

MINUTE of MEETING of the DEVELOPMENT AND TRANSPORT POLICY DEVELOPMENT AND SCRUTINY PANEL held within COUNCIL CHAMBERS, WEST LOTHIAN CIVIC CENTRE, LIVINGSTON, on 3 SEPTEMBER 2019.

Present – Councillors Cathy Muldoon (Chair), David Dodds, Robert De Bold, Chris Horne, Tom Kerr, Dom McGuire and Kirsteen Sullivan (substituting for Tom Conn)

Apologies – Councillor Tom Conn

In Attendance – Councillors Stuart Borrowman, Lawrence Fitzpatrick and Charles Kennedy

1. DECLARATIONS OF INTEREST

Agenda Item 7 (Draft National Transport Strategy) – Councillor Chris Horne declared an interest in that he was a council appointed member to SESTran;

Agenda Item 7 (Draft National Transport Strategy) – Councillor Cathy Muldoon declared an interest in that she was a council appointed member to SESTran, a council appointed member to Lothian Buses Regional Sub-Committee and was an employee of a train operator;

Agenda Item 8 (SDP2) – Councillor Cathy Muldoon declared an interest in that she was a council appointed member to SESPlan; and

Agenda Item 8 (SDP2) – Councillor Dom McGuire declared an interest in that he was a council appointed member to SESPlan

2. ORDER OF BUSINESS

The Chair advised the Panel that members of the Development Management Committee had been invited to the meeting to participate in Agenda Item 5 (Summary of Planning (Scotland) Act 2019).

The Chair then welcomed Councillors Stuart Borrowman, Lawrence Fitzpatrick and Charles Kennedy to the meeting.

3. MINUTE

The Panel approved the Minute of the meeting held on 20 June 2019. The Minute was thereafter signed by the Chair.

4. SUMMARY OF THE PLANNING (SCOTLAND) ACT 2019

The Panel considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration providing an update on the main changes to the planning system as a result of the Planning (Scotland) Act 2019.

The Planning (Scotland) Act 2019 was passed by Scottish Ministers on 20 June 2019 and received Royal Assent on 29 July 2019, becoming the Planning (Scotland) Act 2019.

The principle changes promoted in the Act were Development Planning; Development Management and Enforcement; and Masterplan Consent Areas. The Head of Planning, Economic Development and Regeneration proceeded to provide an overview of each of these areas. With regards to Development Management and Enforcement a number of significant provisions were being made in the Act; these were as follows :-

- All Section 75 legal agreements to be made publicly available and an annual report produced for the number of legal agreements entered into in a financial year;
- Local Review Bodies would assess appeals against certificates of lawfulness;
- A requirement to assess health effects of major and national developments
- A requirement for disabled toilets in certain developments
- The ability of the planning authority to decline to determine repeat applications for 5 years following their refusal and dismissal at appeal

The Head of Planning, Economic Development and Regeneration proceeded to explain other issues contained in the Act and included matters such as mandatory training for members sitting on planning committees, annual performance reports to the Scottish Government on a statutory basis, introduction of the ability of Scottish Ministers to charge for their services at a national level; and a regulation to allow Scottish Ministers or Planning Authorities to waive or reduce fees under certain circumstances.

The Head of Planning, Economic Development and Regeneration then proceeded to answer questions from the Panel and invited members. The questions centred around a number of themes; these being the need for the council to update its Scheme of Delegation in response to the Act, financial implications for the council and therefore the need to raise fees, the LDP process moving from a five year to a ten year cycle, the replacement of Strategic Development Plans (SDP) with Regional Spatial Strategies.

The Head of Planning, Economic Development and Regeneration proceeded to explain that it was hoped that further clarity on the Act would be provided in secondary legislation which was still to be produced. The Head of Planning, Economic Development and Regeneration then gave an undertaking that as the secondary legislation developed he would endeavour to keep the Panel and other elected members closely involved as the legislation was implemented.

The Panel was asked to note and consider the terms of the report and the significant changes to the operation of the planning system set out in the Planning (Scotland) Act 2019.

