charitable status from the point of transfer.

Other amendments to the articles would be necessary to ensure that WLL is able to meet the necessary degree of independence, and allow a reasonable structure to account for conflict of interest issues and involvement of persons on the board with skills useful to the trust. Also to ensure the necessary balance between OSCR's requirements for independence of Board members and the need for the Council to exercise control over WLL to address issues arising from procurement considerations.

In order to ensure that the council has an appropriate level of representation in the modernised trust model going forward, reflective of the additional facilities and functions proposed for transfer, one proposed amendment to the articles would be to increase the maximum number of council directors which could be appointed to WLL Board from the current number of three.

The maximum number of council directors, however, could not be a majority of the total maximum allowable number across all categories of director. Indeed, as well as requiring to consent to the proposed amendments to WLL's objects, OSCR will also seek to ensure, as it does currently, that WLL operates with sufficient independence from the council.

In addition, in order to build on the position agreed at the Council Executive in June 2016, in terms of trade union representation, another proposed amendment would be to allow for a maximum of one trade union representative to be appointed to WLL Board.

It is the intention that through further discussions with WLL, considerations will be also be given to other associated amendments to the articles in order to appropriately define:

- The other categories of directors.
- Any restrictions which would be required in terms of appointing to the role of Chairperson from any given category of director.
- The level at which the quorum for directors meetings should be set.

The matter of council representation on WLL Board will be reported to members for determination. Furthermore, it is an essential pre-requisite to the implementation of the

transfers, if approved by the Council and WLL Board, that WLL Board also approves the necessary amendments to WLL's articles, as outlined above and in the subsequent section on governance.

2.6 Governance

WLL is currently considered by Audit Scotland to be an Arms' Length External Organisation (ALEO) of the Council, and continues to be classed in that way following its conversion. Audit Scotland and other regulatory and parliamentary bodies have stressed the importance in relation to ALEOs of close attention to legal and governance matters. Good governance assists and contributes to good decisions and good performance. In this context, "governance" extends beyond the simple provision of a place to make decisions - it extends more widely to the systems and procedures which underpin that decision-making function and forum.

The Council and WLL have made decisions about the scope and content of the project and the work to be carried out towards implementation must ensure compliance with those Council decisions.

The following preliminary issues have been addressed but must be kept under review: fit with Council and WLL values, priorities and policy; legal compliance; aims, purposes and agreed outcomes; and choice of delivery vehicle and structure following an options appraisal.

The other issues to be addressed to help ensure sound decision-making are:

- Supporting legal agreements and guidelines.
- Engagement, liaison and co-operation arrangements for officers (membership and remits of working groups and channels for reporting to the Council and to WLL senior management).
- Engagement, liaison and cooperation arrangements relating to members and directors. This must include the retention of a Council committee (in addition to a PDSP) to provide formal member involvement and contact with WLL with as much public access as possible. Where necessary, similar formal arrangements should be made in the Articles of Association.
- A suitable financial regime and regulations will be required and agreed reached in relation to that.
- Risks to implementation will require to be identified and assessed and mitigation actions put in place, by both the Council and WLL.

Roles and responsibilities must be defined for both officers and members:

- The Council's Scheme of Delegations to Officers should be reviewed to allocate responsibility within the Council.
- Representation at officer level on the agreed liaison bodies must be determined, considering the involvement of Council officers in meetings of WLL, (its board and otherwise), and the involvement of WLL employees in internal Council meetings.
- Member Representation must be agreed, including membership of West Lothian Leisure Advisory Committee (WLLAC) for both bodies. Currently 7 elected members sit on WLLAC. Appointments to WLL's Board will require to be reviewed and the potential for conflict of interest for Councillors who are appointed to more than one role should be reviewed.
- Support and training for representatives (officers and members) will be required.

- Arrangements for performance measurement, reporting and recording will be required.

The establishment of these arrangements before implementation will feed into and provide the basis for the post-implementation monitoring, reporting and review processes.

In addition to the accountability resulting from the Council's sole membership of WLL, there requires to be firm and practical day-to-day engagement and cooperation. Matters for consideration in relation to this include:

- Continuation and review of arrangements for engagement and liaison.
- Monitoring and reporting of risk, service performance and financial performance.
- Rights and actions to address and remedy performance failures or financial concerns.
- Ongoing legal compliance in relation to the regulatory regimes under which WLC and WLL would operate.
- Internal audit access and co-operation will continue to be required, where appropriate.

The Council must ensure that it accounts to the public for its decisions and actions:

- Reporting back to elected members through WLLAC in performance and financial monitoring terms, but with an additional requirement to report elsewhere on the financial strategy, service delivery plans and WLL's annual report.
- The requirements on the Council to deliver best value and to comply with Following the Public Pound will require to be built in to ongoing reporting arrangements.
- Consideration should be given to wider scrutiny by Internal Audit.
- There should be a formal periodic review of the partnership to identify if any adjustments are required.

Guidance considering relationships with ALEOs stresses the importance of the need to periodically take stock and examine critically and transparently the whole structure and relationship to review its continuing fitness for purpose - e.g. on an annual or two-yearly basis.

2.7 Contractual Structure

The contractual structure that is likely to be required between the Council and WLL should include:

- *Transfer Agreement* - requiring the parties to enter into the other agreements and defining the process which will transfer the properties, assets, business and personnel. Note that ownership of the properties is not proposed for transfer.
- *Services Agreement* - setting out the financial arrangements between the parties and specifying in detail the services to be provided by WLL.
- *Annual Business Plan* - from WLL setting out its anticipated income and expenditure and the assumptions on which these have been based. Also including details of WLL's key aims and priorities; attendance, membership and income forecasts; core pricing and charges; concession policy; assumptions and contingencies; risk assessment; summary income and expenditure budget;

financial analysis by venue; and action plan. The Business Plan would require to be approved by the Council.

- Appropriate lease, licence and contractual arrangements for the transferring facilities. The length of these would require to be determined and would be considered in line with existing leases of facilities currently operated by WLL.

2.8 Leases and Licences

If leases and/or licences were granted to WLL, the Council would require to follow the procedures under the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

2.9 Service Level Agreements (SLAs)

WLL currently has an SLA with the Council for corporate communications. The arrangements set out the responsibilities and obligations between WLL and the relevant Council service. It is proposed that at the outset WLL would continue with this SLA and that work be jointly progressed to identify and develop others which may be required to ensure effective and efficient provision of facilities and services.

2.10 Policy and strategy

Although the Council would retain overall responsibility for policy and strategy, in the event of the proposed transfers, sports, leisure and cultural expertise would be shared between the Council and WLL. As such, it is proposed that WLL provides strategic policy advice to the Council on relevant matters that relate to sport and physical activity. It is also reasonable that, in this context, WLL could be asked by the Council to develop appropriate sports and leisure strategies on its behalf.

By working closely together, sports, leisure and cultural staff from both organisations would be continually developing and utilising their skills and knowledge and would be best placed to advise the Council and the Community Planning Partnership on new developments, shifts in strategic thinking, new ways of working and responding to future challenges.

The Council and WLL would continue to work in partnership at a national level through organisations such as Creative Scotland, sportscotland and the NHS (for physical activity) and this would be reflected in local policy and strategy.

At a local level, the new organisation would require to continue current and establish new relationships with a range of partners, therefore, it is appropriate that WLL has responsibility for delivering jointly agreed plans. This is likely to increase ownership and understanding between the partners. WLL would also continue to advise on the specification and technical requirements for relevant infrastructure developments as well as improvements or relocations of existing facilities.

3. Finance and Property

3.1 Financial Context

As agreed by West Lothian Council on 29 January 2015, as part of its three year budget strategy for 2015/16 to 2017/18, savings of £532,000 have been agreed to be delivered through modernised trust model arrangements by 1 April 2017.

In addition, it was agreed that the transfer proposal must ensure that the fees, charges and concessions, agreed by the Council for the period up to and including financial year 2017-18 for the facilities and functions transferring be maintained by the modernised WLL up to and including financial year 2017-18.

3.2 Non Domestic Rates Relief

It is anticipated that due to the WLL's charitable status, facilities transferring to WLL would be subject to Non Domestic Rates (NDR) relief which is not available to the Council. Mandatory relief of 80% of NDR is allowed where the property is occupied by the charity and is wholly or mainly used for charitable purposes. The cost of mandatory relief is met by the Scottish Government and does not create a cost to the Council. Discretionary relief of 20% can be awarded by the Council to top up the mandatory relief to provide 100% relief to a charity. The Scottish Government will meet 75% of the 20% discretionary relief, with the Council funding the remaining 25% of the 20% relief. The ongoing cost to the Council would therefore be equivalent to 5% of the unrelieved NDR bill of WLL.

3.3 Recurring Annual Savings to the Council on Non Domestic Rates

The estimated NDR savings are set out below:

Total estimated NDR savings	£560,000
Less: Residual 5% NDR cost to Council	£28,000
Saving to the Council @ 95% Relief* (see note 3 below)	£532,000

Note:

1. The calculation is based on non-domestic rate poundage's at 2015/16, and estimated rateable values based on the 2010 revaluation appeal settlements for each property;
2. The saving assumes that charitable status is awarded and the premises meet the wholly and mainly for charitable use criteria for eligibility for mandatory and discretionary reliefs;
3. The exemption available for Howden Park Centre has been assumed as 80% due to the fact that the property has a liquor licence;
4. The next revaluation is scheduled to take effect on 1st April 2017 based on values fixed at 1st April 2015; thereafter, valuations will take place every five years. The saving arising in 2017/18 onwards may be adjusted through the revaluation exercise; and
5. The rateable values in respect of those facilities proposed for transfer to WLL have still to be agreed with the Lothian Assessor.

3.4 Application for Non Domestic Rates Relief

Initial indications are that the facilities proposed for transfer to WLL from the Council

would be able to obtain relief. Further detailed discussion with the Council's rating advisors, Lothian Assessor and the Council's Revenues Unit would be required during the implementation phase, as part of the due diligence process. The formal application for relief could only be made to the Revenues Unit once the relevant entries in the Valuation Roll had been made. The application for rates relief could only be made by WLL.

3.5 Service Level Agreements - Service Charge

As indicated at section 2.9, further discussion would be required between the Council and WLL during the implementation phase to agree the services that may either transfer or be provided by the Council through a service level agreement. Such agreements could, for example, relate to building maintenance, cyclical maintenance, grounds maintenance, statutory compliance or the supply and payment for utilities.

Agreement would be required on how each or any of such services should be paid for. The most appropriate and finally agreed form of charging mechanism would depend on a variety of different factors including the treatment of such payments for tax purposes.

3.6 Additional Costs of Transfer

The transfer of services to WLL would result in additional one off implementation costs such as professional fees for taxation, rating and legal advice, and condition surveys for properties within scope and associated regulatory costs (Companies House), Registers of Scotland and may include Land and Buildings Transaction Tax. (LBTT). There may also be costs associated with securing the agreement of PPP providers to the proposals. Any one-off implementation costs would be met through existing Council resources.

3.7 VAT Implications

Technical advice in relation to VAT would continue to be sought during the implementation phase to ensure that the transfer of facilities did not adversely affect the current VAT position of the Council and WLL. VAT reliefs would be given further consideration to determine whether any VAT savings could be generated including Sport services exemption, Cultural services exemption and the use of a trading subsidiary. This would involve discussion and agreement with HMRC on proposals for the optimum method for the calculation of VAT.

It is unlikely that the transfer of services proposed would have an adverse impact on the Council's own VAT position.

3.8 Management Fee

The Council would continue to pay WLL a fee for the management and delivery of services by WLL. The management fee would be payment in return for WLL providing the Council with the service of operating the facilities. The management fee payment would be calculated during the implementation phase to cover the delivery of services that would transfer and to take account of any services that would be provided to WLL by way of a service agreement by the Council. The management fee will require to be reported to members for determination.

An indicative Management fee would be calculated once the terms of the transfer had

been agreed to take account of the services that would transfer and those that would be provided to WLL through any service level agreements. The payment would reflect the cost of delivering the services transferring less the income that was received for the delivery of the services.

It would be difficult to precisely calculate the necessary management fee for transferring services, so it would be proposed that the management fee be reviewed 12 months after transfer to ensure that it had been properly calculated.

The key areas which would require to be developed at the implementation phase to support the calculation of the management fee are as follows:

- Confirmation of any staff costs salary transferring.
- Agreement of income and expenditure budgets from the date(s) of implementation including agreed sports and leisure fees and charges for 2017/18.
- Agreement of service level agreements.
- Agreement of saving targets.

3.9 Leases and Licences

Ownership of all properties proposed for transfer will remain with the Council (WLC) with occupation by WLL being granted through appropriate lease and/or licence agreements.

The type of agreement used in the proposed transfer to WLL would depend on the nature and extent of the property involved i.e. stand-alone; part of a secondary school managed directly by WLC, or through a PPP agreement. These agreements would be subject to detailed negotiation amongst the various parties involved at the implementation stages.

The main principles of any such agreement would be as follows:

- Length of lease or licence – dependent on the property involved, but could be up to 40 years in some cases.
- Rent – to be assessed in accordance with the Disposal of Land by Local Authorities (Scotland) Regulations, 2010.
- Repairing obligations – responsibility and payment for repairs would be established on a property by property basis and appropriate clauses inserted into lease or licence agreements to regulate delivery and payment obligations between the landlord (WLC) and the tenant (WLL).
- Utilities for transferring facilities – responsibility and payment for utilities to be established on a property by property basis and appropriate clauses inserted into lease or licence agreements to cover usage and payment obligations between the landlord (WLC) and the tenant (WLL). Where appropriate, agreements will have to reflect the statutory requirements of the Heat Network (Metering and Billing) Regulations, 2014.
- Condition surveys – these will be carried out at the start of any lease or licence agreement and would record the condition at that point in time with the obligation on the tenant (WLL) to return the property at the end of the agreement in a condition as close to that existing at the commencement of the lease, reasonable external factors notwithstanding.

- Non domestic rates (NDR) – areas transferred to WLL may be eligible for separate entries in the Valuation Roll. Once these entries are established the tenant/occupier (WLL) will be responsible for applying for NDR exemptions as a charitable organisation.

Consideration would require to be taken of any sub-lease arrangement in any transferring facilities.

The leases/licences to occupy would require to be registered with the Registers of Scotland and will incur a recording fee.

3.10 Corporation Tax

The impact of the extension of WLL's remit and change in legal status on any corporation tax liabilities will be considered in the implementation stage of the project. A review of WLLs primary and non-primary purpose activities will be required to assess the impact on the taxable trading activities that are carried out.

HMRC defines a primary purpose trade as one that forms part of the primary purposes or charitable objectives of the charity. An example of a primary trading activity would be the provision of swimming facilities, one of WLLs core objectives (i.e. sport). This cannot be achieved without public access and, therefore, admission charges are exempt. However, non-primary trade such as food sales in the cafe would be subject to tax.

3.11 Information and Communications Technology (ICT)

The main ICT considerations in respect of the proposed transfer of services/functions to WLL are:

- Assess the hardware and software implications for services/functions transferring to West Lothian Leisure;
- Assess internal and external network and physical infrastructure implications;
- Assess telephony, printing and security implications;
- Assess business application, licence and data transfer implications;
- Determine any legal, contractual and financial issues associated with the change; and
- Support the review of service business continuity plans associated with the changes.

4. HR and Workforce Planning

4.1 Employment Strategy

The Council's employees are key assets in delivering essential front line services to the public. The ethos of delivering high quality services is one that is shared by WLL. In addition, WLL requires its employees to develop skills which promote the organisation in a more enterprising manner. It is therefore vitally important that WLL's employment strategy continues to reflect this by pursuing a best practice, values based, people management strategy, thereby enabling it to meet the standards expected of an employer of choice.

4.2 Workforce Planning

If the transfer proposals are approved and implemented, the employees assigned to any transferring function would transfer to WLL. Provision of the functions proposed transfer is also currently supported by casual supply workers in respect of which the arrangements set out at section 4.3 of this document will apply.

The management structure for the service would require to be developed following such approval. The design of the management structure would follow the normal principles of good organisational development, taking into account the vision and purpose of the organisation, how it functions and how it links together, examples of good practice elsewhere and stakeholder views. As would be the case within the Council, the most cost effective and efficient method of delivering such services would be a key consideration in the design of the structure.

4.3 TUPE Implications

The Transfer of the Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies to situations where an undertaking, e.g. a function of service delivery, transfers to a new provider. The individuals working wholly or mainly in the area of work being transferred may qualify to be transferred with the work and to the new provider. Under TUPE, the individuals will receive TUPE protection which, in general terms, protects an employee's continuity of employment, their pay and their contractual conditions. Pension arrangements are not afforded the same protection under TUPE. This is covered in more detail in section 4.7 in so far as it would apply to transferring Council staff.

An assessment of the work carried out by employees would be required to determine who should be transferred to WLL. There is no specific amount of time an employee must have been working on the transferring service function before they could be considered for transfer but generally where 50% or more time is spent by them in the function to be transferred then they would qualify for transfer. This is not the sole determinant though and the value of an individual's role in terms of potential contribution to WLL's operational and commercial activities going forward would also be a valid consideration.

Employees assigned to any transferring function on this basis would transfer to WLL and become employed directly by WLL. In this scenario, TUPE would apply and the employees would receive the protection provided by TUPE. It should be noted that temporary employees would only have a right to transfer where their contract remained in existence at the point of transfer.

In essence, the TUPE regulations would transfer the contract of employment that existed between an employee and the Council to WLL, which would become the new employer. The protection offered is not time-bound. WLL would only be able to amend an employee's terms and conditions in certain circumstances, as described in section 4.6.

TUPE arrangements would not apply to those employees who continued to be employed by the Council.

The Council has no obligation to provide work for casual workers and equally, if offered work, casual workers are under no obligations to accept it. Given the nature of this relationship, and the absence of a formal contract of employment, TUPE does not apply

to these types of workers.

In the event that employees working within the functions identified for transfer to the WLL do not meet the criteria for transfer, they will not have an automatic right to transfer to WLL nor would the Council be in a position to insist they transferred.

4.4 TUPE Consultation

As is required by legislation, consultation on the transfer would take place in accordance with the TUPE Regulations (Regulation 13). This would involve representatives from both the Council, as the current employer, and WLL. The date of transfer for those transferring in accordance with TUPE legislation will be 1 April 2017.

As part of the consultation, discussions would require to cover a number of areas including the following:

- The fact that the transfer was going to take place, approximately when and why.
- Any social, legal or economic implications for the affected employees.
- Whether there would be any measures that the Council or WLL expected to take in respect of their own employees (even if this is nothing) in connection with the transfer. e.g. a re-organisation of employees and the specific action envisaged.
- Whether WLL is likely to make any changes that would impact on the transferring employees.
- Any impact on the transferring employees' terms and conditions.
- Any other matter affecting employees, who would be transferring, not covered in the above.

The issues within paragraph 4.2 above would be provided in writing to the Head Office of the recognised trade unions after the consultation process began.

Consultation on such issues would be initiated as soon as possible and on formal confirmation of the decision to transfer services to WLL. It would also continue during the implementation phase leading to the completion of the transfer. In line with good practice a wider consultation and communication strategy beyond that required by legislation would be implemented including the following measures:

- Regular meetings with trade union representatives to address not only the statutory TUPE issues but also any more general operational or relevant non-employment related matters.
- Issuing individual letters to employees and their representatives as appropriate.
- Publishing newsletters and regular web updates to keep employees advised of progress.

If any of the employees within the current workforce did not meet the test for transfer as referred to earlier, then specific consultation would be required including a discussion in respect of what this meant for the employee.

4.5 Transfer Options for Employees

An employee assigned to a transferring function would automatically transfer to WLL and be covered by TUPE protection. Where appropriate, employees who were affected would be discussed with the appropriate trade union representatives. The employee

could challenge whether they were working wholly or mainly in such an area. In such circumstances a process would be agreed with the trade unions to ensure careful, open and transparent consideration was given to any challenges made by the employees and that all decisions relating to employees, due to the transfer could be justified.

4.6 Pay, Terms and Conditions

The pay, terms and conditions of employees transferring to WLL would be protected by TUPE legislation. Any change to the pay, terms and conditions of employees following transfer could only be made by WLL if it met the requirements of having a justifiable reason under TUPE legislation.

These are namely for reasons unconnected to the transfer or where an economic, organisational or technical reason ('ETO') can be demonstrated. Economic reasons are to do with how the company is performing. Technical reasons are to do with the equipment or processes the company uses. Organisational reasons are to do with the structure of the company.

Where terms and conditions are incorporated into the contract of employment from a collective agreement these may be varied a year after the date of the transfer, providing that they are no less favourable terms and conditions.

4.7 Pensions

Given WLL has admitted body status to Lothian Pension Fund, appropriate arrangements will be agreed with the Fund to ensure membership of any transferring employees is unaffected.

4.8 Trade Union Recognition

WLL would maintain continuity of recognition arrangements by recognising the same trade unions for consultation/negotiating purposes.

WLL would also maintain appropriate trade union consultative mechanisms /forums which took into account the size, make-up and overall purpose of WLL.

4.9 Employee Development

It is essential that employees are competent and capable at performing their jobs, understand the standards expected of them and have the necessary skills to deliver services effectively, safely and efficiently.

Employees within the Council currently have access to a wide range of learning and development opportunities. Within WLL it might be necessary for transferring staff to develop new skills to operate in a third sector environment and ensure that all income generating and marketing opportunities are used to their best advantage. It would be essential that employees continued to receive access to job-based training and skill development opportunities to help WLL deal with changing demands on its services and deliver excellent services to its customers. This should be recognised by the Council and WLL with appropriate budget being put in place to support the necessary training and development of staff.

4.10 Protection of Vulnerable Groups (PVG) checks

There are a number of posts within the functions proposed for transfer that require checks to ensure all necessary steps to protect vulnerable children and adults are in place. The Council would provide details of the posts for which Protection of Vulnerable Groups (PVG) checks were required. Consideration would be given to placing a requirement on WLL that it adhered to the Council's policies on such matters, that checks would continue to be carried out in accordance with the Council's current arrangements and that requirements for retrospective checks were met.

