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COUNCIL EXECUTIVE

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

REPORT BY HEAD OF PLANNING, ECONOMIC DEVELOPMENT & REGENERATION

A. PURPOSE OF REPORT

The purpose of this report is to advise Council Executive of the outcome of the SEA screening determination process relative to Supplementary Guidance (SG) on Developer Obligations for General Infrastructure for Site Delivery and subsequent adoption of the guidance.

B. RECOMMENDATION

It is recommended that Council Executive:

1. notes the comments received from the Strategic Environmental Assessment (SEA) Consultation Authorities on the Supplementary Guidance on Developer Obligations for General Infrastructure for Site Delivery and the overall view that the guidance would have no significant environmental effects (see Appendix 3);
2. notes that the Head of Planning, Economic Development and Regeneration has subsequently issued a "Screening Determination" which concluded that a separate SEA was not required and which confirmed that no separate SEA would be prepared to accompany the Supplementary Guidance (also Appendix 3);
3. notes that the Supplementary Guidance was submitted to the Scottish Ministers for consideration and was 'cleared' to be adopted as statutory Supplementary Guidance in support of the West Lothian Local Development Plan; and
4. notes the guidance was formally adopted on 21 September 2020 (see Appendix 1).

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.

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| <p>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</p> | <p>New statutory Supplementary Guidance and non-statutory Planning Guidance will replace Supplementary Planning Guidance (SPG) which had previously supported the superseded West Lothian Local Plan. Going forward, new guidance will support the Local Development Plan and the development management process.</p> <p>This guidance accords with Policy INF 1 (Infrastructure Provision and Developer Obligations) of the adopted LDP.</p> <p>It has previously been determined that this new guidance is in itself unlikely to have significant environmental effects and it was not anticipated that there would be a requirement to make it the subject of separate Strategic Environmental Assessment (SEA). The required 'screening' procedures have however been satisfactorily concluded.</p> <p>There are no equality, health or risk assessment issues associated with the guidance and there are no risk assessment issues.</p> |
| <p>III Implications for scheme of delegation</p> | <p>None.</p> |
| <p>IV Impact on performance and performance indicators</p> | <p>None.</p> |
| <p>V Relevance to Single Outcome Agreement</p> | <p>Outcome 3 - Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.</p> <p>Outcome 4 - We live in resilient, cohesive and safe communities.</p> <p>Outcome 8 - We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.</p> |
| <p>VI Resources - (Financial, Staffing and Property)</p> | <p>None.</p> |
| <p>VII Consultations at PDSP & Council Executive</p> | <p>The guidance was reported to the Development and Transport PDSP on 3 September 2019 and to Council Executive on 23 June 2020.</p> |
| <p>VIII Other consultations</p> | <p>None.</p> |

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D. TERMS OF REPORT

D1 Background

A report was made to a meeting of Council Executive on 23 June 2020 relative to the preparation of new Supplementary Guidance on Developer Obligations for General Infrastructure for Site Delivery.

The guidance identifies a range of developer contributions required to assist in the delivery of the development strategy set out in the adopted West Lothian LDP (and the process and mechanics of achieving this). The adopted guidance is attached as Appendix 1.

While Council Executive approved the guidance for adoption it also required the Head of Service to report the outcome of the subsequent SEA screening determination process to a future meeting of the Council Executive for information. This report fulfils that requirement.

D2 Screening Process

Local authorities have been undertaking SEA since July 2004. The process is regulated by the EU Directive 2001/42/EC, the Environmental Assessment of Plans and Programmes (Scotland) Regulation 2004 and the Environmental Assessment (Scotland) Act 2005.

Screening is the means to judge the likely impact on the environment of a public plan (in this case supplementary and planning guidance) and prior to being adopted, new guidance requires to be subjected to a screening process in order to determine whether there is a likelihood of it having any significant environmental effects.

Scottish Government has prescribed the process to be followed and it has oversight of this through the SEA Gateway, an agency responsible for coordinating the formal correspondence between the council and the three 'Consultation Authorities' i.e. SEPA, NatureScot (previously SNH) and Historic Environment Scotland (HES).

The council prepared a 'Screening Report', Appendix 2, which explains the purpose, scope and effect of the guidance and which concluded that no formal strategic environmental assessment was required to be prepared in this particular instance.