Decision

1. To note the contents of the report; and
2. To note the commitment by the Head of Planning, Economic Development and Regeneration to keep elected members appraised as the Planning (Scotland) Act 2019 developed and was implemented.

5. 2018/19 FINANCIAL PERFORMANCE - 12 MONTH MONITORING REPORT

The Panel considered a report (copies of which had been circulated) by the Head of Finance and Property Service providing an update on the financial performance of the Development and Transport portfolio for the General Fund Revenue Budget.

The Head of Finance and Property Services explained that the budget monitoring process was undertaken in line with the council's budgetary control framework and procedures, which placed particular focus on a risk based and pro-active approach to budget monitoring.

A table contained within the report provided the overall revenue position in relation to service expenditure for the portfolio area. It was noted that there was an underspend of £532,000.

The Head of Finance and Property Services then proceeded to provide an update in relation to Public Transport; Planning Services; and Economic Development and Regeneration.

For the Development and Transport portfolio, savings of £294,000 in 2018/19 had been delivered in full. Various savings to be delivered for the portfolio area in both 2019/20 and 2020/21 required further development and implementation at officer level, including staffing restructures in Planning Services and Economic Development and Regeneration.

The Head of Finance and Property Services concluded with a summary of future budget issues and risks noting that the overall position reflected the very challenging financial position the council was now facing after many years of funding constraints and requirements to make significant savings as demand for services continued to grow. There were considerable risks and uncertainties around various aspects of council spending, including the costs of demand led services especially in social care, the level of inflationary increases in budgeted expenditure and the waste recycling market.

It was recommended that the Panel :-

1. Notes the financial performance of the Development and Transport portfolio for 2018/19;
2. Notes that the Development and Transport portfolio position for the year formed part of the outturn reported to Council Executive on 25 June 2018; and
3. Notes any actions required to be taken by Head of Service and budget holders to manage spend within available resources.

Decision

To note the contents of the report

6. DRAFT NATIONAL TRANSPORT STRATEGY 2 (NTS2) - WEST LOTHIAN COUNCIL'S CONSULTATION RESPONSE

The Panel considered a report (copies of which had been circulated) by the Head of Operational Services advising of the Scottish Government's draft National Transport Strategy 2 (NTS2) for Scotland and to recommend a formal response to Council Executive.

The Head of Operational Services advised that the Scottish Government published its National Transport Strategy 2 (NTS2) draft for consultation 20 August 2019. The consultation was seeking answers to a set of 14 questions, over 6 chapters with a closing date of 23 October 2019.

The Head of Operational Services then proceeded to provide a summary for each of the chapters and included matters such as A Vision for Transport in Scotland; Current and Emerging Challenges; Meeting the Challenges; Transport Governance; and What we will do.

Attached to the report at Appendix 1 was a proposed response to the National Transport Strategy and it was recommended that the Panel notes the content of the report and recommends the council's draft response be forwarded to a meeting of Council Executive for approval for onward submission to the Scottish Government.

Decision

1. To note the content of the report and the proposed council response;
2. To agree that the report and the proposed council response be forwarded to an appropriate meeting of the Council Executive for approval; and
3. That prior to submission to Council Executive the Head of Operational Services was to include in the response to Q2, Q3 and Q7 reference to the fact that much of West Lothian was of a rural nature.

7. STRATEGIC DEVELOPMENT PLAN (SDP2) - DECISION LETTER

The Panel considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration advising of the Minister's decision to reject the second Strategic Development Plan (SDP2) and the implications arising from that decision.

The Panel were advised that in accordance with Section 4(1) of the Planning, etc (Scotland) Act 2006, Strategic Development Planning Authorities were required to prepare and review strategic development plans and submit these to Scottish Ministers within four years of the approval of the existing plan; the existing plan was adopted in June 2013. On 26 June 2017 the Proposed Plan for the second Strategic Development Plan (SDP2) was submitted to the Scottish Government's Directorate of Planning and Environmental Appeals (DPEA) for Examination.