Any employees transferring to WLL in posts which required PVG checks would already have been checked through this process. There would, however, be a requirement to carry out checks for new employees, where relevant to their post and to carry out retrospective checks at agreed intervals. It should be noted that this would have cost implications for WLL in the same way as it does for the Council.

Delivering Better Outcomes - Partnership Working

Appendix 3 - Risk Management

The Council's corporate approach to risk management has been adopted for the project to develop and implement proposals to transfer sports, leisure and cultural facilities and functions to WLL.

Through this approach, relevant risks and issues will be identified, assessed and monitored during the project, with the aim of managing exposure to unwanted outcomes. It is important that WLL continue to be closely involved in the risk management process, given the partnership nature of the work which would be required to successfully implement the proposed transfers if approved.

Responsibility for the initial identification of risks/issues and possible mitigating actions sits with the officer groups established to develop the transfer proposals and deliver the required activities to implement any approved transfers.

A central risk register has been developed which will be monitored by the Project Team and Board to ensure that all aspects of the proposed transfers are considered and risks proactively managed.

If the proposed transfers are approved by the Council Executive and WLL Board, the Project Team will conduct a focussed risk workshop to identify all possible risks associated with the implementation phase and ongoing delivery of services, to ensure that risks are assessed, accepted, managed and mitigating actions identified and implemented.

The high level risks that have the potential to impact on the implementation of the project are highlighted in the table overleaf.

Risk/Description	Mitigating Actions
Challenge in Relation to State Aid/Procurement - It is impossible to entirely rule out the risk of a third party challenge on the grounds of alleged infringement of procurement or EU State Aid principles.	Providing the Services Agreement between the Council and an expanded Trust is structured in a manner which reflects the <i>Altmark</i> principles (including the level of payments under the services agreement being similarly in line with these principles), the risk of a successful challenge to the arrangements by reference to state aid principles is considered to be limited.
Timescales - Following approval of any transfer proposals by Council Executive and WLL Board there may be insufficient time to complete implementation actions in advance of 1 April 2017.	Officer groups are aware of the time pressures. A detailed implementation plan is being developed to ensure that timescales are feasible.
Due diligence uncovers property issues - Full diligence process could uncover issues in relation to title or ability to enter into an appropriate lease structure.	An early start to property review has commenced and appropriate discussions with relevant parties will be undertaken as soon as is reasonably practicable.
Condition Surveys - Properties remain in Council ownership, however, surveys could reveal works which need to be carried out to individual properties with possible financial and timing consequences.	WLL will require updated surveys. The Head of Finance and Property Services will collate existing condition surveys, identify any substantive works since their production and identify gaps. A programme to complete a tender process and survey properties to ensure due diligence is addressed is in progress to mitigate this issue.
Unable to secure NNDR relief - The Council's Revenues Unit will only be able to make a decision on what levels of relief are available once new rateable values have been established for the properties to be occupied by WLL.	The project team has engaged with the Revenues Unit and its Rating Advisers at an earlier stage in the process. Based on the project team's review of the properties, it is anticipated that the arrangements being put in place will be sufficient to ensure NNDR relief is granted.
PPP arrangements - Possibility that PPP providers do not engage in proposals or that requirements (including financial considerations) for engagement is prohibitive. Timescales are also a risk in relation to implementation of any arrangements agreed with providers.	Early engagement with PPP providers to develop proposals and explore appropriate arrangements / timescales and financial considerations to achieve implementation.

Risk/Description	Mitigating Actions
OSCR Approval - Company structure and governance arrangements do not meet the requirements of OSCR.	Early engagement has taken place with OSCR for implementation including corporate governance structure as well as refinement of the appropriate Articles of Association. Feedback suggests that the revised structure would gain OSCR approval.
Amendment to of Articles of Association to accommodate increased objects in support of proposals not agreed.	Articles of Association being reviewed and necessary amendments identified in anticipation of consideration by WLL and OSCR.
Data and Technology - Following approval of any transfer proposals by Council Executive and WLL Board there may be risks associated with the provision and transfer of services and functions relating to data and technology.	Officers are aware of the potential risks and a detailed implementation plan is being delivered to ensure that the risk is managed effectively.
Identification of all existing contractual and other arrangements relating to facilities and services to enable appropriate contractual and other regulatory changes required to accommodate proposed transfer.	Exercise in collating contractual and other existing arrangements is underway.



COUNCIL EXECUTIVE

CONSULTATION RESPONSE TO SOCIAL SECURITY IN SCOTLAND.

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

The purpose of the report is to inform the Council Executive of the Scottish Government's consultation on Social Security in Scotland which closes on 28 October 2016, and to agree a West Lothian Council response.

B. RECOMMENDATION

It is recommended that the Council Executive:

1. Notes the contents of the report and the accompanying proposed consultation response (appendix 1); and
2. Approves the proposed consultation response.

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities; making best use of our resources; working in partnership.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	There are questions on equality impact assessment contained in the consultation.
III Implications for Scheme of Delegations to Officers	None.
IV Impact on performance and performance Indicators	There may be a statutory requirement to have performance indicators.
V Relevance to Single Outcome Agreement	Our children have the best start in life and are ready to succeed. We are better educated and have access to increased and better quality learning and employment opportunities. Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business. We live longer, healthier lives and have reduced health inequalities.

VI Resources - (Financial, Staffing and Property)	Resource implications are not clear at this stage.
VII Consideration at PDSP	Given the timing of the consultation it has not been possible to consider this at PDSP.
VIII Other consultations	West Lothian Council: Legal Services, Social Policy, Housing, Customer & Building services, Finance and Property Services and Employability service. CPP Anti-Poverty Development Group, Universal Credit Working Group and West Lothian Advice Network have been consulted on this response.

D. TERMS OF REPORT

Background

In March 2016, the Scottish Government published its paper 'A New Future for Social Security in Scotland'. The paper sets out the aim for a new social security system with its vision that "*Social security is important to all of us and able to support each of us when we need it*".

The vision is supported by five principles which will govern the decisions made on social security policy and delivery. The principles are:

- Social security is an investment in the people of Scotland;
- Respect for the dignity of individuals is at the heart of everything we do;
- Our processes and services will be evidence based and designed with the people of Scotland;
- We will strive for continuous improvement in all our policies, processes and systems putting the user experience first; and
- We will demonstrate that our services are efficient and value for money.

The aim is to create a fairer society which contributes to the goal of tackling poverty and inequality and which challenges the stigma that surrounds social security. The Scottish Government has made four commitments in using its new social security powers to improve the financial support available to benefit recipients, namely to:

- abolish the bedroom tax;
- increase Carer's Allowance to the level of Jobseeker's Allowance;
- abolish the 84-day rule, under which children with disabilities and their families stop receiving Disability Living Allowance and Carer's Allowance if they are in hospital for more than 84 days; and
- enable Universal Credit to be paid directly to social landlords, and to offer twice monthly payments to recipients rather than monthly payments.

No decision has yet been taken through the Scotland Bill or fiscal framework negotiations on the exact dates for transferring individual benefits to Scotland. There is recognition that the Scottish Government will need to work closely with the Department of Work and Pensions (DWP) to ensure the transfer of responsibility for managing and delivering each devolved benefit is at the most appropriate time to guarantee payments are not interrupted. This is vital as many people who receive the devolved benefits will also continue to receive support from DWP.

The Scottish Government has indicated that it will establish a new social security agency which will be accountable to Scottish ministers. The new agency will look to deliver the new powers in partnership with other agencies.

Context

The total spend in Scotland on social security in 2014/15 was £17.5 billion and the UK Government will remain responsible for 85% of this spend including pension benefits and benefits for those who are seeking employment. The 15% of benefit spend which will be devolved to Scotland covers:

- Ill health and disability benefits (Attendance Allowance, Disability Living Allowance, Personal Independent Payment, Severe Disablement Allowance and Industrial Injuries Disablement Benefit).
- Carer's Allowance
- Best Start Grant (formerly Sure Start Grant)
- Funeral Payments
- Cold Weather Payments and Winter Fuel Payments
- Discretionary Housing Payments
- Universal Credit – some powers in relation to split payments

The Scottish Government proposes introducing a new Job Grant for young people, who have been unemployed for six months, and who are entering the job market.

Given that around 1.4 million people will be eligible to claim one or more devolved benefits, it is important that the transition from the DWP to the Scottish social security system is transparent, simple and takes account of any changes and is embedded in timescales which are achievable.

Consultation

The consultation opened on 29 July 2016 and will finish on 28 October 2016. The consultation is in three parts:

Part 1: A principled approach – this section contains questions on:

- principles for the new Social Security Agency,
- outcomes and the user experience,
- delivery of social security in Scotland,
- equality and low income and
- Independent advice and scrutiny.

Part 2: The Devolved Benefits – this section contains questions on:

- each of the powers being devolved to Scotland in the area of Social Security.

Part 3: Operational Policy – this section contains questions covering:

- Advice, representation, advocacy,
- Complaints, review and appeals,
- Residency and cross-border issues,
- Overpayments and debt,
- Fraud,
- Protecting information, and
- Uprating of benefits.

The proposed response covers all parts of the consultation and has been informed by input from officers from a wide range of council services, the Universal Credit Working Group, the Community Planning Partnership's Anti-Poverty Development Group and West Lothian Advice Network. As recently reported at the Partnership and Resources PDSP on 23 September, given the wide ranging and complex nature of the consultation and the time taken to produce the proposed response, it has not been possible to submit this through the Partnership and Resources PDSP.

In summary, the proposed consultation response agrees with the principled approach to the new social security system and also agrees that dignity and respect should be at the heart of the system along with a co-production approach. It is considered that this offers an opportunity to do things differently to achieve a more joined up customer experience which links benefits with other forms of local support.

However, included in the detail of the consultation (Appendix One), the response also highlights the following challenges, namely:

- The approach will need an ethos and culture established within the new agency from the outset to distinguish it from the UK benefit system.
- While there is a welcome emphasis on the importance of those with a lived experience of social security helping to shape the service, it is also important that those with experience of delivery are involved in the design.
- There is an emphasis on data sharing and the use of IT systems. This would require significant resourcing to ensure it was fit for purpose.
- Local Government has the knowledge and skills to deliver at a local level and to integrate local support services. It is important that local authorities are a key partner. This will require additional funding.
- Potentially customers will be dealing with both the UK benefits system and the Scottish system therefore communication will need to be clear to avoid confusion and lack of take up of benefits.
- The offer of goods or in-kind services rather than money may well be expensive to deliver and may conflict with the principles of dignity and respect.
- Advice, advocacy and representation are areas where funding comes from a variety of sources: local, Scottish and UK governments. There is an opportunity to review and streamline to match resources with need and avoid duplication. However, care needs to be taken to ensure that independent advice is accessible in order to help navigate the UK, Scottish social security and local government processes.

The response also puts forward the following recommendations:

- The 'user panel' should include those who have experience of delivering the system.
- To achieve digital literacy, focus should be on connectability, the need for data sharing and IT resource which is fit for purpose and resourced adequately.
- Local authorities should be a key partner in delivery. Local authorities are in a strong position to be able to expand a role in delivery and administration, using existing infrastructure and accountability arrangements. This will need resourced.
- It is recognised that there will still be a need for face to face facilities to allow claims to be made, evidence provided and assistance through the claims process. Local government already has the means to provide this and to link with other forms of local support.
- A strong evidence base should be built to support the investment of 'goods or in-kind' services.

- E. • It is recognised that there is an opportunity for health professionals to play a greater role in the social security system and in supporting individuals to access other localised forms of support.

CONCLUSION

The proposed new principled approach to social security is welcomed. There are matters that need to be considered in relation to how this will be delivered given the continuing challenging economic circumstances and the implications on budgets at a local authority level.

The Council Executive is asked to agree the submission to the consultation as set out in Appendix 1.

Appendices/Attachments: Appendix 1: Response to Consultation

Contact Person: Elaine Nisbet, Anti-Poverty and Welfare Advice Manager,
elaine.nisbet@westlothian.gov.uk Tel: 01506 282921

Donald Forrest

Head of Finance and Property Services

Date of Meeting: 25 October 2016

A New Future for Social Security

Consultation on Social Security in Scotland

Answer Booklet

July 2016



Scottish Government
Riaghaltas na h-Alba
gov.scot

Introduction to the Answer Booklet

This is designed to accompany the Consultation on Social Security in Scotland which can be found here: <http://www.gov.scot/Publications/2016/07/9955> . This booklet should be used if you can not or do not wish to provide an online response. Please refer to the consultation document to give context to the questions.

Send your completed response to:

socialsecurityconsultation@gov.scot

or

Social Security Consultation
5th Floor
5 Atlantic Quay
150 Broomielaw
Glasgow
G2 8LU.

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form**. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Chris Boyland
5 Atlantic Quay, 5th floor
150 Broomielaw
Glasgow,
G2 8LU.

Or

E-mail: socialsecurityconsultation@gov.scot

RESPONDENT INFORMATION FORM

Consultation on Social Security in Scotland to determine how best to use the new social security powers which will be devolved by the Scotland Act 2016.

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

☐ Individual

☒ Organisation

Full name or organisation's name

West Lothian Council

Phone number

01506 282921

Address

Civic Centre, Howden Road South, Livingston

Postcode

EH54 6FF

Email

Donald.forrest@westlothian.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

☒ Publish response with name

☐ Publish response only (anonymous)

☐ Do not publish response

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?

☒ Yes

☐ No

CONSULTATION QUESTIONS

PART 1: A PRINCIPLED APPROACH

1. Fixing the principles in legislation

Q: Which way do you think principles should be embedded in the legislation?
(please tick the option/s you prefer)

A. As a 'Claimant Charter'?	x
B. Placing principles in legislation?	x
C. Some other way, please specify	

Why do you favour this/these option/s?

Please explain your answer

Certain of the five key principles in the document lend themselves to inclusion in the legislation, e.g. Principle 2 regarding "the respect and dignity of the individual". As stated this type of provision was also incorporated in the Welfare Funds (Scotland) Act 2015.

Together with this high level commitment, further details can be fleshed out in the Guidance or Charter.

Other Principles, e.g. Principle 4 regarding "continuous improvement" and "putting the user experience first", perhaps lend themselves more to the Guidance Document or Charter.

Therefore a Claimant Charter, which had been agreed with all stakeholders, should contain the detail and could be reviewed, updated and revised on a regular basis.

If you think option A, 'a Claimant Charter' is the best way to embed principles in the legislation please advise:

Q: What should be in the Charter?

The five key principles outlined on page 12 of the consultation document should be used as the basis for the Charter. The charter should develop further detail on how these would be delivered and the standards of the service and should include:

- The ease and joined-up nature of the simpler application process;
- Timescales;
- Customers treated with respect;
- Questions answered timeously;
- Plain English communications; and
- A commitment to continuous improvement and learning from customers' experiences.

Q: Should the Charter be drafted by:

(please tick the option/s you prefer)

A. An advisory group?	
B. A wider group of potential users and other groups or organisations?	
C. Both	x
D. Some other way, please specify	

Why do you favour this/these option/s?

It is important that the process takes into account the experiences of those who access and use the system, stakeholder groups who are providing assistance and support and Scottish Government who will be responsible for the new arrangements alongside those who administer the current system. It is important that there is a clear understanding from all sides on the challenges faced and therefore this will support the delivery of a Charter which reflects a realistic set of commitments.

Q: We are considering whether or not to adopt the name, “Claimant Charter”. Can you think of another name that would suit this proposal better? If so, what other name would you choose?

In the narrative of this section the document makes the point that, by the end of the process, ...“we will also have turned a corner, away from a social security system which many people say stigmatises and disempowers users”.

The term ‘claimant charter’ could be confused with the claimant commitment which is a statement of obligations as part of the DWP current arrangements. West Lothian Council believes that the continued use of the word "Claimant" (rather than a preferable word such as "User", "Customer" or "Applicant") is perhaps no longer helpful in general. More particularly, in this context, the prominence, awareness, and negative sanctions associated in many people's minds of the experience of the DWP Universal Credit and Job Centres' "Claimant Commitment" obligations might cause something called a "Claimant Charter" to be regarded with suspicion.

Q: Do you have any further comments on the ‘Claimant Charter’?

No

If you think option B ‘placing the principles in legislation’ is the best way to embed principles in the legislation, please advise:

Q: On whom would you place a duty to abide by the principle that claimants should be treated with dignity and respect? (please tick the option you prefer)

A. The Scottish Government	<input checked="" type="checkbox"/>
B. The Scottish Ministers	<input checked="" type="checkbox"/>
C. The Chief Executive of the Social Security Agency	<input checked="" type="checkbox"/>
D. Someone else, please specify	

All who have a specific part to play in any elements of social security in Scotland should be clear about the principles – the principles of dignity and respect must be woven through all parts of the process: training for staff, promotional material, and correspondence.

Q: Do you have any further comments on placing principles in legislation?

No

Q: Do you have any further comments or suggestions in relation to our overall approach, to fix our principles in legislation? For example, do you feel that there is no need to fix principles in legislation?

(please tick one box)

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

Given the importance of the principles they should be stated in legislation. However, guidance and clarification on dignity and respect may need to refer to the culture and ethos of an organisation along with practical application of these principles.

2. Outcomes and the user experience

Q: Are the outcomes (shown in the table on page 17 of the consultation) the right high level outcomes to develop and measure social security in Scotland?

(please tick one box)

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Short and long term outcomes to measure the impact of the overall system are welcomed. Further clarification on how some of the outcomes would be measured and reassurances that there would be a consistency of approach in these measures of performance would be helpful. An evidence framework should be introduced to determine periodically how they are being achieved.

Q: Are there any other outcomes that you think we should also include (and if so, why?)

The short and medium term outcomes and the long term outcomes detailed on Page 17 of the document are comprehensive and welcome.

However in the list of long term outcomes the single sentence “The Scottish social security system...works effectively with the reserved benefit system” needs to be further detailed, fleshed out and focussed on.

It is also the case that the reserved benefits, and their agencies especially DWP, need to engage with developments in Scotland and adapt their administration and systems to properly address the devolved aspects of their reserved benefits, e.g. the Housing Support element of Universal Credit.

Q: How can the Scottish social security system ensure all social security communications are designed with dignity and respect at their core?

Recognition that the concepts of dignity and respect must be clear at all levels of the organisation involved with Social Security is important. This will take time and specific actions to achieve.

Staff training would need to embed key elements around disability awareness training, poverty awareness and customer service which would include commitments towards listening, being courteous and helpful.

The design would need to take into account the views of stakeholders particularly around accessibility for those with visual impairments, English as a second or other language, literacies, learning disabilities and other conditions. All documents should be scanned to ensure plain language.

Access for those with hearing impairment, language line for those customers whose first language is not English, as well as on line ‘easy read’ formats should be considered.

There should be consideration given to a working group made up of stakeholders, customers and support workers to consistently review all communication and suggestions for improvements should be agreed and time lined.

It would be beneficial to have a simplified application system with IT systems which work together to share information.

Q: With whom should the Scottish Government consult, in order to ensure that the use of language for social security in Scotland is accessible and appropriate?

All stakeholders: local authorities, voluntary organisations, advice and advocacy services, disability organisations. Individuals who have accessed the benefits system and may have had either a positive or negative experience of it should be consulted.

Consideration needs to be given to who would be able to give expert advice on clear communication channels and how this might be best marketed and publicised.

Q: Are there any particular words or phrases that should not be used when delivering social security in Scotland?

Yes	x
No	

The Poverty Alliance's 'Stick Your Labels' campaign could be used to highlight many of the phrases that are unhelpful. There are terms which may have been used in the past but are now regarded as stigmatising. Asking organisations to 'sign up' to the campaign, cascading training to all front-line staff around the use of language and poverty sensitivity training would help change the culture and ethos.

Those who have had experience of the system will be able to inform the use of language in all forms of communication.

Q: What else could be done to enhance the user experience, when considering the following?

- When people first get in touch
- When they are in the processes of applying for a benefit
- When a decision is made (for example, about whether they receive a benefit)
- When they are in receipt of a benefit

- Good customer service which meets the standards set in the Claimant Charter.
- Train staff to be able to deal with the person's whole needs at first point of contact.
- Clear, concise information on what they can expect and what they need to contribute to the process.
- Acknowledgement of applications/information received.
- Information/timescales on what will happen and when.
- Updated information on what is happening if there are delays.
- Good, simple ways in which to make contact in a variety of formats (on-line, by phone)
- Consider where, when and how customers may wish to get in touch – not necessarily traditional office hours.
- Advice and guidance on what customer can do if they are not satisfied with the decision at each stage of the process.

Q: How should the Scottish social security system communicate with service users? (For example, text messaging or social media)?

- All forms of multi media should be used – email, text messages to encourage and support use of digital channels.
- The use of websites, info grams, You Tube, to give general information should be widely accessible.
- Customers should be encouraged and supported to self-serve for general information and advice ie frequently asked questions.
- Texting has proved to be an effective way to send reminders to customers about deadlines and appointments.
- Customer should be asked what the preferred means of communication is.
- Alternative, appropriate forms of communication should be offered to those who do not or cannot use new technology.
- All staff to have training in alternate ways of communication as a key element of customer care.

Q: What are your views on how the Scottish Government can ensure that a Scottish social security system is designed with users using a co-production and co-design approach?

This could be an opportunity to achieve a more joined up customer experience. Part of the process should be about how accessing social security 'triggers' other forms of help and support. Systems need to talk to each other to share information to ensure an integrated approach.

The approach needs to remove barriers, build confidence and trust, and support individuals and organisations to take part. This will require time, user friendly approaches which recognise that child care, travel and enabling assistance will be needed.

The views of those who have experience of claiming social security needs to be balanced with those who currently deliver the service, along with advice givers, local government and key public services to ensure that there is a realistic consideration of cost implications and limitations on what can be achieved.

Q: We are considering whether or not to adopt the name "User Panels". Can you think of another name that would better suit the groups of existing social security claimants which we will set up?

It is not clear how the term 'User Panels' reflects the need to involve those people administering the system?

The difference between a user panel and an advisory panel which is mentioned elsewhere is not evident.

3. Delivering social security in Scotland

Q: Should the social security agency administer all social security benefits in Scotland?

Yes	
No	x

Local authorities already have extensive experience of administering various elements of social security type funds both entitlements based and discretionary. Local authorities have managed to reduce the processing times for claims and, mindful of the constraints on budgets, have also managed to reduce costs.