The council has consistently expressed the view that supplementary and planning guidance is simply to help interpret and provide further detail in respect of policies that are already set out in the adopted West Lothian Local Development Plan and which was itself the subject of a full Strategic Environmental Assessment. As a consequence, additional strategic environmental assessment is neither required nor justified.

The guidance and this Screening Report were submitted to the 'Consultation Authorities' for independent scrutiny and to allow them to bring their individual environmental expertise to the assessment process. In the event they concurred with the council's view that a SEA was not required.

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Subsequently, the council formalised and published its decision that the guidance should be exempted from a separate strategic environmental assessment and issued a 'Screening Determination' to this effect on 21 August. This incorporates the responses of the Consultation Authorities and is attached as Appendix 3.

E. CONCLUSION

The guidance has been produced with the intent of being adopted as statutory Supplementary Guidance in support of the West Lothian Local Development Plan.

Having confirmed that it did not require to be accompanied by a Strategic Environmental Assessment it was submitted to Scottish Ministers for scrutiny on 21 August 2020 and clearance was received on 11 September 2020, paving the way for the guidance to be adopted on 21 September 2020.

F. BACKGROUND REFERENCES

- Adopted West Lothian Local Development Plan (2018)
- [Report to Council Executive of 23 June, 2020](#)

Appendices/Attachments: Three

Appendix 1: Supplementary Guidance - Developer Obligations for General Infrastructure
for Site Delivery (Adopted version)

Appendix 2: Screening Report

Appendix 3: Screening Determination

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6 October 2020

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West Lothian
Council

Planning Services
Development Planning & Environment



SUPPLEMENTARY GUIDANCE (SG)
**Developer Obligations for General Infrastructure
for Site Delivery**

Approved by Council Executive 23 June 2020

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Introduction

- 1.1 This Supplementary Guidance is one of a series supporting policies in the West Lothian Local Development Plan 2018 (LDP). The LDP was adopted by the council on 4 September 2018 and is framed within the context of Scottish Planning Policy (2014); Circular 3/2012: Planning Obligations and Good Neighbour Agreements; and Circular 4/1998: The Use of Planning Conditions in Planning Permissions.
- 1.2 Supplementary Guidance forms part of the LDP and as such is a statutory document in the determination of planning applications. It elaborates on key policies contained in the adopted LDP and provides advice to developers and others on the issues to be taken into account when submitting proposals for planning permission. Supplementary Guidance is a material consideration in the determination of planning applications. It is particularly important in considering and helping to ensure the delivery of the Core Development Areas (CDA) across West Lothian and the strategic allocations of Heartlands, Whitburn and Bangour to create sustainable and well designed and integrated places for new residents and the existing community. This Supplementary Guidance is also relevant for all other development sites identified in the LDP (particularly housing) and is intended to be read alongside the relevant policies of the LDP together with other related and pertinent guidance.
- 1.3 For the avoidance of doubt, all previous Supplementary Planning Guidance (SPG's) with regards to general infrastructure provision contributions are superseded by this guidance from the date it is approved by the council and other Supplementary Guidance prepared in support of the LDP.

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Justification

- 2.1 The West Lothian Local Development Plan (LDP) outlines a development strategy that supports sustainable planned growth across West Lothian up to 2024 and beyond. In particular, it continues to support the previously established Core Development Area (CDA) allocations at three strategic locations: Armadale, East Broxburn/Winchburgh and Livingston and the Almond Valley (i.e. Calderwood, East Calder and Gavieside, West Livingston) together with the strategic development allocation at Heartlands, Whitburn and Bangour.
- 2.2 Although the development strategy will have many positive effects by providing new homes, jobs and economic development, it is recognised that new development also creates a requirement for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect on existing communities, local amenity and the quality of the environment.
- 2.3 In order to deliver the planned growth set out in the LDP, improvements to infrastructure must be delivered alongside development. The planning system allows, and indeed expects developers to mitigate the impact of their development and to pay for, or contribute towards, improvements to infrastructure that arises as a direct consequence of the development, or from the cumulative impact of the development and which would not otherwise be needed.
- 2.4 This Supplementary Guidance has been prepared to explain how the council, through relevant policies of the LDP and with regard to the LDP Action Programme, will secure such improvements. Development will therefore only be supported if:
 - (a) funding (including any contributions from developer obligations) for necessary infrastructure is fully committed and that infrastructure is capable of being delivered;
 - (b) phasing to manage demand on infrastructure has been agreed; or
 - (c) in advance of all necessary infrastructure requirements being fully addressed, sufficient infrastructure is available in the interim to accommodate the development.
- 2.5 Development proposals will be assessed with regard to their impact on the capacity of infrastructure, (either on an individual or cumulative basis) and such provision will ordinarily be secured through planning conditions or planning obligations / legal agreements.