The Examination of SDP2 commenced in August 2017 and the report of Examination was published on 20 July 2018. Following consideration of the report, the Minister issued his decision letter on SDP2 on 16 May 2019. The Minister rejected SDP2. The decision letter was attached to the report at Appendix 1.

The decision letter set out three reasons for rejection of the Plan; these being :-

1. Scottish Ministers were not satisfied that the plan had been informed by an adequate and timely transport appraisal;
2. The plan did not take sufficient account of the relationship between land use and transport; and
3. Scottish Ministers did not support the use of supplementary guidance to resolve this issue.

On 24 June 2019 the SESPlan Joint Committee met to discuss the implications of the Minister's decision to reject SDP2 and any actions SESPlan could pursue, including Judicial Review of the Minister's Decision. The Joint Committee determined that Judicial Review should not be pursued and that a proposal for the preparation of a Regional Spatial Framework (RSF) be progressed and reported to the Joint Committee at a future date.

In the absence of an up-to-date SDP, SESPlan had been informed that background material used to inform SDP2 could be used to inform a RSF and could be treated as a material consideration in the determination of planning applications. However the weight given to this information may, however, be subject to challenge at appeal and the weight Reporters would give these documents in considering appeals was uncertain.

The report also provided information on the position surrounding the council's 5 year housing land supply and implications arising from the Planning (Scotland) Act 2019, which had been subject to an earlier report

to the Panel and which removed the requirement to prepare SDP's and introduced a requirement to prepare Regional Spatial Strategies.

It was recommended that the Panel notes :-

1. That the rejection of SDP2 by the Minister placed all SESPlan member authorities at risk in terms of a lack of an up-to-date strategic development plan for the SESPlan area; and
2. This would impact on preparation of the next round of local development plans (LDP's) across the SESPlan area.

Decision

To note the contents of the report

8. DRAFT PLANNING GUIDANCE: PLANNING FOR NATURE: DEVELOPMENT MANAGEMENT AND WILDLIFE

The Panel considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration advising of the preparation of Planning Guidance (PG) on Planning for Nature in support of the West Lothian Local Development Plan (LDP) and to set out the next steps towards finalisation and approval of the guidance. A copy of the PG was attached to the report at Appendix 1.

The Head of Planning, Economic Development and Regeneration explained that with the adoption of the Local Development Plan in September 2018 the suite of Supplementary Planning Guidance that had supported the previous plan was diminished, particularly in relation to the determination of planning applications.

The purpose of Supplementary Guidance and Planning Guidance was to expand upon existing policies and proposals and was used to support the content of the LDP. As a general rule statutory Supplementary Guidance was the preferred format for guidance which required developers to make a financial contribution. All other guidance was usually prepared as non-statutory including Planning Guidance, the main difference being it did not form part of the development plan and did not require to be approved by Scottish Ministers before being adopted by the council.

The report recalled that the councils existing supplementary planning guidance relating to natural heritage had been adopted in May 2015. This had recently been reviewed and refreshed and it had been concluded that no fundamental or significant changes were required to the document. The new Planning Guidance (PG) set out how the biodiversity and geodiversity of the West Lothian area were taken into account when considering all development proposals and provided a checklist for interested parties on matters to be considered and addressed when submitting development proposals.

It was proposed that public consultation on the PG would commence in September 2019 and would run for a period of six weeks. It would also be

published on the council's website and invitations to comment would be issued to Scottish Natural Heritage, other external agencies, developers and agents who were active in West Lothian and to all community councils. Comments would be reported to the Council Executive together with the council's draft responses at a later date and should further revisions be identified following consultation these would also be considered by Council Executive.

It was recommended that the Panel notes and considers the following recommendations which were intended to be submitted to Council Executive for approval after a consultation exercise had been undertaken :-

1. Approves the content of the Planning Guidance "Planning for Nature: Development Management and Wildlife";
2. Approves the responses to any comments received during consultation on draft Planning Guidance; (to be provided as an appendix to the report to Council Executive); and
3. Delegates to the Head of Planning, Economic Development and Regeneration to agree and conclude a "screening determination" as to whether a SEA was required, having taken into account the views offered by the Consultation Authorities.