This is an opportunity to streamline the process of all the elements which councils currently administer and to use the expertise at a local level to deliver nationally agreed policy.

The customer journey would be simpler, building upon the relationship which already exists at a local level. Local authorities already have face-to-face facilities to allow claims to be made, evidence provided and assistance through the claims process. Local authorities are already engaged in the channel shift agenda and are working toward digital or telephony service although expansion of this will require funding.

Local authorities already have a strong, productive relationship with the DWP. This will need to continue. If another interface is set up, this will confuse the customer, create added expense and could increase duplication of effort.

This is an opportunity to provide a 'one stop' service which integrates a range of support, advice and advocacy

Q: Should the social security agency in Scotland be responsible for providing benefits in cash only or offer a choice of goods and cash?

(please tick one box)

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If the new social security system is based on dignity and respect, then it is difficult to see how this would fit with these principles.

There is not enough detail on what types of goods could be accessed, how this would be procured and managed, who would be responsible for this and whether there would be a choice. More detailed information is needed to help an informed discussion to take place.

Q: How best can we harness digital services for social security delivery in Scotland?

The channel shift agenda is one in which all public services are involved. There is a balance to be struck between digitalisation to enable a self-service approach alongside call centres where, if staff were well trained, they could deal with customers on a case by case basis. This would support the initial stages of claims to be front loaded to ensure that the majority of claims were correctly made at the initial stage.

Support to access digital services needs to be provided at a local level which integrates with locally provided services.

It is vital to retain alternative channels for those who are unable to access digital services.

Q: Should social security in Scotland make some provision for face to face contact?

(please tick one box)

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

It is inevitable that some customers will struggle to use a system with no face-to-face contact.

This should be provided locally taking into account time, place and location to make this accessible. It should be given as part of an integrated approach to other services and forms of help and support.

Face-to-face contact will need to complement the accessibility and ease of the general information, application process and any requirements needed for the provision of evidence, reviews and appeals.

Q: Who should deliver social security medical assessments for disability related benefits?

If, data sharing was agreed between HMRC and NHS, which is suggested elsewhere in the consultation, then attendance at medical assessments would not be needed. A health professional who knows the customer would be best placed and therefore this could be a wide range of professionals. They are best placed to give clear information on the individual's health and make an assessment for disability benefits.

There would need to be further discussion once there is a clearer understanding about what disability benefits will look like once devolved.

Q: Should we, as much as possible, aim to deliver social security through already available public sector services and organisations?

(please tick one box)

Yes	x
No	

Yes, there is a high level of expertise and experience within local government. This would encourage a more 'joined up' approach with local services and support. It will be more cost effective using existing infrastructure, building upon existing knowledge, skills and expertise. This will help local authorities to reach hard to reach vulnerable customers and offer a range of support and tackle long term, persistent poverty. Some customers have received negative experiences of services delivered by the private sector.

Q: Should any aspect of social security be delivered by others such as the 3rd sector, not for profit organisations, social enterprises or the private sector?

(please tick one box)

Yes	
No	x

It is difficult to consider which 3rd sector or social enterprise would have the governance, expertise or infrastructure to take this forward without incurring considerable expense.

If, local authorities were the conduit for social security delivery, then wrap-around services would be integrated into delivery. These are often delivered by 3rd sector and not for profit organisations.

4. Equality and low income

Q: How can the Scottish Government improve its partial EqIA so as to produce a full EqIA to support the Bill?

These prompts could be helpful in framing your answer:

- What does the Scottish Government need to do, as it develops a Scottish social security system, to ensure that equality implications are fully taken into account?
- What does the Scottish Government need to do, as it develops a Scottish social security system, to ensure that any implications for those on low incomes are fully taken into account?
- Are there equality considerations for individual benefits that you would like to draw to our attention?
- Are there considerations about individual benefits for those on low incomes that you would like to draw to our attention?
- What are your views on how we can best gather equality information for the new Scottish benefits?
- What does the Scottish Government need to do to ensure that its social security legislation (including secondary legislation and guidance) aligns its vision and principles with equality for all those who need assistance through Social Security support?
- What does the Scottish Government need to do to ensure that a Scottish social security system provides the right level of support for those who need it, and what are the possible equality impacts of this?

There will need to be a focus on the implications of policies and arrangements in relation to particular benefits. It will need to take into account how benefits interact with other public services and the reserved benefits system.

If the EQIA only considers Scottish benefits (which equates to only 15% of the whole benefit system) then it may miss issues which affect individuals through the delivery of the whole system.

If the EQIA only considers what needs to be done by a Scottish social security system, there may not be recognition that the right level of support required needs both investment in other services and how effectively services can be joined up to achieve outcomes.

It would be beneficial to know how race related organisations and LGBT charities and organisations views are supported. In terms of demographics, what work are you already doing in identified deprived areas?

5. Independent advice and scrutiny

Q: Do you think that there is a need for an independent body to be set up to scrutinise Scottish social security arrangements?

(please tick one box)

Yes	x
No	

This would provide expert analysis, and scrutiny on the new arrangements.

Q: If you agree, does the body need to be established in law or would administrative establishment by the Scottish government of the day be sufficient?

(please tick one box)

Yes	x
No	

It should be established in legislation with powers to investigate aspects of the system and required to produce regular reports and guidance.

Q: If yes, what practical arrangements should be made for the independent body (for example, the law could state how appointments to it are made and the length of time an individual may serve as a member of the body)?

It will need to be independent. There will need to be a range of expertise and will need to be given powers through legislation to ensure that it can carry out its role. The body should be able to make recommendations to ministers, the social security agency and other bodies involved in delivering social security powers. Scottish Ministers should be expected to respond to those recommendations. Appointment, length of time, roles, remit and responsibilities should fit with other independent bodies.

Q: Should there be a statutory body to oversee Scottish social security decision making standards?

(please tick one box)

Yes	x
No	

It would be preferable to have one scrutiny body which could have responsibility for overseeing standards of decision making thereby giving a complete overview of the social security system.

Q: If yes, should this be a separate body in its own right?

(please tick one box)

Yes	
No	x

Once decisions have been made on the role and responsibilities then consideration should be given to merging this with an existing public body.

Q: Do you have any other views about the independent scrutiny of social security arrangements in Scotland (e.g. alternative approaches)?

no additional comments

PART 2: THE DEVOLVED BENEFITS

6. Disability Benefits (Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Severed Disablement Allowance and Industrial Injuries Disablement Benefit)

Q: Thinking of the current benefits, what are your views on what is right and what is wrong with them?

Disability Living Allowance (DLA)

What is right with DLA?

DLA (Care Component) is based on a fairly open consideration of the care reasonably required. This better matches the social impact on the claimant and their carer than PIP does. Mobility can be based on limitation through a wide consideration of time, distance, manner and speed and supervision, risk, cognitive impairment, and mental illness.

DLA requested medical/extra supporting information from relevant health professionals named in claimants form, reducing costs to the claimant requesting information, medicals were only required when no medical evidence was returned and medicals were at the clients home.

It is not means tested and is not taxable.

There is a commitment from DWP to continue to roll out PIP and the Scottish Government has indicated that they will not ask those who are migrating from DLA to PIP to undertake any more assessments during this transition.

What is wrong with DLA?

No account is taken of the claimant's actual living situation, for example, if they are socially isolated or have no accessible transport. Help not directly linked to 'bodily functions' that may be required to maintain dignity, such as laundry or housework, is not taken into account. Provision of aids and adaptations can reduce entitlement (as attention from another person is no longer needed) with loss of entitlement and corresponding loss of passported entitlements. Care which is required to maintain a home is not counted; a claimant may be in squalor or at risk from malnutrition as a result of not coping through their condition.

Mobility for claimants with supervision needs relating to cognitive impairment or mental illness is, in most cases, limited to the lower rate (exceptions on visual acuity and where restraint required). When it is stopped a claimant faces a financial cliff edge with not only loss of DLA but also loss of any premiums payable with means tested benefits.

It can be a grey area determining whether an award should be for a 'significant portion' of the day or 'frequent attention required' with the department usually awarding lower rate care £21.80 to claimants when the award could be middle rate care £55.10, a potential loss of £33.10 and loss to passported benefits, carers allowance claim or severe disability premium worth £61.85 and concessionary travel. Without guidance and assistance from professionals the person is unaware that they may have been awarded the wrong rate.

A person over 65, who has been on DLA, and wishes to report a change of circumstances will require to complete a form. It would be helpful if the form was short and user friendly.

Processes could be improved around data sharing especially between the NHS and DWP decision makers. NHS staff should have more knowledge about what is being asked and why they are being asked to report on this. Communication between different benefit departments ie PIP and ESA, particularly around DS1500 cases, could be improved.

Personal Independence Payment (PIP)

What is right with PIP?

Account is taken of aids and adaptations to increase entitlement (though that may be changed if rules change).

As with DLA it is not means tested and is not taxable.

Initially there has been a significant number of teething issues with the new benefit, particularly around the issues claimants reported during the implementation stage.

What is wrong with PIP?

It does not fully recognise supervision requirements or the actual burden on carers (where care is provided) and allows no flexibility of issues out with those stipulated in Regulations.

Those who are currently on DLA and are being invited to apply for PIP are not able to be identified. This is a missed opportunity to support vulnerable people who may slip through the net.

DWP has been unable to provide information on those who are transferring across. This lack of data sharing means missed opportunities to target individuals who might need support

and advice. There is no frontline support at the DWP to assist people who are struggling with the invitation or who are experiencing problems; some claimants are unable to cope over the phone and require face to face assistance and guidance.

PIP was meant to focus on those with the most severe challenges in day-to-day life. If support is reduced or withdrawn from those with lower levels of need then there will be a considerable strain potentially placed on local authority social work budgets.

The process and timescales for applying for PIP are extremely long. The length of the form, the types of information requested and the standard of communication all make it difficult to access the support. When requesting a change of circumstances / review, there is no timescale, when the decision is made and if, in the claimants favour with an increase to their award, the award date is only from when the decision was made. It should be from when the change was reported as the claimant potentially loses out in income to help with the increase in their care or mobility needs and passported benefits.

When a current DLA claimant is diagnosed with a terminal illness, they have no choice but to report the change by becoming a new PIP claimant. The DLA timescales for terminal 'special rules' were 14 days for making a decision. The PIP claim under 'special rules' for terminal illness timescales are poor. It can be 28 days or more. This group of people should be the last group to be targeted for PIP transfer and should be allowed to remain on DLA with the 14 day timescale turnaround until PIP has been fully rolled out. There is potential loss in income for terminal patients with the delay in making the decision as they remain on the lower rate of DLA until PIP make the new decision.

There is poor internal processing with DS1500 medical services in PIP section. When a claim has been submitted, this is sent for screening by a medical person to check DS1500 does apply. There are frequent delays with checking medical information, seeking further clarification and delays in the decision making process.

Medical assessments are particularly burdensome with long timescales and are not undertaken locally. The medical assessment should be streamlined in line with the claim form questions to make the process easier for claimants. The claimant often takes extra evidence to the medical and the medical examiner refuses to look at it or include with the assessment. This could be improved and could help the DWP decision maker when the report from the examiner is received.

As with DLA, when it is stopped a claimant faces not only the loss of PIP but also the loss of any premiums payable with means tested benefits.

Attendance Allowance (AA)

What is right with AA?

AA considers a wider range of attention and supervision needs broadly linked to the burden on the carer or amount of unmet need if there is no carer.

AA for the most part is seen as fit for purpose.

What is wrong with AA?

There is no equivalent lower rate and the cut off between DLA (includes Mobility) and

Attendance Allowance (which does not) does not reflect the increase in life expectancy or increase in retirement age, however for many claimants it is less restrictive than PIP.

Whilst the provision itself could be seen as fit for purpose the application process and evidence requirements discussed around PIP are also true for AA.

Q: Is there any particular change that could be made to these disability benefits that would significantly improve equality?

Please specify below

Assessment processes do not support claimants with mental illnesses or disabilities and are clearly based on a 'snapshot' on day of assessment. Assessment is not always by doctors and may be completed by other 'health professionals' such as physiotherapists or nurses who may be working out with their area of expertise. Claimants may be discouraged from working because, although in theory DLA/PIP/AA can be paid while working, in practice that is used as a prompt to review and remove entitlement. Entitlement should be wider to include claimants who have been granted asylum or immigration rights. Needs exist from day one and restriction to entitlement for 'past residence' does not recognise the burden on individuals, or Local Authorities or other services which may have to put services in place to compensate for lack of entitlement.

There needs to be an examination/review of age barriers. There needs to be consideration given to the different rules across the age ranges to confirm if there is evidence to support these differences.

Realistic timescales for review of awards to be re-introduced based on the customer's individual circumstances and prognosis.

Ensure that consideration is given to aligning temporary suspensions of benefit to ensure equity in terms of the number of weeks.

We want to make sure that the process is clear and accessible from start to finish, and that people claiming devolved benefits understand how and when their claim will be dealt with.

Q: In relation to the above how should the new Scottish social security system operate in terms of:

- A person applying for a disability related benefit
- The eligibility criteria set for disability related benefits
- The assessment/consideration of the application and the person's disability and/or health condition
- The provision of entitlements and awards (at present cash payments and the option of the Motability Scheme)
- The review and appeal process where a person isn't content with the outcome

Overall, It is difficult to determine how the process should work until there is clarification on access to medical records, whether assessments will be needed or if the criteria are simplified.

However, it would be helpful if applications were accepted by a variety of methods not just digital or phone and should include paper applications. Advisors often complete applications at claimants' homes and it may not be either possible or appropriate to apply on-line or by phone.

The process for DLA/AA where a phone call may be made for a form to be sent out, with the call simply logging the date of the claim rather than being part of the application is preferable to the process with PIP where the initial application (PIP1) is by phone or Universal Credit where application is on-line.

The extent of a claimant's disability along with a broad consideration of care and mobility needs should be at the heart of the eligibility criteria. A health professional and/or services which are already engaged with the claimant should undertake the assessment process. The award should remain monetary (to ensure the principles of dignity and respect) with the continuation of the option of the motability scheme.

The overall process should be a streamlined process, clear and concise with information given/sent out to the claimant on what to expect. With signposting to local agencies/assistance who may be able to offer help.

Q: With this in mind, do you think that timescales should be set for assessments and decision making?

Yes	x
No	

Please explain your answer

It should be a fundamental part of the both the legislation and the customer charter that timescales are clearly set out.

For those applying for benefits alongside those who are providing advice and support, there needs to be a clear understanding about what the benefit is, how you apply, what the criteria is and how long it will take both to process a claim, make a decision and what happens if the timescales are not adhered to.

The public needs to have confidence in the system and be able to hold those administering the system to account.

Claimants depend on Disability Benefits and unreasonable delay can have a devastating effect on individuals, their families and carers, both financially (noting knock on effect to other benefits as well as the Disability Benefit itself) and also, through being unable to access 'passported' benefits such as Disability Parking, travel concessions.

Local Authorities all have different systems and it will take time to set up. Timescales can only be adhered to if there are sufficient resources and funding. There would also need to be acknowledgement of exceptional circumstances and guidance and timescales put in place to deal with these situations.

Q: What evidence and information, if any, should be required to support an application for a Scottish benefit?

Please specify below

This will be dependent upon the benefit being applied for. However, it would be prudent to simplify the criteria and the supporting evidence needed. As suggested elsewhere, with the permission of the claimant, evidence should be gathered from other public bodies to reduce the burden on the claimant and be within a reasonable timescale.

Who should be responsible for requesting this information?

Please specify below

The person responsible for making the decision should be responsible for requesting it. There should be a duty placed on public services to submit the information requested timeously.

Who should be responsible for providing it?

Please specify below

It would depend on what was being requested and who would be able to supply the information. The ability to share information is paramount to simplify the application process.

If data sharing protocols were in place then this could be achieved without burdening the claimant. However, The claimant should provide personal details. Information as to impact on the claimant should be corroborated by Health Professionals. Where the Health Professional is unable to corroborate the extent of disability an independent assessment should be arranged. Supporting evidence may also be provided by the claimant, a relative, the carer or other services supporting the claimant which would be the responsibility of the claimant.

Please explain why

GPs and other health professionals should be required to provide evidence. There may, of course, be times when the GP may not be best placed to give this evidence, for example, where the claimant's condition is not stable or not treatable. Alternative forms of assessment and evidence provision should be considered.

Q: Should the individual be asked to give their consent (Note: consent must be freely given, specific and informed) to allow access to their personal information, including medical records, in the interests of simplifying and speeding up the application process and/or reducing the need for appeals due to lack of evidence?

Yes	x
No	

If no, please explain why

Q: If the individual has given their permission, should a Scottish social security agency be able to request information on their behalf?

Yes	x
No	

If no, please explain why

Q: Do you agree that the impact of a person's impairment or disability is the best way to determine entitlement to the benefits?

Yes	x
No	

Yes, this should be the way to determine entitlement. The questions being asked should be tailored to the outcomes to be achieved through the benefit. There are certain conditions which could be included as having an automatic entitlement. However, care needs to be taken to ensure there is a consistency of approach.

Care provided or *reasonably required* (so recognising unmet need as well as care actually provided) to maintain a reasonable standard of living which includes attention, supervision and domestic support needs.

Limitations to mobility from both physical and mental health that would effectively prevent a claimant accessing shops, GP and cause social isolation along with extra costs associated with disability.

The criteria should cover:

- Daily living
- Personal needs
- Mobility (the flat level test is unrealistic)
- Housework and shopping
- Mental health and how it affects independent living
- To what level can claimants safely do things independently.

This does not sit with the Scottish Government seeking to base entitlement on specific conditions and age related: extend free personal and nursing care to people under 65 who have dementia.

If no, how do you suggest entitlement is determined?

Q: Currently there are only special rules for the terminally ill but should there be others?

(please tick one box)

Yes	x
No	

Please explain why

The rules for those who are terminally ill are very clear.

This will be a complex area to determine which long term deteriorating conditions would be included. Potentially, if not clear, it will lead to challenges to what is included in the list.

It would need to make provision for improvements in medicine/care.

Potentially, this could include: MS, Cystic Fibrosis, degenerative illnesses, COPD, dementia, MND, Brain Injuries.

How could this be determined?

By medical evidence as to the stage a condition has reached and prognosis.

Q: What do you think are the advantages and disadvantages of automatic entitlement?

Please specify below

This is a complex area and would require careful consideration to ensure there are clear qualifying criteria.

Advantages: reduced administration costs, clarity and reduced stress for the claimant, use of data sharing should take into account other support which could be offered, potential to link benefits, care and other forms of support to be packaged to ensure that services meet needs of individual and target those most in need.

Disadvantages: disputes over which conditions should be included, does not take into account the changing nature of the condition, does not take into account that disabilities affect individuals in different ways and, depending upon those conditions which qualify, there is potential for early diagnosis and increasing age population to see overall expenditure to increase.

Q: Would applicants be content for their medical or other publicly-held records, for example, prescribing and medicines information or information held by HMRC, to be accessed to support automatic entitlement where a legal basis existed to do this?

Please specify below

Yes, we consider claimants would be content for the sharing of data to reduce the stress on gathering evidence when readily available on various systems.

There could be the option, if consent is not given, for the claimant to claim under 'normal rules'. This can take a lot longer and the onus is on the claimant to provide the evidence to support the claim. This is the same as the current system in place. It allows the claimant to make informed decision best option for them.

Q: Do you agree that the current UK-wide PIP and AA process for supporting people with terminal illnesses is responsive and appropriate?

(please tick one box)

Yes	x
No	

If yes, should this approach be applied to all disability-related benefits for people with a terminal illness?

Yes AA current process is responsive and appropriate

AA/PIP – good that a professional can make claim on persons behalf

If no, how could the approach could be improved?

Q: Should there be additional flexibility, for example, an up-front lump sum?

(please tick one box)

Yes	x
No	

Please explain your reasons

Would depend what it was for, what the criteria was.

Is this as well as on-going benefits? If you receive the up-front payment does this reduce your benefits?

Anecdotally there is a view that this would be helpful however there should be an evidence base to support this.

In our opinion, it could be useful for terminal illness claimants. For example, if the lump sum covered a period of eight weeks to process the claim; check if DS1500 is appropriate and to make decision. If successful weekly benefit takes over. If unsuccessful there is no award and lump sum will not be recovered.

Q: In the longer term, do you think that the Scottish Government should explore the potential for a consistent approach to eligibility across all ages, with interventions to meet specific needs at certain life stages or situations?

(please tick one box)

Yes	x
No	

There is a particular need to look at eligibility based on age. The current distinction between benefits for children, working age and pensioners is artificial. Many older people have an expectation of remaining economically and socially active and younger people may conversely stay within the family home for longer.

Given the changing ways in which individuals are leading their lives, Scottish Government would need to ensure that its 'interventions' were not seen as interference or disempowering individuals.

Q: What would the advantages and disadvantages of a single, whole-of-life benefit be?

Please specify below

There would need to be an evidence base to support the advantages and disadvantages of a whole of life benefit. How would this take into account the changing circumstances of the individual, the impacts of new medicines and medical interventions, how would this be reviewed.

Q: Could the current assessment processes for disability benefits be improved?

(please tick one box)

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please explain how

It would be helpful if there was a local point of contact. A simple process with the claimant provided with clear guidance on how to prepare for the appointment, Clear timescales and linked to other forms of support and signposting services at a local level. Good advice, advocacy and support services for the most vulnerable. Adapt the current medical report template which is very generic and unhelpful for particular conditions. Most of the first page is copied and pasted into every page of the form; there is room for improvement to be more personalised to the person the assessment relates to.

Q: For those people that may require a face-to-face assessment, who do you think should deliver the assessments and how?

For example, private organisation, not-for-profit organisation, public sector body or professional from health or social care.

Please specify below

Travelling for assessment is extremely stressful especially for those with a disability. For those who may require a face-to-face assessment this should be conducted at a local level with access to relevant data. All data including medical records and other forms of evidence should be taken into account. These should be supportive, offer advice, access and referral to local services. Assessment should be undertaken by a local service.

Q: What are the advantages and disadvantages of different types of assessments?

e.g. paper based, face-to-face, telephone

Please specify below

Paper based – only as good as the questions and the person who completes it understanding what is needed.

Telephone – if undertaken with a fully trained professional would support better completion of the application. There is room for improvement with the current contact centre. They are not trained advisors and unable to assist with the form and have to escalate any question for call back.

Face-to-face – should allow the person to fully explain the impact the disability has on their lives.

All have advantages and disadvantages. It will depend on the original application process, the evidence gathered, the flexibility given to the decision maker and the appeals process.

Q: How could the existing assessment process be improved?

Please specify below

The current process could be improved as mentioned earlier and be streamlined. The form should link in with the assessment questions. Currently the questions asked at assessment cause the claimant confusion as they do not realise that they are not going to be asked the same set of questions as the form. They believe that the medical professional is taking notes on all the information they are providing verbally.

Q: Could technology support the assessment process to promote accessibility, communication and convenience?

(please tick one box)

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please explain why

Technology and data sharing arrangements should be used to increase accessibility, communication and convenience. Technology should enable those applying to feel empowered, fully informed to make good decisions and remove barriers. Evidence from 'user panels' should be used to inform how technology can assist the process and, if appropriate, should be included in the claimant charter.

Q: If yes, please explain what technology would be helpful

e.g. Skype, video conferencing

Please specify below

Ultimately, this will depend on the individual. However, there needs to be recognition that there is a digital challenge to support individuals to gain the skills, knowledge and confidence to use new technology. There is also a challenge in how individuals gain access to new technology.

Q: If the individual's condition or circumstances are unlikely to change, should they have to be re-assessed?

(please tick one box)

Yes	x
No	

Please explain why

There should be periodic reviews to ensure that circumstances have not changed to ensure that the level of support was equivalent to need. The review conditions should reflect the individual's condition and circumstances and be on a sliding scale accordingly.

Q: What evidence do you think would be required to determine that a person should / or should not be reassessed?

Please specify below

Access to medical evidence being made available to decision makers where appropriate.

Q: Who should provide that evidence?

Please specify below

This should be dependent upon the decision maker having permission to access medical evidence.

Q: Do you think people should be offered the choice of some of their benefit being given to provide alternative support, such as reduced energy tariffs or adaptations to their homes?

(please tick one box)

Yes	x
No	

Please explain why

If we are to treat individuals with dignity and respect, then there should be an assumption that the benefit should be in cash. However, if this meant that applicants were able to access reduced energy tariffs then, for some with specific conditions, this would be of benefit.

Unfortunately, there is not enough information to make an informed decision. Who would be responsible for procurement/manage the alternatives. What other types of alternative support would be offered and how would applicants qualify for this? Would this have a particular set of criteria and would this complicate the process and delay payment of benefits.

What alternative support do you think we should be considering? (Please specify below)

motability

Approved disability aids – riser/recliner chair, scooter

Q: Would a one-off, lump sum payment be more appropriate than regular payments in some situations

(please tick one box)

Yes	x
No	

Please explain the reason for your answer

On balance, it should be considered. However, it would be prudent to collect and analyse evidence to support what types of one-off payments would be beneficial. Advance lump payments should be available to claimants against their award but not limiting it.

If yes, what are they?

Adaptations, clothes.

Q: What would be the advantages and disadvantages of such an approach?

Please specify below

It would depend on what the evidence showed was needed. There would need to be consideration of criteria, how this was to be paid, whether this would affect other benefits/forms of support.

Potentially, it could help the claimant to be able to meet large expenses associated with disability, however, the loss of entitlement where the effects of conditions persist longer than covered by a one off payment would need to be considered.

Q: Should the new Scottish social security system continue to support the Motability scheme?

(please tick one box)

Yes	x
No	

Please explain why

The Motability scheme is well regarded by those entitled to this assistance. Given the concerns around public transport, it may be beneficial to look at extending this scheme.

Consider full protection for customers going through the appeal process. Where a claimant loses enhanced rate mobility and has a motability car then the claimant should keep the car until the appeal outcome. Only if the appeal is refused should the car be returned.

Q: How could the new Scottish social security system support older people with mobility problems not eligible for a mobility allowance?

Please specify below

By cash benefit and extending travel concession entitlement if it is not possible to widen entitlement to a mobility component, for example, by a Scottish 'top up' to Attendance Allowance.

Q: How could the new Scottish social security system better support people of all ages with mobility problems who are in receipt of a mobility allowance?

Please specify below

Include lower rate care DLA as eligibility criteria for bus pass – currently only middle or higher rate accepted.

Q: What kind of additional support should be available for people who need more help with their application and during assessment?

Please specify below

Professional Advice services alongside other support agencies should be seen as a first point of contact for support. There should be a list of local support available to claimants when requesting a claim to inform them options of who can assist

Additional support would be dependent upon the customer and the benefits they are applying for. The user panels would be a core element of any decisions about future support. There should be a dedicated phone line that can assist with enquiries / form completion and the contacts should also have a local list of help available to signpost the claimant to.

There should be named contacts within the Social Security Agency rather than call centre system to prevent feeling of being 'passed about'.

Q: How could disability benefits work more effectively with other services at national and local level assuming that legislation allows for this e.g. with health and social care, professionals supporting families with a disabled child.

Please specify below

Sharing information across agencies and ensuring the working being done at national and local level merge and complement each other.

It is important that integration between services is planned, is considered at the design stage and is tested prior to full roll out. It is important that lessons from the roll out of universal credit are taken into account.

Q: How do you think this might be achieved?

Please specify below

Both at national and local level, services need to be involved at both policy, operational and administrative levels. There needs to be a meaningful and a staged approach to roll out of the system which would aid review and adjustments to be made.

Q: What are the risks?

Please specify below

Getting it right for the customer at the first point of contact, simplifying the need to gather evidence and to provide a clear picture of the individual's needs is at the heart of the wish to provide dignity and trust in the system. Failure to share information and to design an integrated service will be extremely costly, increase the strain on the system including appeals and advocacy and will lead to more confusion for services being delivered.

Q: If DLA and PIP help meet the additional costs of disability, what is the role of Industrial Injuries Disablement Benefit (IIDB) and its supplementary allowances (Constant Attendance Allowance, Reduced Earnings Allowance etc) in the benefits system?

Please specify below

IIDB is a non-contributory, non means-tested benefit paid to compensate those injured at work. It is not an income replacement benefit but a compensatory benefit.

Reduced Earnings Allowance also has the characteristic of compensation and it can be paid while working but is limited to accidents or diseases arising before 1990 so is increasingly irrelevant.

Constant Attendance Allowance shares some characteristics with Attendance Allowance (requirement for care needs) but entitlement is limited to claimants with entitlement to Industrial Injuries Benefit or War Disablement Pension. It has the advantage that assessment is linked to the IIDB assessment where the 100% disability threshold is reached.

Q: In addition to the issues set out at page 47 of the consultation, please tell us:

What is right with the IIDB scheme?

Non means tested so can be paid to claimants who have other household income or savings

What is wrong with the IIDB scheme?

It disadvantages claimants who are in receipt of means tested benefits as income from IIDB is fully taken into account. Compensation payments also offset against other benefits.

Please explain your answer

The claim form is not easy for claimants to complete. There can be lots of gaps trying to remember dates from 20 years ago, naming employers and locations, lots of employers may no longer be operating.

If you have an accident or diagnosed with industrial disease you cannot claim if you are self-employed.

Potential loss of income for claimants with late presentation as there is no backdating.

Q: Should different approaches be taken for people with life limiting conditions compared to people with less severe conditions?

(please tick one box)

Yes	x
No	

What would be the advantages or disadvantages of such an approach?

Mesothelioma – fast track option same as special rules with quick process timescale
Non terminal – normal rules process

Q: Are there situations where a one off lump sum payment would be more appropriate than a regular weekly IIDB benefit payment?

(please tick one box)

Yes	x
No	

What are they, and why? What would be the advantages and disadvantages of such an approach?

Where the claimant is entitled to means tested benefit, a one off payment could be paid without necessarily affecting entitlement (would be treated as capital not income), but a disadvantage would be that overall entitlement may be reduced by loss of benefit over time.

Q: Should the Scottish Government seek to work with the UK Government to reform the IIDB scheme?

(please tick one box)

Yes	x
No	

If yes, what should the priorities be? What barriers might there be to this approach?

Self employed claimants should be eligible to make claim if accident at work.

Q: Do you agree with the Scottish Governments approach to Severe Disablement Allowance?

(please tick one box)

Yes	
No	x

Please explain why

Those in receipt of SDA have been in receipt for a large number of years. Those claimants are still being identified and will go through the migration process to ESA. Some of these claimants could see a reduction in income or potentially lose benefit due to old rules on income support/SDA criteria and calculation and not meeting the criteria conditions for ESA.

7. Carers Allowance

Q: Do you agree with the Scottish Government's overall approach to developing a Scottish Carer's Benefit?

(please tick one box)

Yes	
No	x

Please explain why

The paper does not appear to provide a clear rationale for carer's allowance. It is described as an 'income replacement' which normally requires mean testing to establish the income-deficit that requires to be replaced. However, there is a commitment given that CA will not be means tested.

There is no evidence base or rationale as to why CA is to be brought in line with JSA. JSA is a means tested benefit for the purpose of income replacement and to ensure claimants receive a certain level of income. This raises the question as to why CA will not be means tested. This would raise concerns about equality and equity with other claimant groups.

There appears to be a disparity between caring for children and adults. Raising the level of CA for those caring for more than one child will raise expectations amongst those caring for more than one adult. There would need to be clear evidence as to why this was the case. Again, it would raise concerns about equity.

Under the proposals, carers who only receive a carers allowance will be better off. If they receive any other benefits they will not.

For example, a person currently receiving Carer's Allowance at the present rate of £62.10 per week will be entitled to a "top-up" of Income Support of £45.60, giving a weekly total of £107.70.

Carer's Allowance	Income Support	Carer's Premium	Total
£62.10	£11.00	£34.60	£107.70

Under the proposed scheme, raising Carer's Allowance to £73.10 would entitle the recipient (should they have no other source of income) to a "top up" of Carer's Premium of £34.60, giving a weekly total of £107.70. So they are no better off than under the current scheme.

Carer's Allowance	Income Support	Carer's Premium	Total
£73.10	£0.00	£34.60	£107.70

If the Scottish Government is serious about its statement that it wants to "*maximise the opportunity to deliver positive experiences and outcomes for carers*" then any increase should be above £107.70 per week in order to alleviate poverty among carers and make a tangible difference to the lives of those providing care. There is an opportunity for the Scottish Government to do something different and these proposals offer no difference to the present scheme.

Q: Do you agree with our proposed short to medium term priorities for developing a Scottish carer's benefit?

(please tick one box)

Yes	
No	x

Please explain why

Careful consideration needs to be given regarding the potential for integration with health and social care services and the provisions of the Carers Act.

The approach to young carers whereby they are encouraged to 'sustain the caring role if they wish' would be problematic for very young carers. The approach from social care would be to minimise or even exit from the caring role. The proposals do not give sufficient recognition to the fact that caring can have a negative effect on the health and well-being of individuals. Public services have a duty to protect the wellbeing of children and young people.

Clarity is needed about what age young carers allowance would be made available and how this might fit with other benefits such as education maintenance allowance.

If a young carers allowance was made available then this must reflect the nature of the care provided by the young people. Is it proposed, like the Carer's benefit for adults, that a young carer could receive an allowance for looking after more than one adult?

There is no information, however, as to whether this may impact on a young carer's entitlement to Education Maintenance Allowance, for example, as the EMA is means tested and does take into account a young person's income.

There should be access to income maximisation, advice and advocacy for carers. This is

important and helps to raise awareness of the help and support available.

There is no information provided as to how the Young Carer's proposals will sit with the requirements of the "Named Person's legislation". How will this impact on young carers and their families?

Q: How can we improve the user experience for the carer (e.g. the application and assessment process for carer's benefit)?

Please specify below

A 'one stop' approach for accessing all financial and other support would simplify the process. It would help support integrated assessment which considers the carers needs and would help financial and other resources to be joined together to give the carer the maximum choice and control over how this will meet their individual needs. The systems and processes in place to deliver self-directed support could have a considerable role to play in this. Care would need to be taken that the carer's benefits does not get consumed by social care which should stand alone from SDS or any other locally based schemes.

Q: Should the Scottish Government offer the choice of exchanging some (or all) of a cash benefit for alternative support (e.g. reduced energy tariffs)?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please explain why

This should be considered in relation to flexibility and maximising choice.

Q: What alternative support should be considered?

Please specify below

Consultation with carers themselves and those who are cared for would be the best way to consider what is needed.

Q: How can we achieve a better alignment between a future Scottish carer benefit and other devolved services?

Please specify below

The development of a one stop approach for accessing financial and other support would simplify the process for carers. It would help to form a single integrated assessment which considers the carers needs in a holistic way. It would allow resources to be pooled and give the carer control over how this is invested to meet their needs. It would ensure that local services are targeted towards those most in need and reduce the duplication and cross-over of services.

Q: How can we improve the support given to young people with significant caring responsibilities - beyond what is currently available?

Please specify below

Financially, many young carers are at a disadvantage so there should be a Young Carer's benefit to reflect this. It should be paid alongside any other entitlements such as EMA and/or Child Benefit and should not be detrimental to the Young Person. More could be done in terms of respite provision to allow young people to access and remain in education alongside their caring responsibilities.

Q: Do you agree with our proposed long term plans for developing a Scottish Carer's Benefit?

(please tick one box)

Yes	x
No	

Please explain why

It appears that the focus on the longer term is about changing the definition of a carer. The Carers (Scotland) Act significantly widened the definition of who is a carer. Differing definitions would create confusion and could lead to concerns about equity. Equally if the definition is too wide, then potentially costs will be significant. There may need to be consideration given to deciding who is eligible for CA and at what level depending on the different groups.

Therefore, it is important to define what a carer is and also to open entitlement to people who care for more than one person. There needs to be clarification, however, on how this will operate. For example, will the rate of Carer's Benefit payable be reduced in the way that Child Benefit currently is (ie £20.70 for the first child and £13.70 for the other and so on) or will it be paid at the same level regardless.

The benefit should remain non-means tested. Again, though, clarification is required regarding the statement: "The way that a carer is currently defined, for the purpose of paying a benefit, limits capacity to study or work". Does this mean that the current earnings limit for working Carer's of £110 per week is to be scrapped? If so, will it be replaced? Will Carer's Benefit be available to all Carer's regardless of employment income? This needs to be clarified before final policy can be formulated.

Q: Do you have any other comments about the Scottish Governments proposals for a Scottish Carer's Benefit?

When someone who is being cared for has to go into hospital for treatment and their stay lasts for longer than 28 days their disability benefit stops (DLA, PIP and AA) the carers allowance benefit stops at the same time. It means then that the carer loses out on the carers allowance benefit paid at £62.10. Most carers may be entitled to a top up of income support which would be £45.60 (if eligible).

The carer has no way of knowing that the person being cared for will be in hospital for 28 days plus and would be un-prepared for their carers allowance stopping and the drop in income would cause them financial hardship.

They will also have difficulty obtaining employment immediately after their carers allowance had stopped as it takes a bit of time to find paid work. There is a risk of gaining paid employment because they would have to terminate their employment to go back to being a carer once the person being cared for has been discharged.

It would be good if the carers allowance can have a run on period similar to what happens with carers once a person being cared for has died.

8. Winter Fuel and Cold Weather Payments

Q: Do you have any comments about the Scottish Government's proposals for Winter Fuel and Cold Weather Payments?

Please specify below

Extending winter fuel payments to families with disabled children on a high rate of DLA and making early payments to those households who live off the gas grid is to be welcomed. There should be further discussion around the needs of rural communities. There should be further discussion around ensuring that Winter Fuel and Cold Weather payments are used as effectively as possible.

Q: Could changes be made to the eligibility criteria for Cold Weather Payments? For example, what temperature and length should Cold Weather Payments be made on in Scotland?

Please specify below

Consideration should be given to the reports from the Fuel Poverty Strategic Working Group and the Rural Fuel Poverty Task Force which is due to be published later in the year. One area which would benefit from a closer examination would be the rules regarding temperatures and the length of time.

9. Funeral Payments

Q: Proposals for Funeral Payment: What should the benefit cover?

Please specify below

Given the wish to embed dignity and respect at the heart of this bill, then the benefit should cover the minimum cost of a funeral. The setting up of a national conference and discussions around funeral poverty are welcomed.

Q: Which of these elements do you think should be paid for by the Funeral Payment?

	YES	NO
Professional funeral director fees – advice and administration etc.	x	
Removal or collection of the deceased	x	
Care and storage of the deceased before the funeral	x	
Coffin	x	
Hearse or transport of the deceased	x	
Limousines or other car(s) for the family	x	
Flowers	x	
Death notice in a paper/local advertising to announce details of funeral (time and location)	x	
Fees associated with the ceremony e.g. for the minister or other celebrant	x	
Order of service sheets	x	
Catering for wake/funeral reception	x	
Venue hire for a wake/funeral reception	x	
Memorial headstone or plaque	x	
Travel expenses to arrange or attend the funeral	x	

Q: Are there other elements that you think should be included or explicitly excluded?

(please tick one box)

Yes	x
No	

Please explain why

Decisions on what should or should not be included would be best decided as a result of the discussion and evidence base gathered.

Q: How can we improve the process for identifying whether someone is responsible for the funeral and should receive the funeral payment?

Please specify below

The current DWP arrangement for identifying who is responsible for the funeral and should receive a payment appears to work. It is the length of time in assessing applications and the difficulties with the communication which seems to be problematic.

Q: In terms of the Scottish Funeral Payment, are there any qualifying benefits (e.g. Pension Credit) that you would add to or take away from the current qualifying benefit list?

(please tick one box)

Yes	
No	x

Please explain your answer

There has been a great deal of interest in 'funeral poverty' over recent months. However, it would seem prudent to provide different ways in which individuals can save for funeral costs as well as increase the numbers who are entitled to assistance.

Q: Is the three month application window for a Funeral Payment sufficient time for claimants to apply?

(please tick one box)

Yes	x
No	

If no, please explain your answer and suggest an alternative length of time in which a claim could be made.

Q: What are your views on the options for speeding up and simplifying the payment?

Please specify below

Simplify the process. Ensure that information is passed between statutory agencies rather than requiring the applicant to gather the information. For example, seeing consent from the applicant to contact funeral providers.

Q: The other funds which are deducted from the DWP funeral payment are listed below. What sorts of funds do you think it is appropriate to deduct from a Scottish FP?

	YES	NO
Funds in the deceased's bank account	x	
Funeral plan/insurance policy	x	
Contributions from charities or employers	x	
Money from an occupational pension scheme	x	
Money from a burial club	x	

Q: Are there any other funds that you think are appropriate to deduct?

Please specify below
no

Q: Which services should promote awareness of the funeral payment to ensure that claimants know about it at the relevant time?

Please specify below

DWP
Registrars
Local Authorities
Funeral Providers
NHS
Credit unions/other credit agencies
NHS
Advice and Support Agencies

Q: Are there any other points that you would like to raise in connection with the new Scottish Funeral Payment?

Please specify below
No further comments

10. Best Start Grant

Q: What are your views on who should receive the Best Start Grant (BSG)?

Please specify below
BSG should be targeted at those children experiencing the greatest inequality.

Given that resources are limited, it would be helpful to be provided with the evidence base to

support universal provision of the baby box. Baby boxes should be targeted to those most in need especially those on very low incomes and should focus on additional assistance they might need. Baby boxes are not suitable for everyone, alternative could be vouchers or cash payment for subsequent children.

Greater clarity is needed to understand what outcomes the BSG is trying to achieve. It might be helpful to provide examples of what types of expenses occur at various stages of a child's life and link them to the BSG. How does the BSG link to raising educational attainment and reducing inequality?

There are already families who are entitled to free early learning and childcare at two years of age. Given that there is already a focus on this group, it may be best to focus resource on this group rather than spread the funding available.

Q: Should we continue to use the same system to determine who is responsible for a child for the purposes of the BSG application?

(please tick one box)

Yes	x
No	

Please explain why

SSMG is seen as one of the better regulated social fund payments. The existing way used to determine who is responsible for a child is consistently applied regardless of the family make up. Those applying and making decisions are clear on the criteria. What evidence is there to support that this needs to change or that there is unmet need?

Many people can be in charge of a child and not be getting child benefits for various reasons, for example, Kinship carers and grandparents.

Q: Do you agree that each of the three BSG payments should only be made once for each child?

(please tick one box)

Yes	x
No	

If no, what exceptions would you make to this rule?

Whilst in principle, payment should only be made once for each child, there is recognition that family circumstances are seldom static and straight forward. There would need to be clear rationale and guidance given for exceptions to ensure those children who are living in chaotic circumstances do not slip through the net.

Q: Should we continue to use the same method as the SSMG to determine whether a child is the first child in a household?

(please tick one box)

Yes	
No	x

Please explain why

If families who are on a low income have another child under the age of 16 does not seem relevant. Storing items such as cots, prams for up to a period of ten years does not appear reasonable. There would also be questions about safety and fitness for purpose.

It is potentially unfair on families who join together and both have children. If they then go on to have a child together, then this child is penalised.

If no, what alternative method should we use?

It would be beneficial to reduce the age of the other child in the property to a more reasonable number of years. Alternatively go back to the old system of multiple grants within families.

Q: Do you agree that we should retain the requirement to obtain advice from a medical professional before making a maternity payment?

Yes	x
No	

Please explain your answer

It would prevent increases in poorer pregnancy outcomes. This would also be an opportunity to link this with other forms of help and support at a local level. It would be beneficial if there was an automatic referral to income maximisation and money advice services.

Q: Are there other points during the first five years of a child's life when families face greater pressure than at the start of nursery (other than birth and the start of school)?

Please specify below

Each family will have different pressures depending on family circumstances. It is key therefore to determine what outcomes the BSG is trying to achieve. For example, many parents return to work prior to their child starting nursery and therefore the second payment linked to when their child starts nursery may not be the best approach.

Q: What are your views on defining ‘the start of nursery’ as the point of entitlement to a funded early learning and childcare place, for the purposes of making the second payment?