Decision

1. To note the contents of the report;
2. To note that a six week consultation period would be undertaken on the Planning Guidance "Planning for Nature: Development Management and Wildlife; and
3. To agree that once the consultation had concluded the report would be forwarded to a future meeting of the Council Executive seeking approval of the recommendations contained in the report.

9. SUPPLEMENTARY GUIDANCE: DEVELOPER CONTRIBUTIONS FOR GENERAL INFRASTRUCTURE FOR SITE DELIVERY (EXCLUDING TRANSPORT AND EDUCATION INFRASTRUCTURE, CEMETERY AND PUBLIC ART PROVISION)

The Panel considered a report (copies of which had been circulated) by the Head of Planning, Economic and Regeneration advising of the preparation of Supplementary Guidance (SG) on Developer Obligations for General Infrastructure for Site Delivery in support of the West Lothian Local Development Plan. It was noted that the SG did not embrace transport, education infrastructure, cemetery or public art as these were being addressed in separate guidance. A copy of the SG was attached to the report at Appendix 1.

The report recalled that West Lothian Local Development Plan was adopted on 4 September 2018 and embraced a development strategy that

supported sustainable planned growth up to 2024 and beyond, including the development of over 24,000 houses.

In order to deliver the planned growth set out in the LDP, improvements to infrastructure must be delivered alongside developments and the council was entitled to require developers to mitigate the impact of their development and to pay for, or contribute towards, improvements to infrastructure that came about as a direct consequence of the development.

Supplementary Guidance expanded upon existing policies and proposals and was used to support the content of the LDP. SG was also helpful in establishing the requirement for infrastructure and services that were attributable to a development early in the planning process.

The SG on Developer Obligations for General Infrastructure for Site Delivery was also required to be compliant with Scottish Planning Policy (SOO2014) and Circular 3/2012: Planning Obligations and Good Neighbour Agreements which established that Planning Obligations could be used to address the potentially negative impacts of development or infrastructure providing they met all of the following five tests :-

- Necessary to make the proposed development acceptable in planning terms;
- Serve a planning purpose and, where it was possible to identify infrastructure provision requirements in advance, should relate to development plans;
- Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- Fairly and reasonably relate in scale and kind to the proposed development; and
- Were reasonable in all other aspects.

The SG would continue to support the previously established CDA allocations at three strategic locations; these being:- Armadale; East Broxburn/Winchburgh; and Livingston and the Almond Valley together with the strategic development allocations at Polkemmet, Heartlands and Bangour to create sustainable and well designed and integrated places for new residents and the existing community.

It was proposed that public consultation on the SG would commence in the coming weeks and would run for a period of six weeks. It would also be published on the council's website and invitations to comment would be issued to developers and agents who were active in West Lothian and to all community councils. The outcome of the consultation would be reported to a future meeting of Council Executive and because the SG was intended as "statutory" and in support of the West Lothian LDP, it would be submitted to Scottish Ministers prior to it being adopted.

It was recommended that the Panel notes and considers the following recommendations which were intended to be submitted to the Council Executive for approval following public consultation :-

1. Agrees the content of the SG Developer Obligations for General Infrastructure for Site Delivery (Appendix 1);
2. Agrees the responses to the consultation comments (to be provided as an appendix to the report to Council Executive);
3. Notes that following consideration by the Council Executive the Supplementary Guidance would require to be submitted to the Scottish Ministers for consideration prior to being adopted as statutory supplementary guidance in support of the West Lothian Local Development Plan; and
4. Delegates the Head of Planning, Economic Development and Regeneration to agree and conclude a “screening determination” as to whether a SEA is was required, having taken into account of the views offered by the Consultation Authorities.