Please specify below

If it is identified that ‘start of nursery’ is the time when the payment should be made then it would be sensible to merge access to the BSG with increasing the take up of funded places. Local authorities are already engaging with those entitled to ELCP and there are synergies to be gained from joining up these two initiatives.

Q: Are there any particular issues related to the nursery payment that you think we should consider?

Please specify below

Ensure that the payment is made before the child starts nursery rather than during term time. This will help parents with unforeseen additional costs.

Q: Are there any particular issues related to the school payment that you think we should consider?

Please specify below

There needs to be an evidence base as to what additional expenses are incurred as a child starts school that is not provided via school clothing grants, free school meals, transport etc.

Q: Should the school payment be payable to all eligible children who begin primary school for the first time in Scotland, or should an upper age limit be included?

Please specify below

There needs to be clarification on the outcomes sought and what additional expenses this payment would assist with.
To simplify the payment, there should not be an upper age limit included as this would necessitate checks to be carried out to determine if the child had received the payment elsewhere.

Q: What are your views on our proposals in relation to the BSG application process?

Please specify below

The proposal to treat the BSG application as three separate applications would seem the most straight forward and simplest.

Given the notes in the consultation, consideration should be given as to who would be best placed to have the discussion ie. Maternity payment being discussed with a health professional during pregnancy, nursery and school payments via local authorities. This would enable a more effective way of delivering the grant as local authorities also have records of those in receipt of clothing grants, free school meals. There is an opportunity to link all of those together to provide a more holistic, joined up approach.

Q: What are your views on establishing an integrated application process for the BSG and Healthy Start?

Please specify below

The consultation assumes that the healthy start voucher process will be the same moving forward. If this were the case then the existing criteria provides access to vouchers to provide fruit, infant formula, and milk to those in receipt of certain benefits with a child up to the age of four.

Take up of healthy start vouchers is poor. It would make sense to merge the two and to promote both to ensure a high uptake.

Q: What are the advantages and disadvantages of this approach?

Please specify below

Need to have a carefully considered approach. Healthy start vouchers are not well used. Care needs to be taken not to have a poor uptake because of the perceived stigma around the voucher system. There is potential for there to be confusion about recipients expecting a cash payment and then not understanding about the voucher element.

There is an opportunity to link this with other benefits and support. So referrals to income maximisation and money advice services should be part of the offer alongside other forms of local support for parents.

Q: Would the option to receive items rather than a cash payment as part of the BSG have benefits?

(please tick one box)

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please explain why

The provision of items rather than cash payments can be a good way to maximise the amount those entitled are able to secure via their payment. However, given the overall administrative costs, it would be quite expensive for what would be a small spend overall.

Q: Which services should promote awareness of the BSG to ensure that claimants know about it at the relevant time?

Please specify below

All agencies both statutory and non-statutory will come into contact with those entitled to BSGs and should be used to promote them.

It is important that BSGs are as simple as possible to understand, apply for and receive. The criteria need to be clear about the groups being targeted and why. This should be linked to local services and support agencies.

11. Discretionary Housing Payment

Q: Could the way that Discretionary Housing Payments (DHPs) are currently used be improved?

(please tick one box)

Yes	x
No	

Please explain why

Some claimants who have been impacted by the various Welfare Reform changes introduced over the last few years have received DHP on an ongoing basis to help with the impact of legislation changes. DHP should remain a short term solution for those with exceptional circumstances, and going forward, consideration should be given as to what is expected from claimants in the shape of engagement with relevant advice bodies, landlords, and third party organisations, in an attempt to help improve their employment prospects, budgeting skills etc. This will be more relevant over the next few years as the level of contribution that Local Authorities will be able to make to the overall level of DHP is likely to be put under pressure due to budget constraints and ultimately less assistance by the way of DHP will be available.

There should be full mitigation of the bedroom tax as part of the way UC is calculated for Scottish claimants. This should take the form of the DHP element being included within the UC payment. This would not be possible until all working age claimants have migrated to UC. This approach would provide clarity and transparency for claimants around how UC is calculated including the housing element.

Consideration should be given to using DHP to focus on all the elements of housing need and welfare reform.

It is important that Local authorities still have discretion on local priorities as each area experiences different housing markets.

Q: Could the administration of DHP applications be improved?

(please tick one box)

Yes	x
No	

Please explain why

When deciding on a DHP application for a Hardship Payment it is important that the circumstances of each individual are considered thoroughly. LA's have a duty to maintain budget available throughout the year and this can mean that the level of applications received and awarded throughout the year may dictate whether an award, that would otherwise be granted, can be paid. It is likely that local authorities will be using different systems to administer DHP for both housing benefit and UC claimants and may also have a different opinion as to whether overpayments of DHP are recovered or not. The administration of UC cases require more resource than an equivalent Housing Benefit case and where a DHP has been awarded, require close monitoring to ensure details are kept up to date. The impact of further roll out of UC on the DHP budget and resource required is unknown at present..

Q: Does the guidance for local authorities on DHPs need amending?

(please tick one box)

Yes	
No	x

Please explain why

No, the important part is that local authorities maintain discretion to respond to local needs and priorities.

12. Job Grant

Q: What should the Scottish Government consider in developing the Job Grant?

Please specify below

The job grant will need to integrate with local employability strategies so that it has the maximum impact. Consideration would need to be given to what local authorities are already offering in order that there is no duplication. If, part of the job grant, is to focus on travel costs this would need to be very responsive. The turn around time needs to be quick and the process for applying simplified. Often young people will secure employment with a short lead in time to their start date. Therefore the grant needs to be able to respond to this and be processed within a reasonable timescale. Travel remains a big barrier especially the cost of travel, any support to remove this barrier would be welcomed.

Local Government would be best placed to take the lead to ensure it aligns with employability pipelines. Given that they are already responsible for the payment of the Scottish welfare Fund and Education Maintenance Allowances, this would enable the job grant to be delivered quickly and efficiently making use of existing systems.

13. Universal Credit flexibilities

Q: Should the choice of managed payments of rent be extended to private sector landlords in the future?

(please tick one box)

Yes	x
No	

Please explain why

The priority should be to put in place arrangements to address the specific risks for payment of rents to the social sector and thereafter to private sector landlords. Allowing managed payments to private landlords could help prevent homelessness and sustain tenancies. This would support the Scottish Government's use of the private sector to meet affordable housing demand.

The arrangements for payments of APAs under UC which are open to private sector tenants are similar to the current arrangements under Housing Benefit and LHA.

Managed Payments of rent should be a matter of choice for claimants and landlords. Allowing managed payments of rent to private landlords may open access to other housing options for claimants. Private landlords can be reluctant to accept tenants in receipt of benefit income. Having the option for rent to be paid directly to landlords, without the need to demonstrate a history of poor financial management and/ or arrears of rent, may encourage private landlords to accept tenants in receipt of benefit income. This could result in greater choice for people in where, and what type of property, they chose to live in.

Q: Should payments of Universal Credit be split between members of a household?

(please tick one box)

Yes	x
No	

Please explain why

Careful consideration needs to be given to how this would operate in practice. A general approach could not be taken; consideration would need to be given to individual circumstances. Safeguards would need to be in place to protect the most vulnerable within the household.

Claimants should have the option at the beginning of their claim as to how they manage the payment of Universal Credit. This should be a matter of choice to be decided by joint claimants. One payment per household does not realistically reflect the way that finances are handled in many modern households. One single payment encompassing all of these elements impacts the financial independence of one member of a couple and creates opportunity for financial abuse. The choice at the beginning of a claim to split payments would be preferable to a request for an alternative payment arrangement as a request to

split finances in an abusive relationship could potentially put an abused person in more danger.

It is not realistic to weight a split payment towards the main carer if the claim includes children as they may be registered as the main carer but in reality it is the other member of the household who cares for the children. The complexities of splitting payments and costs elements, then adding in vulnerabilities, special circumstances and weighting would make this an extremely complex and cumbersome process to administer and maintain.

However, this provision is already available through the existing UC system.
There would need to be evidence base around the need for an extension to the system.

If Yes, please indicate if you think the default position should be:

a) automatic payments to individuals, with the option to choose a joint payment

(please tick one box)

Yes	
No	x

If this were the default position, it could lead to difficulties in ensuring the rent was paid.

b) automatic household payments, with the option to choose individual payments?

(please tick one box)

Yes	x
No	

If Yes, how do you think payments should be split? For example 50/50 between members of a couple or weighted towards the person who is the main carer if the claim includes dependent children?

The proportion of splitting payments would need to be determined in light of individual cases and unless there is a clear evidence base for so doing, could lead to confusion and difficulty in getting rent paid. For many couples, 50/50 would be preferable but this presents difficulties. If the whole award was split 50/50 this would mean housing costs being paid to two separate partners. If one partner failed to pay rent, as joint tenants, both would be affected. In cases where rent payments were made directly to the landlord, 50/50 split payments may work well and fit with the idea that Universal Credit should compare to average working households, with earned income paid to individuals.

Caution should be taken when considering whether households with children should have split payments weighted towards the main carer. Whilst this option may better reflect an average working household, whereby the entire household income is not paid to one

member and rather each member receives their individual earned income, and support aimed at children (e.g. child benefit/ tax credits) is paid to the main carer, identifying a 'main carer' could prove problematic and splitting payments this way could cause particular issues for partners and children suffering financial abuse.

Q: Do you have any other comments about how the Scottish Government's powers over Universal Credit administrative flexibilities will be delivered?

Please specify below

Local authorities are concerned about the impacts of UC on rent collection. Build up of rent arrears can happen quite quickly and this is likely to increase as the numbers and complexity of need increases with the UC rollout. Flexibilities to allow direct managed payments to social landlords are viewed as important to mitigate the impacts and it is considered vital that priority is given to doing so quickly.

Consideration should be given to paying above the local housing allowance rates for single tenants under the age of 35. The shared accommodation rate currently applies to private sector tenants and those in temporary accommodation under universal credit. From April 2018 this will be extended to social sector tenants. It is very difficult to secure an affordable tenancy and can have a real impact such as non-resident parents who are unable to provide appropriate accommodation for visitation of their children.

Consideration should also be given to allowing housing costs to be paid with regard to two properties simultaneously where there is an unavoidable liability to pay rent on both. This rule exists for Housing Benefit claimants but has been removed for Universal Credit.

Financial hardship caused by the six week period between initial claim and first payment has proven problematic for UC claimants. Those with no other income are limited in options, the most available being a short term advance. The current system allows UC claimants to be paid up to half their expected UC award two weeks prior to their calculated UC payment date. A full payment is then made on their scheduled payment date, which causes immediate debt and ongoing hardship for UC claimants, as the short term advance needs to be repaid and is collected at source with little flexibility. Consideration should be given to paying half the expected monthly award as a short term advance and half later on the scheduled payment date, eliminating debt at the onset of a UC claim.

Q: Do you have any comments about the Scottish Government's powers over the housing element of Universal Credit?

In the list of long term outcomes the single sentence "The Scottish social security system...works effectively with the reserved benefit system" needs to be further detailed, fleshed out and focussed on.

It is also the case that the reserved benefits, and their agencies especially DWP, need to engage with developments in Scotland and adapt their administration and systems to properly address the devolved aspects of their reserved benefits, e.g. the Housing Support element of Universal Credit.

Other areas of concern/ suggestions associated with UC housing costs element have been addressed in previous answer – consideration to UC housing elements on two homes where unavoidable and consideration to paying above LHA rates for single claimants under 35, particularly those with visitation rights to children etc.

PART 3: OPERATIONAL POLICY

14. Advice, representation and advocacy

Q: What role[s] should publicly funded advice providers play in the development of a new Scottish social security system?

Please specify below

Publicly funded advice providers should play a full part in the development of a new Scottish social security system. There is already significant experience across the social security landscape. They should be part of the user panel, the advisory board and should be seen as a key partner in the shaping of the new social security system.

Q: What steps need to be taken, to understand the likely impact of the transfer of the devolved benefits on publicly funded advice in Scotland?

Please specify below

There should be a mapping exercise to fully understand the current landscape across Scotland of publicly funded advice agencies. Both the UK Government, Scottish Government and local authorities provide funding. Having a complete picture of what is currently available, what will need to remain, where there is duplication will help to gain an understanding of the impact and the actions needed to ensure that there is good, quality, impartial advice to assist those affected by changes.

Q: How could the transfer of the devolved benefits to Scotland be used to drive improvements in the provision of publicly funded advice?

Please specify below

Devolution of benefits to Scotland allows the opportunity to examine and agree a long term plan to ensure that all elements of advice and support are provided equitably across Scotland. There is an opportunity to streamline advice to help those seeking advice to know where to go and to avoid over-provision in certain types of advice or in localities.

Benefits processing done at a local level, for example, Scottish call centres would go some way to breaking cultural barriers.

Making service provision more personal, accessible and flexible.

Q: Do you think that Independent Advocacy services should be available to help people successfully claim appropriate benefits?

(please tick one box)

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please explain why

Independent Advocacy services are critical to those who need additional support. Given that individuals will have to navigate both the UK and the Scottish benefit system, this will be vital to ensure equity of access.

Q: What next steps would you recommend that would help the Scottish Government better understand the likely impact of the transfer of the devolved benefits on independent advocacy services?

Please specify below

It would be important to map existing services to gain a fuller understanding of duplication, gaps and to be clear about the breadth of support available particularly to strengthen areas where there is under-provision.

15. Complaints, reviews and appeals

Q: Do you agree that we should base our CHP on the Scottish Public Services Ombudsman's 'Statement of Complaints Handling Principles'?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please explain why

It would seem sensible to do so and would align the Scottish Social Security complaints procedures with other public bodies.

Q: How should a Scottish internal review process work?

Internal reviews are already normal practice in public sector in Scotland. These should be carried out using procedures which are published and set timescales, help to remedy disputes at the earliest possible level and ensure resolution and feedback to prevent re-occurrence.

Mandatory reconsiderations should remain. This would avoid confusion and make it easier to resolve issues quickly.

The system should be simple, follow a set process, have clear timelines and should be transparent and accountable.

Q: What would be a reasonable timescale for the review to be carried out?

Please specify below

This should be part of the work undertaken by the various panels using the expertise of those who have experience in administering the process and also those who have experienced the system.

Q: Should a tribunal be used as the forum for dispute resolution for the Scottish social security system?

(please tick one box)

Yes	x
No	

Please explain why

The issues being appealed will, for the most part, be around entitlement to benefits and therefore the current system would be appropriate.

Q: If no, are there any alternative methods of dispute resolution that you think would be preferable to a tribunal?

Please specify below

Q: How can we ensure that our values underpin the appeals process for a Scottish Social Security agency?

The legislation and claimant charter should also apply to the appeals process. To ensure that the values stated underpin the appeals process it is important that the tribunal is independent from the initial decision makers, that the legislation is clearly written to ensure that users understand their rights and the process, that timescales are clearly set out in the legislation perhaps with flow charts that can easily be followed and that the legislation makes provision that the tribunal should sit in the closest possible location to the claimant.

Q: Are there any other values that you feel should be reflected in the design of the appeals process?

no

Q: What do you consider would be reasonable timescales to hear an appeal in relation a decision on a devolved benefit?

Please specify below

The current appeal process gives one month to a claimant following a review of the original decision. From there the other side responds and a hearing is held. A decision can be made at the hearing or sent out by post.

Given the risk of destitution of the claimant, this process should be kept as short as possible, perhaps with only 14 days for a response to the appeal being made by the claimant and a hearing within 14 or 21 days of that response. A decision should be issued not later than 14 days after the hearing.

Q: In order to ensure a transparent appeals process, what steps could be taken to ensure that those appealing fully understand and are kept informed at each stage of the appeals process?

The claimant should be asked to provide contact details including a postal address, email address and telephone number and asked what their preferred method of communication is. The social security body should communicate information on the appeal process to the claimant and either or both the tribunal and the social security body should communicate timescales etc. to the claimant once an appeal process is under way.

The appeal reference number could be used online for people to check the progress of the appeal.

Q: How could the existing appeals process be improved?

Please specify below

More use could be made of new technology by accepting submissions by email and sending documents digitally.

16. Residency and cross-border issues

Q: Should Scottish benefits only be payable to individuals who are resident in Scotland?

(please tick one box)

Yes	x
No	

Please explain why

It is important to make best use of public funds and only those who are resident in Scotland should be able to apply.

Q: What are your views on the 'habitual' residence test currently used in the UK by DWP?

Please specify below

This should remain. It is consistent and long established. It would avoid confusion and mean that the same system exists throughout the whole of the UK. It is a good way to determine whether a claimant's "centre of interest" is here or in another country and would allow Scotland to remain on a par with the rest of the UK.

Q: Are there other issues that the Scottish Government should take into account when it comes to residency rules?

Please specify below

Only people who are resident in Scotland should be eligible for assistance under the Scottish system. In order to establish residency, it would be appropriate for claimants to have established a settled intention to reside in Scotland and be registered with local services such as NHS, schools etc.

If the Scottish Government is to offer a more generous system than the rest of the UK, care needs to be given to ensure that only people resident in Scotland receive the benefits. There could be issues, for example, where people living in the rest of the UK use addresses of relatives or obtain properties in Scotland to access this system, so care needs to be taken to ensure this does not happen.

Q: What factors should Scottish Government consider in seeking to coordinate its social security system with other social security systems in the UK?

Please specify below

The current Habitual Residence scheme already used could be adopted by Scotland. This would bring residence requirements in line with the rest of the UK. Current qualifying periods used to determine entitlement to benefit should also be implemented to ensure parity with the rest of the UK.

Q: How can the Scottish Government ensure that no-one either falls through the cracks or is able to make a 'double-claim'?

Please specify below

There needs to be data sharing with other UK Social Security systems to ensure double claims do not happen. This would show, for example, if someone made a claim to benefit in another UK area, was refused, then came to Scotland and attempted to claim. Robust data sharing would ensure this does not happen.

Advice and Advocacy agencies could also be used to ensure that all people arriving in Scotland are provided with support and advice on eligibility for benefits and assistance to ensure that all people entitled to claim can claim.

17. Managing overpayments and debt

Q: Could the existing arrangements for recovering social security overpayments be improved in the new Scottish social security system?

Yes	x
No	

If yes, please explain your answer

There should be an effective system of control and the paper recognises that 'there must be controls in the system, to spot errors and put them right. Therefore, if there is an overpayment which is not the result of an error by the individual making the claim, but that the claimant should have noticed it, it should be recoverable. This would be consistent with principle 5.

Q: What are your views on the role that financial advice can play in the recovery of overpayments?

Please specify below

Financial advice is critical when overpayments are identified and subject to recovery. Claimants may already be experiencing financial hardship, therefore it is crucial they receive financial advice and support to ensure the overpayment is recovered in an achievable and realistic manner.

18. Fraud

Q: Should the existing Scottish Government approach to fraud be adopted for use in our social security system?

(please tick one box)

Yes	x
No	

Yes, there should be a robust stance taken against fraud and that there is a commitment to a zero tolerance approach.

Q: If yes, should our existing counter-fraud strategy be adapted in any way?

(please tick one box)

Yes	x
No	

Please explain your answer

Yes, the investigation of fraud should be undertaken by authorised officers as is the case for the investigation of fraud for DWP. Officials should continue to have the power to report the results of their investigation directly to the procurator fiscal.

Q: How could the new Scottish social security system ‘design out’ errors and reduce the potential for fraud at the application stage?

Please specify below

Data sharing and data matching should be more robust. If DWP and the Social Security evidence were the same it would avoid duplication and asking again for more evidence. Evidence and data sharing would need to be in ‘real time’.

Q: Should the Scottish social security system adopt DWP’s existing code of practice for investigators?

(please tick one box)

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

No further comment

Q: What are your views on the existing range of powers granted to investigators?

Please specify below

The DWP’s existing code of practice should be adopted as, in terms of the proposed powers for authorised officers, it would seem to be proportionate for the effective investigation of fraud.

Q: What are your views on conducting interviews under caution?

Please specify below

It is imperative that interviews under caution continue. This is vital to the interviewee in that they are formally informed of their legal rights, and of the purpose of the interview, including the fact that the outcome could be used as evidence in potential criminal action. Without this, there is the potential to legal challenge and the evidence would be potentially inadmissible in court.

Q: What improvements could be made around conducting interviews under caution?

Please specify below

No further comment

Q: Should the Scottish Government retain the same list of offences which people can be found guilty of in terms of social security fraud?

(please tick one box)

Yes	x
No	

Please explain your answer

The existing list of statutory offences as set out in the consultation should be retained. Firstly, as a demonstration of the zero tolerance approach, secondly as a deterrent, thirdly to facilitate the effective investigation of fraud and finally to ensure that effective sanctions are applied to offenders.

Q: Should the Scottish Government impose the same level of penalties for social security fraud as are currently imposed?

(please tick one box)

Yes	x
No	

Please explain your answer

These seem proportionate. There should consideration of using the confiscation orders under part 3 of the 2002 Proceeds of Crime Act.

19. Safeguarding your information

Q: Should the existing Scottish Government approach to Identity Management and Privacy Principles be adopted for use in our social security system?

(please tick one box)

Yes	x
No	

Please explain your answer

No further comment

Q: If yes, should our existing Identity Management and Privacy Principles be adapted in any way?

(please tick one box)

Yes	X
No	

Please explain how

No further comment

Q: Who do you consider should be consulted in regard to the Privacy Impact Assessment and what form would this take?

Please specify below

No further comment

Q: What are your views on privacy issues that may affect the new agency?

Please specify below

No further comment

Q: Do you perceive any risks to the individual?

Please specify below

No further comment

If Yes, What solutions might be considered to mitigate against these?

No further comment

Q: Would you support strictly controlled sharing of information between public sector bodies and the agency, where legislation allowed, to make the application process easier for claimants? For example, this information could be used to prepopulate application forms or to support applications, reducing the burden on applicants.

(please tick one box)

Yes	x
No	

Please explain your answer

No further comment

Q: Would you support strictly controlled sharing of information between a Scottish social security agency and other public sector organisations (for example local authorities) to support service improvements and deliver value for money?

(please tick one box)

Yes	x
No	

Please explain your answer

No further comment

Q: What are your views on having the option to complete social security application forms online? Can you foresee any disadvantages?

Completing applications online could be helpful and convenient for customers. It would be important to provide support to enable all customers to have access and be able to use this option.

Q: What are your views on the new agency providing a secure email account or other electronic access to check and correct information for the purposes of assessing applications (noting that any such provision would need to be audited and regulated so that the security and accuracy of the information would not be compromised)?

Please specify below

In principle, providing such access would be helpful.

20. Uprating

Q: What are your views on the best way to ensure that devolved benefits keep pace with the cost of living?

Please specify below

There are a number of different criteria used in uprating different parts of the benefit and tax systems. Most benefit levels have been uprated annually for inflation, by the Retail Prices Index (RPI), measured looking backwards. Means tested benefits are uprated by the Rossi index, which excludes housing costs and local taxes on the basis that these costs are supported directly. However, a few – such as the Guarantee Credit for pensioners and the

child rates within the Child Tax Credit – are currently adjusted by average earnings.

Overall, it would appear that the ‘triple lock’ would provide the best way to ensure that devolved benefits keep pace with the cost of living. The triple lock guarantees to increase the state pension every year by the higher of inflation, average earnings or a minimum of 2.5%.

Q: Are there any devolved benefits in particular where uprating based on a measure of inflation would not be effective?

If so, please explain which benefits and why

no



COUNCIL EXECUTIVE

INDEPENDENT REVIEW OF THE COUNCIL'S PLANNING SERVICE

REPORT BY HEAD OF PLANNING, ECONOMIC DEVELOPMENT & REGENERATION

A. PURPOSE OF REPORT

The purpose of this report is to advise the Council Executive of the findings of an independent review of the council's planning function and to seek agreement on the proposed actions in response to the recommendations in the consultant's report.

B. RECOMMENDATION

It is recommended that Council Executive:

1. notes the findings and recommendations set out in the review
2. approves the action plan which addresses the recommendations in the consultant's report; and,
3. approves the revised remit for Development Management Committee as set out in Appendix 4

C. SUMMARY OF IMPLICATIONS

- | | |
|---|--|
| I Council Values | <ul style="list-style-type: none">• 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) | <p>The report considers the council's role as Planning Authority.</p> <p>The report does not raise any SEA, equality, health or risk issues.</p> |
| III Implications for scheme of delegation | <p>The report makes specific recommendations about the scheme of delegation. The recommendations are set out in the body of the consultant's report and the proposed actions are set out in the appended Action Plan.</p> |
| IV Impact on performance and performance indicators | <p>The report makes specific recommendations about monitoring and reporting of performance. The recommendations are set out in the body of the consultant's report and the proposed actions are set out in the appended Action Plan.</p> |

V Relevance to Single Outcome Agreement	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)	The report makes references to the available budget for running the service and staffing levels. These are set out in detail in the consultant's report and the proposed actions are set out in the appended Action Plan. The recommendations do not have any significant financial or staffing implications.
VII Consultations at PDSP	Commissioning of the study was reported to Council Executive on 16 December 2014. The decision on the item requires that the conclusions be reported back to Council Executive for consideration. As a consequence the matter has not been reported to a PDSP.
VIII Other consultations	The consultant consulted a number of members of staff in Planning Services and a number of elected members. Cllrs Davidson, Muldoon and Paul were consulted given their respective roles as chair of Development Management Committee, Development & Transport PDSP and the Local review Body respectively.

D. TERMS OF REPORT

D.1 Background

On 16 December 2014 Council Executive agreed to commission an independent review of the council's planning functions. The report which was agreed by Council Executive included a remit for the review which is appended to this report as Appendix 1.

The council's Chief Executive was delegated to commission the review and to report the findings of the review back to Council Executive. This report discharges that requirement.

D.2 Commissioning the Review

SOLACE In Business was invited to recommend potential consultants to progress the review. A number of consultants were identified and, following interviews, Sue Bridge was appointed to carry out the review. Sue Bridge has a background in planning for both local government and the private sector and most recently has been employed as Head of Planning with Northampton Borough Council.

Sue Bridge has now delivered the report to the council which is appended to this report as Appendix 2.

D.3 Findings of the Review.

Reassuringly, the consultant found that there were no issues of concern in respect to the probity and competence of officers or general governance arrangements. She did, however, recognise that the overall workload of the service will increase due to the general improvement of the economy. This, and progressing the West Lothian Local Development Plan will lead to increased pressure on the staff and the processes and procedures employed; the service thus needs to use its existing resources more efficiently and effectively.

The review sets out 18 recommendations to address efficiency and effectiveness of the service. A number of the recommendations suggested by the consultant are already in hand and an update on progress is set out in the Action Plan appended (Appendix 3) to this report.

In addition, the report makes a further 7 recommendations concerning the format, remit and operation of committees which deal with planning matters and the operation of the scheme of delegation. Specific actions to respond to these recommendations are set out in Appendix 3 to this report.

D.4 Comments on the Review

D.5 Staffing and Processes Employed

The review recognises that the service had recently been restructured in response to the council's approved budget strategy. That restructure was focussed on channel shifting customer contact from face to face to other points of contact.

The report also recognises that consultation on the restructure commenced in May 2014 and, as a result the review of the service took place while the restructure was still bedding in, particularly in the Technical and Support Team and the senior management tier. The consultant identifies that some of the issues she raises will be resolved when bedding in is complete.

The consultant also identifies that in addition to the restructure, staff have been subject of two office moves, culminating in their relocation to the civic centre and that this has been a period of significant change for the service. It is, however, pleasing that the consultant identifies that during this period of significant change, performance, staff morale and the professionalism of the service had been maintained.

However, the consultant also identifies that the need to drive out efficiency savings has not been accompanied by a systematic review of operational working practices, particularly the back office processes associated with delivery of the service.

This is a matter which had been identified by the service and was, in part, addressed by the service restructure. For example, it was identified that a number of key processes were delivered by a single officer and this could cause processing delays when that officer was on leave or otherwise not in the office. The service restructure sought to address this by ensuring that no single process was the responsibility of a single officer to ensure resilience of the function. That outcome has now been achieved.

Now that greater resilience is in place, it is recognised that further work needs to be done on streamlining processes. A Rapid Improvement Exercise has recently been completed and this has identified opportunities for further streamlining processes.

D.6 Committee Processes

The review recommends a number of changes to the remit and operation of committees. On the whole these are procedural in nature, but most would seem to be sensible and should assist with the public's understanding of the decision making process.

The consultant makes recommendations concerning the remit of Development Management Committee and suggests that certain matters which are not currently within the remit of that committee should be brought within the remit. This includes dealing with advertisement consent applications, tree preservation orders, listed building consent applications and conservation area consent applications. These are matters which officers had already identified as potential changes and the attached action plan supports the revised remit. A proposed revised remit for Development Management Committee is appended to this report as Appendix 4.

Although not set out in the report, the remit of Development Management Committee could also embrace the consideration of consultations on planning applications in adjoining local authorities which impact on West Lothian communities and this is incorporated within the proposed remit.

The consultant also makes recommendations concerning on-going training for members. It is recommended that the proposed changes set out in the action plan are adopted.

D.7 The Scheme of Delegation

The consultant suggests a number of changes to Part B of the Scheme of Delegation for dealing with planning and related applications. Members will recall that the Scheme of Delegation has two parts – Part A which is statutory and is approved by the Scottish Government and Part B which is locally determined and sets out delegation beyond that which is required by statute.

The action plan suggests that the changes to delegation are matters which should be considered further and should be addressed through the regular review of the council's overall scheme of delegation. Any changes proposed will be reported and considered via that route.

D.8 Other Matters

The consultant addresses a number of other matters in the report but does not present these as formal recommendations. As such they are not specifically addressed in the Action Plan. However, officers will pick these up as operational matters and will progress them as appropriate.

E. CONCLUSION

The council has commissioned an independent review of the council's planning functions. The consultant appointed to carry out that review has found no issues of concern in respect to the probity and competence of officers or general governance arrangements. She has, however, made a number of recommendations to further improve service delivery and efficiency and these are set out as an action plan appended to this report.

F. BACKGROUND REFERENCES

Report to Council Executive; 16 December 2014.

Appendices/Attachments - 4

Appendix 1: Remit for the Independent Review

Appendix 2: Findings of the appointed Consultant Sue Bridge

Appendix 2a: Participating Officers and Members of west Lothian Council

Appendix 3: Summary of Recommendations and Action Plan

Appendix 4: Revised remit for Development Management Committee (to follow)

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Craig McCorriston
Head of Planning, Economic Development and Regeneration

25 October 2016

APPENDIX 1

SCOPE FOR A REVIEW OF THE PLANNING FUNCTION OF THE COUNCIL

Part 1: The staff and processes employed to discharge the statutory and non-statutory functions of the council in its role as planning authority. The review should consider the appropriateness and / or effectiveness of, and make recommendations on:

1. The organisational structure and management arrangements.
2. The prioritisation of activities carried out by the service and the processes employed to achieve the activities and outcomes.
3. Staffing levels, including administrative and technical support.
4. The level of performance achieved and the effectiveness of performance reporting.
5. Engagement with customers, communities, partners and other external stakeholders.
6. Engagement with other services of the council.
7. Interaction with elected members including support for the democratic process, briefing of members, training and awareness raising
8. Quality of decision-making at first instance, on review, or on appeal (including conduct of appeals) and the implementation of these decisions.

Part 2: The Committees and Other Decision Making Bodies. The review should consider the appropriateness and/or effectiveness of, and make recommendations on:

1. The format, remit, frequency and operation of Development Management Committee.
2. The format, remit, frequency and operation of West Lothian Planning Committee and West Lothian Council (Planning) when considering decisions on planning applications judged to be significantly contrary to the development plan.
3. The format, remit, frequency and operation of West Lothian Local Review Body.

Part 3: The Scheme of Delegation sets out the powers delegated in relation to planning matters. The review should consider the appropriateness and/or effectiveness of, and make recommendations on:

1. The Scheme of Delegations (in relation to development management matters), including triggers for automatic referral of applications to committee.
2. Other delegations covering other matters such as the development planning process.
3. Communications with ward members on new applications and applications which the Development Management Manager intends to deal with as delegated decisions.
4. Member referral to committee on planning applications and in particular the members who can refer, types of application covered by the referral process, grounds for referral, restriction of ability to refer.
5. Procedures for handling planning appeals.



REVIEW OF PLANNING SERVICES FOR WEST LOTHIAN COUNCIL

JUNE 2015

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APPENDICIES:

- 1. Report to Executive Committee December 2014**
- 2. Participating Officers and Members**
- 3. Example of Enforcement Charter**
- 4. Examples of Schemes of Delegation**

Executive Summary

The Planning Service aims to provide an efficient and effective service for the people who live and work in West Lothian. The review found no issues of concern in respect to the probity and competence of officers or general governance arrangements. However, the service has been affected by the need to implement budgetary reductions and drive out savings, but this has not been accompanied by a systematic review of operational working practices, including the processes and procedures of the department.

This downward pressure on resources can be expected to continue at the same time as the overall workload of the Service will increase due to the general improvement in the economy leading to an increased number of more complex planning applications being received. This, together with the review of the West Lothian Local Plan will lead to increased pressure on the staff and processes and procedures employed.

As the economy improves the Council can reasonably expect its planning application fee income to grow. Although outside the scope of this review, planning application fees in Scotland are substantially lower than in England and Wales. Pressure could be put on the Scottish Government to increase fees to a level which would not damage the economic recovery but would give a more sustainable level of resources to support the planning function which is a key driver of growth.

Even if income increases substantially, it can be seen that the Planning Service needs to use its existing resources more efficiently and effectively. This review has therefore concentrated on reviewing the current working practices with a view to identifying where these can be made with a view to doing more for the same resources

There are also recommendations in the respect of the format and operation of committees, especially the Development Management Committee. These recommendations are aimed at improving the transparency and accessibility of the committees to the public as the 'shop window' of the planning function. Some of the recommendations are equally applicable to the West Lothian Planning Committee and West Lothian Council (Planning).

The remit of the Development Management Committee and the Scheme of Delegation should be reviewed and recommendations are made accordingly.

1. Introduction

- 1.1 Solace in Business was appointed by West Lothian Council to undertake a review of its Planning Service following a report to the council's Executive Committee in December 2014. The Committee agreed to commence a review of the Planning Service and the scope of the review. This report is attached as Appendix 1.

The proposed remit of the review was to consider the following elements of the planning service:

- The staff and processes employed to discharge the statutory and non-statutory functions of the council in its role as planning authority
- The committees that make planning decisions
- The interaction between the two, via the Scheme of Delegations

For the purposes of the review the planning service is defined as the Development Management team, including enforcement, and the Development Planning Team.

- 1.2 The review took place in June 2015.
- 1.3 The Planning Service has been the subject of a restructure in 2014/15, the purpose of which was to achieve a saving of £172,000 from the modernisation of services within the Planning Service for the financial year 2015/16. This modernisation is focussed on channel shifting customer contact from face to face contact through the duty officer to other points of contact, primarily the council's web-site and the customer call centre. The re-structure resulted in a revision to the management structure, a reduction in the number of main grade posts and a restructure of the technical and support function. A number of vacant posts were deleted from the establishment resulting in a smaller number of permanent staff.
- 1.4 Consultation on the proposals was begun in May 2014 and the restructure was implemented on the 1st June 2015. Consequently, this review of the planning service took place whilst the restructure was still bedding in, especially in the Technical and Support Team and the senior management tier within the service. This review has had due regard to this.
- 1.5 The service review was undertaken using published information, including the nationally published performance data, interviews with officers and members of the council and examination of internal performance data and records including the level of complaints, referrals to the Ombudsman and attendance at Committees and a review of the processes and procedures used by the Department against current best practice.
- 1.6 The officers and council members interviewed as part of the review are listed in Appendix 2 of this report.

3. The Staff and Processes Employed

- 3.1 The Planning Service aims to provide an efficient and effective service for the people who live and work in West Lothian. The review found no issues of concern in respect to the probity and competence of officers. However, the service has been affected by the need to implement budgetary reductions and drive out savings, but this has not been accompanied by a systematic review of operational working practices, including the processes and procedures of the department.
- 3.2 This downward pressure on resources can be expected to continue at the same time as the overall workload of the Service will increase due to the general improvement in the economy leading to an increased number of more complex planning applications being received. This, together with the review of the West Lothian Local Plan will lead to increased pressure on the staff and processes and procedures employed
- 3.3 The revenue support which the service receives from the general fund has decreased from £833,222 in 2013/14 to £321,861 in 2015/16. During the same period income has grown from £1,381,854 to £1,657,263 whilst permanent staffing levels have fallen from 41.7FTE to 37.4FTE. Income has increased by £275,409 whilst revenue support has decreased by £511,386.
- 3.4 As the economy improves the Council can reasonably expect its planning application fee income to grow. Although outside the scope of this review, planning application fees in Scotland are substantially lower than in England and Wales. Pressure could be put on the Scottish Government to increase fees to a level which would not damage the economic recovery but would give a more sustainable level of resources to support the planning function which is a key driver of growth.
- 3.5 The Service moved from outlier offices into the Civic Centre in December 2014; this, together with the re-structure, has meant a period of significant change for the staff and management of the service. Notwithstanding this it would appear that performance and staff morale and the professionalism of the department has been maintained.
- 3.6 The council undertakes regular employee surveys. An action arising from the last survey was to invite the staff to consider and prepare an action plan for the overall improvement of the service. This action plan is being implemented and has been taken into account in this section of the report.

Structure, Management and Staffing Levels

- 3.7 The Head of Service is responsible for the Planning Service (which includes Development Management, Development Plans, Building Standards and Education Planning), Economic Development and Environmental Health and Trading Standards. These are key functions of the council and incorporate two regulatory functions. The Head of Service aims to apportion his time between the functions on an even basis but, in fact, this varies depending on particular circumstances at the time. The functions are also not all in the Civic Centre, with Environmental Health and Trading Standards located off-site. This presents managerial challenges in its own right. Consolidating the whole department on one site should be considered to improve managerial efficiency and effectiveness.
- 3.8 The re-structure of the planning service resulted in the deletion of the Planning Service Manager, a post which sat between the Head of Service and the team

managers. This post had responsibility for the day to day management of the service and had the overview of the service as a whole. Although the recently completed re-structure needs time to bed down, and for those staff with new managerial responsibilities to become confident about their new roles, it is considered that the loss of the Planning Service Manager post could put additional pressure on the Head of Service and the four lower tier managers, none of whom will have an overview of the service as a whole.

- 3.9 It is **recommended** that the four managers should hold weekly service management meetings in addition to the existing departmental management meetings with a reporting mechanism by exception to the Head of Service. This meeting should review performance, the service risk register, staffing issues, including performance, and other service wide issues, such as staff training and professional development. These meetings should be chaired in rotation with the Chair responsible for report back to the Head of Service. The frequency of the meeting should be reviewed from time to time but attendance should be mandatory with an appropriate substitute nominated to cover in a manager's legitimate absence. The effectiveness of this arrangement should be monitored by the Head of Service.
- 3.10 It is further **recommended** that the requirement for the post of Planning Service Manager be kept under review.
- 3.11 The other major change in the service arises from the amalgamation of the support and technical functions into a single team. This should significantly improve the ability of the service to improve performance and provide more robust business continuity with the opportunity for introducing more agile working practices across the new team. At present cover for important functions in the service, such as validation and registration of planning applications, is provided by planning officers rather than from within the support and technical functions. Planning officers are therefore being diverted from their core activities.
- 3.12 It is **recommended** that the job descriptions for support and technical staff be reviewed to enable multi-tasking across the service functions and that appropriate training is available for the staff concerned. In particular, additional technical and support staff need to be trained in the processes and procedures for validation and registration of planning applications and in the back office systems and processes. This latter point is dealt with in more detail in 3.22 to 3.25 below.
- 3.13 There is currently no provision within the structure for specialist staff in disciplines such as heritage, urban design, landscape and ecology. It is essential for professional planning officers to be able to draw on these areas of expertise from time to time in both the determination of planning applications and in the plan making process. It is therefore **recommended** that a proportion of the planning application fee income is kept in reserve for the appointment of consultant specialists as and when the occasion demands and that the development plan budget allows for the independent appraisal of the plan through the SA and SEA process.

Priorities and Processes

- 3.14 The departmental Management Plan is the key tool for resource allocation and departmental priorities. It has a critical role in demonstrating how the department will deliver the Corporate Plan. Planning as a function relates to and influences a wide range of council services as well as being integral to the improvement of the economy, the wellbeing of communities and the protection and enhancement of the natural and built environment. It can work with other services to improve community

cohesion and access to essential services and facilities through many of its activities including spatial planning and utilising Section 75 contributions and obligations to greatest effect. These linkages should be demonstrated

- 3.15 In times of budgetary restraint it is essential that the preparation of the Management Plan is used as a vehicle for identifying both the departmental priorities to deliver the corporate priorities and the available resources for their delivery. The principle role of the service is to deliver the council's statutory regulatory functions, but there are other statutory non-regulatory functions which help deliver the corporate priorities and these should be recognised through the Management Plan.
- 3.16 Two of these functions are enforcement and the West Lothian development plan review. The available resources for these functions were raised in the interviews as a matter of concern by both officers and members.

Enforcement

- 3.17 All the Members interviewed raised this activity as their greatest area of concern. There is a general acceptance that enforcement is under-resourced and that this does not reflect its importance as a service to the general public. The council has a Planning Enforcement Charter, last reviewed in 2011, which contains the planning enforcement service standards, which are published on the council's web-site.
- 3.18 There was a marked improvement in the number of enforcement cases resolved from 2012/13 to 2013/14 as a result of employing temporary members of staff in the Household Applications and Enforcement Team. Whilst the staffing arrangements within the team need to be resolved, there is a legitimate question over the level of enforcement activity the council can support given the level of resources available for this activity as set out in the Management Plan, which allows for only 1.3FTE staff. It is considered that both the web-site page and the Charter need to be reviewed to give a more realistic representation of the level of service that the public can expect to receive and that this is set in the context of what is necessary, proportionate and expedient having due regard to relevant planning powers, policies and guidance, resources, the severity of the breach of control and any other material considerations. The council should, as a matter of policy, agree a priority basis for dealing with breaches of planning control. There are many examples of best practice and an example is attached as Appendix 3.
- 3.19 It is **recommended** that the Enforcement Charter be reviewed and that the council gives the public more realistic expectations of what level of service they can expect to receive and the service standards should be reviewed accordingly and that a priority basis for dealing with breaches of planning control is agreed and publicised.

Development Planning

- 3.20 Concern was expressed during the interviews that the level of staffing and resources in this team would be insufficient to ensure that the revised local plan was produced to timetable. The current plan is out-of-date, which is not truly reflected in the local Performance Indicator of 100% of the population covered by a finalised or adopted local plan, although the status of the plan is accurately reflected in the national performance indicators. The council is at risk as a consequence and has commenced the review of its local plan. The budget for the plan review 2015/16 is £338,354 with 5 FTE staff. This compares to £294,570 and 3.9FTE in 2013/14. The council is scheduled to go to public consultation on the Proposed Plan in August with a view to examination in March/April 2016. It is considered that the staffing levels for this team

are adequate to produce the plan although the timescales could be challenging if significant representations are made to the plan during the consultation stages.

- 3.21 The consultation techniques used by the development plans team reflect current best practice for community engagement in the plan making process, particularly the drop-in sessions for the public and the wide distribution of regular news letters. The team does not, however, have access to an on-line system for consultation, such as 'Objective', which is widely used and available to the strategic planning team in SESPLAN. Use of this type of consultation tool can significantly reduce the time it takes to log, record and analyse representations to a plan and is cost effective in terms of use of staff time. It is also convenient for the public to use and is widely understood by planning consultants and their clients. It is **recommended** that the resources be made available to provide an on-line consultation management system and appropriate staff training before the consultation on the local plan commences in August.