Decision

1. To note the contents of the report;
2. To note that a six week consultation period would be undertaken on the Supplementary Guidance: Developer Contributions for General Infrastructure for Site Delivery; and
3. To agree that once the consultation had concluded the report would be forwarded to a future meeting of the Council Executive seeking approval of the recommendations contained in the report.

10. SUPPLEMENTARY GUIDANCE: DEVELOPER CONTRIBUTIONS TOWARDS TRANSPORT INFRASTRUCTURE

The Panel considered a report (copies of which had been circulated) by the Head of Planning, Economic Development and Regeneration advising of preparation of Supplementary Guidance (SG) on Developer Contributions towards Transport Infrastructure. The SG was required in support of the LDP, a copy of which was attached to the report at Appendix 1.

The Head of Planning, Economic Development and Regeneration explained that Supplementary Guidance (SG) provided further information or detail in respect of policies or proposals set out in the West Lothian Local Development Plan (LDP). The SG complemented other SG and Planning Guidance (PG) prepared in support of the LDP, namely PG on Air Quality and SG on Developer Contributions towards Other Infrastructure.

The SG related to key transport infrastructure projects and set out

developer contribution requirements. The SG had been informed by Transport Modelling as well as transport appraisals submitted as part of the planning applications for the Core Development Areas.

In some instances transport infrastructure projects were being provided at developer expense and had already been or were being delivered through planning approval and associated legal agreements; for example the Brotherton Farm site, Livingston.

Key transport projects identified in the SG included the A71, A89/A8 corridor, A801, Blackridge Railway Station, M9 slip roads at Linlithgow and requirements associated with the Core Development Area (CDA's). Details of these various projects were summarised in the report.

It was proposed that public consultation on the SG would commence in the coming weeks and would run for a period of six weeks. It would also be published on the council's website and invitations to comment would be issued to developers and agents who were active in West Lothian and to all community councils. The outcome of the consultation would be reported to a future meeting of Council Executive and because the SG was intended as "statutory" and in support of the West Lothian LDP, it would be submitted to Scottish Ministers prior to it being adopted.

It was recommended that the Panel notes and considers the following recommendations which were intended to be submitted to the Council Executive for approval following public consultation :-

1. Agrees the content of the SG Developer Contributions Towards Transport Infrastructure (Appendix 1);
2. Agrees the responses to the consultation comments (Appendix 2); (to be provided as an appendix to the report to Council Executive);
3. Delegates to the Head of Planning, Economic Development and Regeneration, to agree and conclude a "screening determination" as to whether a SEA was required, having taken into account the views offered by the Consultation Authorities; and
4. Delegates to the Head of Planning, Economic Development and Regeneration, in consultation with the Executive Councillor for Development and Transport to agree and conclude the council's response to any direction issued by Scottish Government in relation to the SG.

Decision

1. To note the contents of the report;
2. To note that a six week consultation period would be undertaken on the Supplementary Guidance: Developer Contributions towards Transport Infrastructure; and
3. To agree that once the consultation had concluded the report would be forwarded to a future meeting of the Council Executive

seeking approval of the recommendations contained in the report.

11. QUARTERLY PERFORMANCE REPORT - QUARTER 1 OF 2019/20

The Panel considered a report (copies of which had been circulated) by the Head of Planning and Economic Development providing an overview of performance for the first quarter of 2019/20.

The report examined performance for all indicators that supported the council's Corporate Plan and fell under the responsibility of the Development and Transport Policy Development and Scrutiny Panel.

Appendix 1 to the report showed a summary position of the status of the 17 performance indicators in the Development and Transport PDSP scorecard. The scorecard showed that a significant proportion of performance indicators were achieving targeted levels of performance; where performance was not at the expected level, the scorecard advised of the corrective actions being taken by services to improve performance.

It was recommended that the panel note the performance information and determine if further action or enquiry was necessary for any of the performance indicators in the report.

Decision

To note the contents of the report.

12. SESPLAN MINUTE, 25 MARCH 2019

The Panel noted the Minute of the meeting of SESPlan held on 25 March 2019.

13. WORKPLAN

A copy of the workplan had been circulated for information.

Decision

To note the workplan.