Processes

- 3.22 The staff action plan referred to in paragraph 3.6 above identified the need for improvements to and investment in the back office systems and the way they are used within the service. The service uses IDOX as the electronic document management system with ACOLAID as the back office applications system. The staff action plan is attached as Appendix 4. This review largely supports the staff action plan, finding that the systems are not being used efficiently as they are insufficiently understood and that there is insufficient staff training on their capability. There is also a point of concern that the processes and procedures for quality control throughout the DM process is ad hoc and it is **recommended** that those elements of the staff action plan relating to DM (and Building Standards) be formalised into an Improvement Plan which incorporates a data quality action plan.
- 3.23 It is **recommended** that a member of the Technical and Support team be appointed as systems administrator and web-master with appropriate support and training. The purpose of this role is to ensure that the service makes the most of the available systems, that they are kept up-to-date and used effectively and efficiently by all staff. Proper use of the available technology is the key to more cost efficient working practices and as the service continues to see a rise in the use of the planning portal this becomes business critical. This post would also be responsible for data quality and preparing and up-dating the data quality action plan.
- 3.24 It is **recommended** that the development management team together with the Technical and Support team complete comprehensive process mapping for all the key activities to identify areas of duplication and elimination of unnecessary tasks. This should be facilitated by the departmental Performance Officer on a task and finish basis and this should be incorporated into the Improvement Plan with identified areas for improvement and change. Staff are pleased that some marked improvements as a result of changes to working practices are already noticeable, particularly in the householder team, but the process needs to be properly managed and resourced and championed by management and rolled out to other areas of the DM team.
- 3.25 It is understood that the Acolaid system may have to be replaced and that there is an aspiration to move to a paper free office. In order to ensure that the new system or adapting the existing system meets the service requirements, process mapping and critical analysis of the existing processes and procedures is essential to ensure that any new system will be fit for purpose. It is **recommended** that prior to undertaking

a full procurement exercise process mapping has been completed, soft market testing takes place and that the resource implications are properly understood. This would be a significant work stream and the service would require support from colleagues in IT and procurement. It is **recommended** that a comprehensive business plan, including a resource plan and project timetable, be produced and agreed by the Senior Management Team before the decision is taken to embark on this process.

Performance

- 3.26 In addition to the performance indicators required by the Scottish Government, the council has its own performance indicators (PI's), which feed into the West Lothian Assessment Model (WLAM), which is the council's self-assessment programme to ensure that council services continue to provide high quality, value for money services to the people and local communities
- 3.27 The planning service reports monthly, quarterly and annually across a wide range of PI's and publishes an annual report, the 'Planning Performance Framework', which gives a comprehensive commentary on the annual performance and sets out the target areas for service improvements for the following year.
- 3.28 The Scottish Government produces statistics on a national basis to monitor the performance of all local planning authorities. These are produced annually and quarterly. At the time of writing the annual figures for 2014/15 are not available, although the quarterly figures available to the end of Quarter 3 would tend to indicate that West Lothian is continuing to improve its overall performance against the Scottish average and will maintain or slightly improve its position in the upper median quartile. The 2014/15 national indicators for the council were, however, available and demonstrate an overall improvement in performance from 2013/14 in key areas such as an improvement in the time taken to determine major housing applications from 42.9 to 41.5 weeks and the time taken to determine local developments without a legal agreement from 8.1 weeks to 7 weeks in 2014/15. However there are some key areas such as the determination of major applications without a legal agreement that are not demonstrating a year on improvement towards the Scottish average. This should be monitored through the Planning Performance Framework report and the obstacles to improvement identified.
- 3.29 The performance of departments and services in the council is reviewed regularly via committee and management teams. The planning service was reviewed by the council's formal review panel in March 2015. The Review Panel made a number of recommendations including that the service continues to review and streamline the PI's in Development Management and Building Standards and create new indicators for Development Plans and Education Planning teams. It is **recommended** that the service uses this opportunity to consider and review its PI's, to assess the contribution each makes to managing the performance and continuing improvement of the service and to streamline reporting where possible i.e. what are we measuring and why are we measuring it? In the light of the above. This review should also include a review of the frequency of reporting to bring local reporting into line with national reporting i.e. quarterly and annually. The results for this should be reported back to the Review Panel in March 2016.
- 3.30 The council is also part of the CIPFA/Heads of Planning Service in Scotland benchmarking and costing the planning service project. This project will provide a comprehensive assessment of the cost of running the planning service and provide a yardstick to measure value for money. The project will also provide a benchmark

family of comparable local planning authorities against which value for money and performance can be assessed on a like for like basis.

Customer Engagement

- 3.31 There has been a significant increase in the number of complaints since the Planning Service ceased providing a face to face duty officer service on demand. The council's policy is to make the customer contact centre the first port of call for enquiries and to shift the customer towards the council's web-site for information.
- 3.32 It will take time for the new system to bed in and for customers to become accustomed to the new ways of working. However, the number and substance of complaints needs to be closely monitored and remedial action taken if necessary. It is understood that the council's web-site is being reviewed and a Rapid Improvement Plan is being implemented to improve the customer journey. This should be given priority.
- 3.33 Complaints are mostly dealt with through the CRM system and performance monitoring indicates that the service is maintaining its target and responding to complaints on time. However, responding to complaints is time consuming and efforts must be made to minimise complaints. In Q4 2014/15 the complaints in the Planning and Economic Development Department relating to standard of service was 86.7% and 6.7% for poor communication of the total of number of complaints received compared to 47.8% and 9.3% for the council as a whole. In the year the percentage of complaints relating to standard of service was 59.3% and 21% for poor communication compared to 47.5% and 11.0% respectively for the council as a whole. It is **recommended** that the reasons for these complaints and the increase in complaints about the standard of service be investigated and that the level and reason for complaints in Q1 and Q2 of 2015/16 be monitored and used to inform any necessary action plan. It is further **recommended** that this monitoring should also inform a review of the Customer Focus Strategy and customer care standards to reflect the changes to the way the front facing aspects of the service are provided and manage customer expectations accordingly.
- 3.34 Ombudsman referrals are dealt with by the department in a timely manner and the number of cases referred does not seem exceptional. There have been no findings against the Planning Service.
- 3.35 A considerable amount of officer time is spent dealing with requests for information under the Freedom of Information Act and the Environmental Information Regulations. The number of requests is growing year on year, a situation not unique to West Lothian. The current practice is for each department to administer and reply to its own requests. Although not strictly part of this review, in order to ensure consistency and compliance with the legislation the council may wish to consider appointing an Information Officer based in an appropriate department to administer these requests across the council.
- 3.36 The planning service also provides a service to other council departments in their capacity as developer/applicant. In these circumstances the role of the council in its regulatory capacity as local planning authority must be distinct from its other functions where these meet the planning system. All council departments should be made aware of and encouraged to participate in pre-application discussions to identify and resolve planning issues at the earliest stage of scheme preparation and design.

Interaction with Members

- 3.37 The interviews held with Members indicate that in general the Planning Service is held in high regard although Members have concerns about the impact of budget reductions on the planning service and enforcement in particular. There is also some concern amongst members that enquiries and requests for information are not dealt with in a timely manner.
- 3.38 Other matters raised include the interaction of officers and members at Development Management Committee, training and members being adequately informed about issues in their wards.
- 3.39 Most of the issues raised are dealt with under the specific topic areas, including the operation of committees; however it is **recommended** that a briefing paper be prepared for all councillors on how to access information on-line and all members be offered refresher training on how to access planning applications and other important council information on-line and how to direct their constituents to the available information. This should be an essential part of the channel shift project and be a corporate rather than just a service priority.
- 3.40 It is also **recommended** that the system for handling and dealing with Member complaints and queries be reviewed and service standards be adjusted if necessary to manage expectations in the light of budget pressures.

Quality of Decision Making

- 3.41 The quality of the council's decision making process is measured through the appeals process. In Scotland this is in two parts; applications which have been considered by committee are referred to the Ministers and considered by a reporter and those matters which have been determined under delegated powers are considered by the Local Review Body.
- 3.42 The current West Lothian service target for applications upheld on appeal is 100%. It is considered that this target is unrealistic and should be re-considered.
- 3.43 The current Scottish average for 2013/14 for appeals determined by Local Review Bodies is 59.8% of original decision upheld and 61.9% for appeals determined by Scottish Ministers. This is not dissimilar to the figures for 2012/13.
- 3.44 West Lothian Local Review Body upheld 75% of original decisions in 2013/14 and 60% in 2014/15. This latter figure is in line with the national average. By contrast the percentages of original decisions by West Lothian council upheld on appeal to the Scottish Ministers are 40.9% in 2012/13, 26.3% in 2013/14 and 37.5% in 2014/15 compared to the national average of 61.9% in 2012/13 and 53.6% in 2013/14. The national figure is not yet available for 2014/15. It would appear that there is little improvement
- 3.45 It is **recommended** that the local target for success on appeal be revised in line with national figures with a stretch target set for appeals considered by the Local Review Body and a target which relates more closely to the national average set for appeals determined by Scottish Ministers. This latter target should be re-assessed annually as performance on appeals improves.
- 3.46 The Planning Performance Framework for 2013/14 identified the need for an analysis of appeal decisions where the Reporter has allowed an appeal. It is **recommended**

that the Planning Performance Framework 2014/15 should include such an assessment and that this be continued into 2015/16 as this is an area identified for improvement. This should include an assessment of Member decisions contrary to officer recommendations.

- 3.47 Continuing professional development is the key to service improvement and training needs should be systematically identified through the annual appraisal process with each officer responsible for identifying and implementing his/her development plan. The departmental training plan should be up-dated annually and its success monitored against the quality of decision making. Innovative and inexpensive training such as lunchtime learning sessions are useful in engaging staff actively in arranging peer to peer training.

Summary

- 3.48 The review of the staff and processes employed to discharge the Council's statutory and non-statutory functions as a local planning authority has demonstrated that there are areas in which the Planning Service could improve performance and service delivery within existing resources. The service has an improvement plan which should be reviewed and up-dated in the light of this report.

4. The Committees which Make Planning Decisions

- 4.1 The brief for the review is to look at the format, remit, frequency and operation of the Development Management Committee, the West Lothian Planning Committee and West Lothian Council (Planning) and the Local Review Body.
- 4.2 The terms of reference and the remit of the committees which considers major applications which are deemed to be significant departures from the development plan are established by the Scottish Government, i.e. the West Lothian Planning Committee and the West Lothian Council (Planning).
- 4.3 The requirement for a Local Review Body to consider appeals against delegated decisions is likewise established by statute.
- 4.4 There are two matters which were raised frequently by officers and Members in this review, which are generally applicable to all the committees, namely training and attendance at site visits.
- 4.5 Induction training is compulsory for Members of the Development Management Committee and the Local Review Board, but this would not appear to be the case for the West Lothian Planning Committee or West Lothian Council (Planning), despite there being provision for induction training in the Scheme of Administration. The Council is determining applications of strategic significance and insufficient training for members could potentially leave the council open to challenge. It is therefore **recommended** that all members of the council receive induction training and that all members are invited to any training sessions that may be organised for members of DMC and the LRB. These invitations should clearly set out the benefits for Members in attending the training.
- 4.6 Attendance at site visits is mandatory for members of the LRB if they are to determine the appeal. Attendance is not mandatory for members of DMC, the Planning Committee or the Council (Planning) and this is normal practice. However Members should satisfy themselves that they have enough information to enable them to properly consider the application and make every effort to attend site visits.

Development Management Committee

- 4.7 The Development Management Committee (or equivalent) is the shop window for any Local Planning Authority. Its processes and procedures need to be clear and transparent to both Members and the public. Whether the attendees of the meeting are applicants or objectors they need to feel that whatever the outcome, the process has been even-handed and the decision fairly made.
- 4.8 The DMC has a membership of 9 Members appointed by the Council. It meets every 4 weeks. It is mandatory for councillors to receive induction training before they can sit on the committee. The Scheme of Administration also makes for provision for Members to receive refresher training and they shall not sit at meetings of the Committee unless they have attended such training to the satisfaction of the Clerk.
- 4.9 The remit of this Committee is set out in the Scheme of Administration and it considers planning applications and other matters in circumstances where the powers delegated to officers do not apply, applications which have been called-in by a Member of the council and those which have been referred by the Appointed Person (the Development Management Manager)

- 4.10 The Committee has the power to conduct Hearings which are conducted in accordance with a standard procedure.
- 4.11 The Committee has the powers to determine planning applications, making alterations and revoking development control policies, whether to pursue enforcement action in the circumstances set out, the making of TPO's and approving appeal submission where the decision was contrary to officer recommendation and noting and consideration of appeal decisions. It is not within the current remit of the Committee to consider other applications, e.g. Listed Buildings, Conservation Area consents or adverts or to consider orders or notices other than TPO's. Unless it is the intention of the Council that these matters be reserved for the consideration of Council, then it is **recommended** that the remit of the DMC be reviewed and amended as matter of urgency and that appropriate measures are in place until this can be achieved, including all such matters being dealt with under delegated powers or as otherwise advised by the council's solicitor.
- 4.12 All meeting of DMC are held in the council chamber. Space in the public gallery is somewhat limited and the formal surroundings of the chamber could be perceived to be intimidating. All meetings begin at 10.00am. As a general observation the committee is old-fashioned in the way it operates and should be revamped to bring it in line with current best practice to make it more transparent and accessible to the public.
- 4.13 Accordingly, it is **recommended** that the format and operation of the proceeding of the meeting be reviewed and consideration be given to the following:
- The use of visual aids in presentations by planning officers in presenting their reports, including site plans, photographs and other supporting and illustrative material using the available technology
 - Holding meetings in the evenings, starting at 6.00pm
 - The chair should introduce all members and officers in attendance at the beginning of the meeting for the benefit of the public.
 - Review the procedures for public speakers. At present speakers remain at the table after they have spoken. As there is no limit to the numbers who can register to speak this can be intimidating for the applicant who could easily be outnumbered by objectors at the table. If there are a large number of speakers they could also outnumber the officers and members at the table leading to an obvious imbalance. Speakers should speak after which Members should have an opportunity for questions and they should then return to the public gallery. Speakers would then be called to the table in turn.
 - The published agenda should set out the membership of the committee and the procedures for the conduct of the meeting and public speaking (hearing) should also be included in the published agenda. Although all this information is on the web-site it is necessary to navigate to several different pages to find the information.
 - Procedures for the Council as applicant also should be clarified to distinguish clearly between the Council as the regulatory body and the council as applicant and developer. As applicant, the relevant officer should sit in the public gallery and take advantage of the hearing process to speak in support of the development. The officer applicant should also have their advisors in support to

speaking to the proposals if necessary. There should be no confusion in the public mind as to the distinction between the council as planning authority and the council as applicant.

The Local Review Body

- 4.14 The Local Review Body considers and determines requests for review of decisions by the council's Appointed Person made under delegated powers under the provisions of the Planning etc. (Scotland) Act 2006. The remit and powers of the Body are set out in the Scheme of Administration.
- 4.15 There are 9 Members of the Body and it meets every 4 weeks subject to there being business for it to consider. All members of the committee are required to undergo induction and regular refresher training. The members visit the site and receive legal advice from the Chief Solicitor and a planning advisor, provided that the advisors were not involved with the case at any earlier stage. In practice the planning advice is provided internally by a planning officer other than the case officer.
- 4.16 Although there was no business for the Body at the time of the review, there was a consensus from officers and members that the committee works well. There have been no complaints to date and the LRB would appear to be scrutinising the decisions of the Appointed Person fairly and independently.
- 4.17 However the use of internal planning officers could give rise to concerns about impartiality and therefore it is **recommended** that the council explores the possibility of entering into a service level agreement with an adjoining authority to provide mutual independent officer support.
- 4.18 The role of the LRB in the decision making process is one which is taken most seriously by the Members. It is essential, therefore to protect the council from challenge, that refresher training is made available for the members and that they take every advantage of the opportunity. In particular, the council is reviewing its local plan which is becoming increasingly out of date and is preparing a replacement plan. Members of the LRB need to understand the impact of this in the decision making process and it is **recommended** that specific training needs to be given to members of the LRB on the status of the current West Lothian Local Plan and the weight to be attached to the existing and emerging plans at each stage of the plan making process.

West Lothian Planning Committee and West Lothian Council (Planning)

- 4.19 The remit of this committee is to hold a pre-determination hearing for major applications which are referred to it as being significantly contrary to the development plan. Its remit and the conduct of this committee and the council meeting which determines the application is set out in the Scheme of Administration but is broadly a statutory requirement. There were no meetings held during the course of the review.
- 4.20 The requirement for this type of application to be determined in this way is a statutory requirement and the council has little discretion in the matter. However, it is **recommended** that as these are public meetings, which, by their nature, attract a lot of public interest then the recommendations for the conduct of the DMC also be applied to these meetings.

5. The Scheme of Delegation

- 5.1 The Scheme of Delegation is in two parts. The mandatory scheme, Part A, is the national requirement and changes have to be approved by the Scottish Ministers. Part B is the local scheme and its contents are at the discretion of the Council
- 5.2 The purpose of a scheme of delegation is to streamline the planning system, speed up the decision making process and aim to ensure that only the most significant or contentious applications are considered by committee. Best practice is that about 90% of all decisions on planning applications should be taken under delegated powers. The national average in Scotland 2013/14 was 92.6% compared to West Lothian in the same year at 89.5% and at 93.9% in 2014/15. This would tend to indicate that the West Lothian Scheme of Delegation is functioning as intended.
- 5.3 However, Part B has evolved over time and is overdue for an overhaul to bring it up-to-date and to simplify the contents. Part B runs to 5 pages and it is notable that the recently reviewed scheme of a neighbouring authority is one and half pages long.
- 5.4 It is **recommended** that the council reviews its Scheme of Delegation Part B and gives consideration to the following:
- Reduce the length and complexity of the scheme by delegating all matters to the Appointed Person unless they are expressly reserved for consideration by committee or council.
 - Restrict the right of member call-in for matters of fact or legality e.g. Members should not be able to call-in applications for certificates of lawful development and the like, screening and scoping an EIA, minor non-material development etc. In essence this would restrict the broad powers of call-in set out in paragraph 2.2.2 and 2.2.3 of the scheme insofar as they relate to planning applications.
 - Members should give a bona fide planning reason for call-in on all other matters

Examples of schemes of delegation are attached as Appendix 4.

- 5.6 There is one minor amendment that could be made to Part A should the council wish to approach the Scottish Ministers. This is in relation to committee determinations of local applications where a community council has made a representation. A representation could be support and consideration by committee would be unnecessary. This could be changed to 'attracted an objection'.

Appendix 2A

List of Consultees

Graham Hope	Chief Executive
Moirá Niven	Depute Chief Executive
Craig McCorrison	Head of Service
James Millar	Solicitor/Committee Services Manager
Gordon Blair	Monitoring Officer
Gosia Lawes	Performance Officer
Lesley Craig	Technical and Support Team Manager
Chris Norman	Development Management Manager
Valerie Johnston	Committee Officer
Fiona McBrierty	Principal Planner (acting manager of Development Plans)
Linda Christie	Information Assistant
Steve McLaren	Planning Officer
Ross Burton	Senior Planning Officer
Wendy McCorrison	Principal Planning Officer
Provost Tom Kerr	Member of Development Management Committee
John McGinty	Leader of Council
Alex Davidson	Chair of Development Management Committee
George Paul	Chair of Local Review Body
Stuart Borrowman	Member of Development Management Committee
Cathy Muldoon	Chair of Policy Development and Scrutiny Panel (Development and Transport)

DATA LABEL: PUBLIC

APPENDIX 3

SUMMARY OF RECOMMENDATIONS AND ACTION PLAN

No	Background	Recommendation	Action
1 (Para 3.9)	Structure, Management and Staffing Levels: Deletion of the post of Planning Services Manager	The four service managers reporting to the former Planning Services Manager post should hold weekly meetings to ensure that an overview of the service priorities is maintained.	Recommendation already implemented. Weekly meetings with exception reporting to the Head of Service now take place.
2 (Para 3.10)	Structure, Management and Staffing Levels: Deletion of the post of Planning Services Manager	The need for the Planning Services Manager post to be kept under review.	No specific action proposed. The post was deleted as part of the restructure of the service. The structure of the service will, however, be reviewed as necessary to respond to service pressures and any legislative change.
3 (Para 3.12)	Structure, Management and Staffing Levels: Job descriptions for support and technical staff	Job descriptions to be reviewed to enable multi tasking across the service functions.	Recommendation already implemented. The Job descriptions for the technicians were reviewed as part of the service restructure to increase resilience. Revised job functions have now been implemented. Support staff were not part of the restructure but revised job descriptions have now been reviewed and agreed.
4 (Para 3.13)	Structure, Management and Staffing Levels: The need for specialist staff (such as heritage, urban design, landscape and ecology)	A proportion of the planning application fee income is kept in reserve for the appointment of consultant specialists	No specific action proposed. The Planning Services revenue budget already has an allowance for 'Studies and Initiatives' which is used for the purposes set out in the recommendation.

No	Background	Recommendation	Action
5 (Para 3.19)	Priorities and Processes Enforcement	The Enforcement Charter be reviewed to incorporate more realistic expectations on what can be expected from the service	No specific action proposed. The Enforcement Charter was reviewed in 2014 and is required, by regulation, to be updated every two years. A revision of the charter was progressed earlier in 2016.
6 (Para 3.21)	Priorities and Processes Development Planning	Resources be made available to provide an on-line consultation management system in advance of consultation on the proposed plan.	Recommendation already implemented. An on-line system for consultation management has been implemented as part of the current consultation on the proposed plan.
7 (Para 3.22)	Priorities and Processes Development Management	Processes and procedures for quality control should be formalised into an Improvement Plan which incorporates a data quality control action plan.	Action proposed. A Rapid Improvement Exercise has been undertaken in the Development Management team (and the Building Standards team) to address the issues raised.
8 (Para 3.23)	Priorities and Processes Development Management	Appoint one of the Technical and Support team officers as system administrator .	Action proposed. An interim appointment has been made. The matter will be addressed as part of the outcomes from the Rapid Improvement Exercise undertaken in the Development Management team (and the Building Standards team).
9 (Para 3.24)	Priorities and Processes Development Management	Process mapping of the key activities should be undertaken.	Action proposed. A Rapid Improvement Exercise has been undertaken in the Development Management team (and the Building Standards team) to address the issues raised.
10 (Para 3.25)	Priorities and Processes Replacement of the Acolaid case management system	Soft market testing should be undertaken and support from IT and Procurement should be secured.	Recommendation already implemented. The replacement is being progressed in line with council procurement arrangements and is being supported by IT and Procurement specialists.

No	Background	Recommendation	Action
11 (Para 3.25)	Priorities and Processes Replacement of the Acolaid case management system	A comprehensive business plan should be produced and agreed before a decision is taken to embark on this process.	Recommendation already implemented. A Project Initiation Document has been completed which covers the elements in the recommendation. Replacement of the system is scheduled for early 2017.
12 (Para 3.29)	Priorities and Processes Performance	The service should reflect on the recommendations from WLAM Review Panel and should consider and review the appropriateness of the reported performance indicators.	Recommendation already implemented. A comprehensive review of performance indicators has been undertaken. The service continues to have a very large number of PIs but these are currently necessary to support the requirements of the Planning Performance Framework and the Building Standards Performance Framework .
13 (Para 3.33)	Priorities and Processes Customer Engagement	The reasons for the increase in complaints about the standard of service should be investigated and an action plan prepared as necessary.	Recommendation already implemented. The principal reason for the increase in complaints is the removal of the duty service/pre-application advice and the transfer of call handling to the Customer Service Centre and to self help via web content. The service is reviewing web content to ensure it provides sufficient information. A Duty Service was reintroduced on 1 April 2016 as a 'paid for' service.
14(Para 3.33)	Priorities and Processes Customer Engagement	The customer focus strategy and customer care standards should be reviewed to reflect the way services are now being provided.	Action proposed. The service standards are currently being updated.
15 (Para 3.39)	Priorities and Processes Interaction With Members	A briefing paper be prepared for all councillors on how to access planning information on-line and how to direct their constituents to the on-line information.	Action proposed. This will form part of the regular training offered to members.

No	Background	Recommendation	Action
16 (Para 3.40)	Priorities and Processes Interaction With Members	System for member enquiries to be reviewed and service standards adjusted where necessary.	No specific action proposed. The service standards are agreed corporately and there is no requirement for different standards to apply for planning enquiries.
17 (Para 3.45)	Priorities and Processes Quality of Decision Making	The local target for success on appeal be revised in line with national figures.	Recommendation already implemented. The service recognises that it has been overly restrictive about some aspects of design and this is being addressed. The Development Management Manager now reviews all applications which are recommended for refusal.
18 (Para 3.46)	Priorities and Processes Quality of Decision Making	Changes to appeal targets and approach should be picked up as an improvement area in the Planning Performance Framework.	Recommendation already implemented. The revised approach as set out in Action 17 above was included in the PPF for 2015/16.
19 (Para 4.5)	Committee Processes Induction for Members	All members should receive induction training in planning matters and all members should be invited to training organised for Development management and Local Review Body members.	Action proposed. All members will continue to be invited to planning training sessions which are provided on a frequent basis throughout the year.
20 (Para 4.11)	Committee Processes Remit of Development Management Committee	Remit of Development Management Committee should be extended to cover applications for listed building consent, conservation area consent and all matters related to tree preservation orders.	Action proposed. These matters should be brought within in the remit of Development Management Committee. See Appendix 4 to this report.
21a (Para 4.13)	Committee Processes Remit of Development Management Committee	Procedures of the meeting to be reviewed to introduce the use of visual aids at committee.	Recommendation already implemented. Visual were introduced on a consistent basis from Jan 2016.

No	Background	Recommendation	Action
21b (Para 4.13)	Committee Processes Timing of meetings	Consideration should be given to holding Development Management Committee in the evening.	No action proposed. There is not sufficient justification provided to change current arrangements.
21c (Para 4.13)	Committee Processes Procedure at committee	The chair should introduce all members and officers in attendance at committee.	Action proposed. This is an operational matter which can be discussed with the chair as part of an overall review of the operation of committee.
21d (Para 4.13)	Committee Processes Speakers at committee	The procedures for speakers at committee should be reviewed. Speakers should make their presentation then should answer questions before returning to the gallery rather than remaining at the table as at present.	Action proposed. This is an operational matter which can be discussed with the chair as part of an overall review of the operation of committee
21e (Para 4.13)	Committee Processes Procedure note on conduct of committee	Procedure note should be available on-line and in the same place as committee procedures.	Action proposed. Procedure note to be made available on-line.
21f (Para 4.13)	Committee Processes The role of the council	Procedures should be clarified to distinguish clearly between the council's role as regulator and its role, on occasions, as applicant.	Recommendation already implemented. When council officers are operating in a regulatory role they sit on the 'regulatory' side of the chamber. When they are operating as applicant they sit in the public gallery unless making representations as the applicant at which point they are invited to the committee table.
22 (Para 4.17)	Local Review Body Independent Support	The use of council officers to provide advice could give rise to concerns about impartiality and the council should explore a service level agreement with an adjoining authority to provide independent advice.	No specific action proposed. Measures are in place to ensure that the planning officer giving advice to the local review body has not been involved with the case. A service level agreement already exists with the other SESplan authorities but, to date, it has not been necessary to bring in external advice.

No	Background	Recommendation	Action
23 (Para 4.18)	Local Review Body Training	Refresher training should be made available and should specifically cover briefing on the new local development plan.	Action proposed. All members will be invited to planning training sessions which are provided on a frequent basis throughout the year. This will include sessions on the local development plan.
24 (Para 4.20)	West Lothian Planning Committee Procedures	The recommendations with respect to the conduct of Development Management Committee should also apply to the West Lothian Planning Committee.	Action proposed. Revised Development Management Committee Procedures (as set out in Recommendation 21 above) should be adopted for West Lothian Planning Committee.
25a (Para 5.4)	Scheme of Delegation Part B (non statutory scheme)	Reduce the Length and complexity of the scheme by delegating all matters to the Appointed Person unless expressly reserved.	Action proposed. A review of the scheme will be carried out for consideration by Council Executive as part of the regular review of the council's overall scheme of delegation.
25b (Para 5.4)	Scheme of Delegation Part B (non statutory scheme)	Members should only be able to call in issues which are matters of fact or legality i.e. certificates of lawful development etc.	Action proposed. A review of call in powers should be part of the review of the scheme delegation set out in Recommendation 25a above.
25c (Para 5.4)	Scheme of Delegation Part B (non statutory scheme)	Members should have bona fide planning reasons for calling applications to committee.	Action proposed. A review of call in powers should be part of the review of the scheme delegation set out in Recommendation 25a above.

APPENDIX 4

REVISED REMIT FOR DEVELOPMENT MANAGEMENT COMMITTEE

Current remit and powers in Scheme of Administration

- 1 Determination of planning applications which have attracted objection (subject to G.2, below).
- 2 Determination of planning applications which are recommended for refusal (subject to G.2, below).
- 3 Determination of planning applications which are recommended to be granted contrary to the Development Plan (subject to G.2, below).
- 4 Determination of planning applications which require section 75 Agreements where the Agreements are not standard policy (subject to G.2, below).
- 5 Recommending to the Council the making, alteration or revocation of development control policies.
- 6 Determination of whether to pursue enforcement action in cases which have been instigated by a local Member and that Member expressly wishes, after discussion with the Deputy Chief Executive for Education, Regulatory and Area Services, that action should be taken
- 7 The making of Tree Preservation Orders.
- 8 Approval of appeal submissions in cases where the decision taken was contrary to officers' recommendation.
- 9 Noting of and consideration of appeal decisions.

...

- G.2 The Scheme of Delegations to Officers confers on the Deputy Chief Executive for Education, Regulatory and Area Services and the Council's Appointed Person a power to determine applications in certain circumstances, and applications will only be brought to the Committee in circumstances where those delegated powers do not apply.

Proposed remit and powers

1. With the exceptions of applications referred to the West Lothian Planning Committee and the council's functions under the High Hedges (Scotland) Act 2013, in relation to matters which are the responsibility of the council's Planning Service:-
 - a) Determination of planning and other regulatory applications
 - b) Issuing of notices, certificates and orders

- c) Taking enforcement action, including emergency or urgent action, in relation to allegations of breach of consent, permission or other controls
- 2. Considering and approving appeal submissions in cases where a decision was previously made by the committee contrary to officers' recommendations
- 3. Authorising the making of representations, including objections, on behalf of the council in relation to applications in neighbouring council areas where the council has been consulted
- 4. Responding on behalf of the council to statutory consultations and notifications of licence applications for windfarm developments
- ...
- G.2 The Scheme of Delegations to Officers confers on the Depute Chief Executive for Education and Planning and the Head of Planning, Economic Development & Regeneration a power to determine applications in certain circumstances. Decisions proposed to be made by officers shall, where required by the Scheme of Delegation, be circulated to members on a weekly list, and items of business will only be brought to the Committee when called to committee or in other circumstances where those delegated powers do not apply.



COUNCIL EXECUTIVE

WINCHBURGH COMMUNITY COUNCIL – PRESCRIBED NUMBERS

REPORT BY HEAD OF CORPORATE SERVICES

A. PURPOSE OF REPORT

To seek agreement to alter the prescribed number of members of Winchburgh Community Council from 12 members to 8-18 members in line with the terms of the new Scheme for Establishment of Community Councils in West Lothian.

B. RECOMMENDATION

That the Council Executive agrees to alter the prescribed number of members of Winchburgh Community Council to 8-18 members.

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)	Local Government (Scotland) Act 1973 and Local Government (Scotland) Act 1994
III Implications for Scheme of Delegations to Officers	None
IV Impact on performance and performance Indicators	None
V Relevance to Single Outcome Agreement	None
VI Resources - (Financial, Staffing and Property)	None
VII Consideration at PDSP	
VIII Other consultations	Ward Councillors

D. TERMS OF REPORT

When Winchburgh Community Council was re-established during the 2013 Community Council Elections, their prescribed number of members was set at 12 in accordance with the Scheme for Establishment of Community Councils operating at that time. Under that scheme, the community council could operate with a minimum of 6 and a maximum of 12 members.

Following a recent, well attended public meeting, a number of people completed nomination forms to be co-opted on to the community council. However, due to the restrictions on the number of co-opted members permitted on each community council, it has been necessary to arrange an interim election which is currently underway. To allow the community council to elect the maximum number of people it can during the interim election, the community council has requested that their prescribed size be increased.

A new Scheme for Establishment of Community Councils was adopted by the Council Executive in February 2015. The new scheme sets the membership numbers for newly established community councils at 8-18 members. The new rule on membership numbers was not applied retrospectively to those community councils elected in 2013. Instead, those community councils remain unchanged until the date of the next elections in September/October 2017.

In order to allow the maximum number of people to get involved with Winchburgh Community Council, it is recommended that the membership number for the community council be set at 8-18, in accordance with the new scheme. This will allow the community council to operate with a minimum of 8 members and a maximum of 18 members.

The ward councillors have been consulted and support the action proposed.

E. CONCLUSION

It is important that the council takes action to support the role of the community councils to allow them to express the views of the community to local authorities and other public bodies and to take action in the interests of their community. By altering the prescribed size of Winchburgh Community Council, it will ensure that the community council is able to increase its current size and bring new members on board to safeguard its future operation.

F. BACKGROUND REFERENCES

Scheme for Establishment of Community Councils 2009 – Council Executive – 23rd June 2009

Scheme for Establishment of Community Councils 2014 – Council Executive – 24th February 2015

Appendices/Attachments: None

Contact Person: Lorraine McGrorty, Committee Officer, 01506 281609, lorraine.mcgrorty@westlothian.gov.uk

Julie Whitelaw
Head of Corporate Services
25th October 2016



COUNCIL EXECUTIVE

COMMUNITY COUNCIL GRANTS

REPORT BY HEAD OF CORPORATE SERVICES

A. PURPOSE OF REPORT

To inform the Council Executive of the annual grants and special project grants which have been paid to community councils from 1st April to 30th September 2016.

B. RECOMMENDATION

To note the payments made from the community council annual grants and special project grants budgets from 1st April to 30th September 2016.

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on our customers' needs
	Being honest, open and accountable
	Making best use of our resources
	Working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Section 22 of the Local Government (Scotland) Act 1994
III Implications for Scheme of Delegations to Officers	None
IV Impact on performance and performance Indicators	The timescale for awarding community council administration grants are monitored and recorded through Covalent.
V Relevance to Single Outcome Agreement	None
VI Resources - (Financial, Staffing and Property)	The budget for community councils for 2016/17 is £22,730
VII Consideration at PDSP	None
VIII Other consultations	None

D. TERMS OF REPORT

Following a decision by Council Executive on 18th May 2010, bi-annual reports on community council funding are brought to the Council Executive for information.

Annual Grants

Annual grants are paid automatically to community councils upon submission of satisfactory audited accounts. The current rate is £7.50 per 100 of the population, or £250, whichever is the greater. An additional payment of £35 is included in the administration grant to cover the costs of community councils registering with the Information Commissioner to comply with the terms of the Data Protection Act 1998.

Appendix 1 shows the level of grant now available to each community council for the current financial year, audited accounts which have been received and when grants were awarded.

Special Project Grants

The special project grant scheme allows community councils to carry out projects in their areas such as production of newsletters, environmental improvements, park benches, etc. There is £3,000 available for award. Community councils can apply for a maximum of £750 in each financial year. There is no minimum grant. Applications are dealt with on a first come first served basis. Community councils who retain more than 10% of their grant from the previous financial year are expected to contribute 10% towards the project.

At the start of each financial year, when community councils are notified of their level of administration grant, they are reminded of the availability of the special project fund. Any new community councils set up during the year are advised of the special projects grant scheme at their inaugural meetings.

No special project grants have been awarded during the current financial year. Additional information is awaited on relation to applications previously received and once this has been secured, the outstanding special project grant applications will be presented to committee for consideration.

E. CONCLUSION

This report ensures that elected members are aware of the grants which have been paid to community councils in their wards.

F. BACKGROUND REFERENCES

Minute of Meeting of the Council Executive held on 18th May 2010.

Scheme of Establishment of Community Councils in West Lothian.

Appendices/Attachments: Appendix 1 – Breakdown of Annual Grants
Contact Person: Lorraine McGrorty, Committee Services, 01506 281609, lorraine.mcgrorty@westlothian.gov.uk

Julie Whitelaw

Head of Corporate Services

25th October 2016

COMMUNITY COUNCIL ANNUAL GRANTS 2016/17

COMMUNITY COUNCIL	GRANT PAYABLE 2016/17	DATE GRANT ISSUED
Addiewell/Loganlea Community Council	285	
Armada Community Council	932	
Bathgate Community Council	1634	23/8/16
Bellsquarry Community Council	285	7/7/16
Blackburn Community Council	442	17/6/16
Blackridge Community Council	250	
• Breich Community Council	250	
• Bridgend Community Council	285	
Broxburn Community Council	802	
• Carmondean Community Council	448	
Craigshill Community Council	536	
• Deans Community Council	403	
Dechmont Community Council	285	24/6/16
Dedridge Community Council	590	
East Calder & District Community Council	442	
Ecclesmachan & Threemiletown Community Council	285	24/6/16
Elburn	464	
Fauldhouse Community Council	404	
Greenrigg Community Council	285	17/6/16
• Howden Community Council	285	
Kirknewton Community Council	285	
• Knightsridge Community Council	375	
Ladywell Community Council	517	
Linlithgow & Linlithgow Bridge Community Council	1039	12/6/16
Livingston Village Community Council	285	
• Longridge Community Council	285	
Mid Calder Community Council	256	7/7/16
Murieston Community Council	465	7/7/16
Newton Community Council	285	
Philpstoun Community Council	250	
Polbeth Community Council	285	
Pumpherstoun Community Council	250	
Seafeld Community Council	250	
Stoneyburn Community Council	285	
Torphichen Community Council	285	12/7/16
Uphall Community Council	399	21/6/16
Uphall Station Community Council	250	
West Calder & Harburn Community Council	261	
Westfield & Bridgehouse Community Council	285	7/7/16
• West Lothian Association of Community Councils		
Whitburn & Greenrigg Community Council	976	
Winchburgh Community Council	285	29/9/16

- Not currently in operation.



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 2016 to 30 September 2016.

B. RECOMMENDATION

To note the expenditure from the Councillors' Local Disbursement Fund for the period 1 April 2016 to 30 September 2016.

C. SUMMARY OF IMPLICATIONS

I Council Values	Being honest, open and accountable, focusing on our customer's needs
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	<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>
III Implications for Scheme of Delegations to Officers	None
IV Impact on performance and performance Indicators	None
V Relevance to Single Outcome Agreement	None
VI Resources - (Financial, Staffing and Property)	The budget for 2016/17 is £93,282.00, divided equally amongst the 33 elected members.
VII Consideration at PDSP	Not required
VIII Consultations	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.

Expenditure for the period from 1 April 2016 to 30 September 2016 is shown in the Appendix to this report.

The budget for the Fund for 2016/17 is £93,282.00. Each member is allocated an equal share of the fund, amounting to £2,826.72 per elected member. Members receive regular information about sums they have allocated and balances remaining to them, and they can ask for that information at any time.

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.

E. CONCLUSION

Reporting spending from the Fund for the first half of the year ensures compliance with the rules governing the scheme.

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: Summary of Councillors Local Disbursement Fund Spending - 1 April 2016 to 30 September 2017

Contact Person: Carol Johnston Chief Solicitor/Legal Services Manager
01506 281606, carol.johnston@westlothian.gov.uk

Julie Whitelaw

Head of Corporate Services

Date: 25 October 2016

APPENDIX 1

COUNCILLORS LOCAL DISBURSEMENT FUND – SPENDING SUMMARY

1 APRIL 2016 TO 30 SEPTEMBER 2016

WARD AND MEMBER	AMOUNT ALLOCATED
Ward 1 – Linlithgow	
Tom Conn	£1,000.00
Tom Kerr	£1,100.00
David Tait	£550.00
Ward 2 – Broxburn, Uphall and Winchburgh	
Tony Boyle	£1,600.00
Diane Calder	£1,150.00
Janet Campbell	£800.00
Alex Davidson	£2,050.00
Ward 3 – Livingston North	
Robert de Bold	£1,300.00
Anne McMillan	£1,050.00
Andrew Miller	£1,250.00
Angela Moohan	£1,575.00
Ward 4 – Livingston South	
Lawrence Fitzpatrick	£2,348.72
Peter Johnston	£2,725.00
Danny Logue	£1,915.00
John Muir	£520.00
Ward 5 – East Livingston and East Calder	
Frank Anderson	£1,400.00
Carl John	£470.00
Dave King	£2,275.00

DATA LABEL: PUBLIC

Frank Toner	£960.00
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Ward 6 – Fauldhouse and the Breich Valley

David Dodds	£1,450.00
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Greg McCarra	Nil
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Cathy Muldoon	£2,627.50
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Ward 7 – Whitburn and Blackburn

Jim Dickson	£1,200.00
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Mary Dickson	£1,000.00
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George Paul	£1,700.00
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Barry Robertson	£1,450.00
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Ward 8 - Bathgate

Willie Boyle	£1,400.00
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Harry Cartmill	£2,625.00
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John McGinty	£1,700.00
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Jim Walker	£1,575.00
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Ward 9 – Armadale and Blackridge

Stuart Borrowman	£2,375.00
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Jim Dixon	£2,000.00
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Sarah King	£1,900.00
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Amount available	£93,282.00
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Amount allocated	£49,041.22
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Amount remaining for allocation	£44,240.78
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COUNCIL EXECUTIVE

EARLY RETIRAL AND VOLUNTARY SEVERANCE – 1 APRIL 2016 TO 30 SEPTEMBER 2016

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 April 2016 to 30 September 2016.

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

I Council Values	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
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	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.
III Implications for Scheme of Delegations to Officers	None
IV Impact on performance and performance Indicators	None
V Relevance to Single Outcome Agreement	None

VI Resources - (Financial, Staffing and Property)	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.
VII Consideration at PDSP	None
VIII Other consultations	Consultation has taken place with the Head of Finance and Property Services 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 April 2016 to 30 September 2016.

In accordance with the policy, all cases approved during this period were dependant on the establishment of a business case which ensured that costs of releasing the employee were recovered within the stipulated timescales. All 35 cases approved fell within a 3 year payback period with 25 cases being paid back within a year.

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 April 2016 to 30 September 2016

Contact Person: Katrina Daly, HR Manager - Operations
 Email: Katrina.daly@westlothian.gov.uk
 Tel: 01506 281402

Julie Whitelaw
Head of Corporate Services
Date: 25 October 2016

Early Retiral / Voluntary Severance Summary April 2016 to September 2016

	Social Policy	Chief Executive, Finance & Property	Corporate Services	Education Services		Housing, Customer & Building Services	Operational Services	Planning & Economic Development	Total
				Non Teaching	Teaching				
No of Employees	10	2	0	19		4			35
Category									
Early Retiral	-	-	-	-	-	-	-	-	-
Flexible Retirement	1	-	-	2	-	2	-	-	5
Reduced Severance	-	-	-	-	-	-	-	-	-
Voluntary Severance	7	2	-	16	-	2	-	-	27
Employer's Discretion	2	-	-	1	-	-	-	-	3
Total	10	2	-	19	-	4	-	-	35
Estimated Payback Period									
Less than 1 year	8	-	-	14	-	3	-	-	25
1-2 years	1	1	-	4	-	1	-	-	7
2 -3 years	1	1	-	1	-	-	-	-	3
Total	10	2	-	19	-	4	-	-	35
Added Years Granted									
Nil (Enhanced Lump Sum)	-	-	-	-	-	-	-	-	-
1 year	-	-	-	-	-	-	-	-	-
2 years	-	1	-	-	-	-	-	-	1
3 years	-	-	-	-	-	-	-	-	-
4 years	-	-	-	-	-	-	-	-	-
Total	-	1	-	-	-	-	-	-	1

Cost Summary

Service Area	Number of Employees	Net Salary Savings	Total Exit Costs
Social Policy	10	£ 172,958	£ 179,410
Chief Exec, Fin & Property	2	£ 56,293	£ 112,859
Corporate Services	-	£ -	£ -
Education Services Non Teaching	19	£ 436,179	£ 366,167
Education Services Teaching	-	£ -	£ -
Housing-Customer & Building Services	4	£ 125,011	£ 89,918
Operational Services	-	£ -	£ -
Planning & Economic Development			
Total	35	£ 790,441	£ 748,354

Early Retiral/Voluntary Severance Summary April 2016 to September 2016

DATA LABEL: Public

**Agenda Item 15 –
Private Item of
Business for Decision**