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Purpose and scope of the guidance

- 3.1 It is important to be aware that this Supplementary Guidance does not make, replace or amend existing Local Development Plan policy but is intended to provide further guidance to developers, their agents and communities on the application and interpretation of planning policy generally and policies **CDA 1** (*Development in the Previously Identified Core Development Areas*) and **INF 1** (*Infrastructure Provision and Developer Obligations*) of the LDP in particular.
- 3.2 In many instances development will have commenced, and in some, be at an advanced stage. In these situations it is very probable that developer contributions will have already been agreed through the related planning consent/legal agreement and these arrangements will therefore prevail. The provisions and requirements of this Supplementary Guidance will consequently only be pertinent to the development of sites where there is no approved planning consent in place on the date this guidance is approved by the council.
- 3.3 This Supplementary Guidance is an important material consideration in the determination of planning applications and will form the basis for discussions on individual planning applications and the drafting of planning conditions and / or planning obligations.
- 3.4 The main objectives of this Supplementary Guidance are:
- to set out the council's policies and procedures in respect of the use of planning conditions and planning obligations;
 - to explain the circumstances under which the council will collect financial contributions to mitigate the impacts of a development;
 - to provide clear guidance on the council's approach so that it is applied in a fair, consistent and transparent manner; and
 - to provide certainty for developers and to help ensure the timely provision of environmentally sustainable forms of infrastructure to support growth.
- 3.5 This Supplementary Guidance outlines the national and local legislative and policy framework for planning obligations and provides additional detail on topic areas for which West Lothian Council will ordinarily seek planning obligations, these include community facilities required in support of the CDAs and open space provision.
- 3.6 For an appreciation of developer obligations in the wider context it is recommended that this Supplementary Guidance should be read in conjunction with separate guidance relating to Affordable Housing, Education infrastructure, Transport infrastructure, Developer contributions towards Cemetery Provision and Public Art and, in due course the Green Network. The full programme of proposed supplementary and planning guidance is set out in Appendix 4 of the LDP. All Supplementary Guidance which has been prepared to date can be viewed on the council's [website](#). Other Planning Guidance (PG) may also be prepared in support of the LDP where need arises.

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- 3.7 A key aim of this Supplementary Guidance is to provide a clear framework for developers to identify if a planning obligation is required as part of a planning application. It is important that the process of securing appropriate developer contributions does not result in undue delays in the determination of planning applications and the council is therefore keen to assist those considering the development of land to understand, at an early stage in the planning application process, the likely scope and scale of any developer contributions which the council will require.
- 3.8 Developers and landowners seeking to submit planning applications for residential development are encouraged to make use of the council's pre-application enquiry service in order that any site specific requirements are identified and discussed at an early stage. Details of this service can be accessed on the *council's website*. *Please note that this is a chargeable service.*

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Policy context and legal basis

- 4.1 Section 75 of The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 allows planning authorities to secure developer contributions, through the use of planning obligations, to overcome obstacles to the granting of planning permission.
- 4.2 Legal agreements can also be made under other legislation including the Local Government (Scotland) Act 1973, the Countryside (Scotland) Act 1967, Sewerage (Scotland) Act 1986 and the Roads (Scotland) Act 1984 and provide a possible alternative mechanism to secure developer contributions. They are useful where the nature of the contribution is relatively straightforward, involves a one-off payment and/or does not require to be secured through successors in title. For this reason they can help speed up the development process. The council has used, and will continue to use alternative agreements where appropriate and where they are considered to speed up the development process.
- 4.3 This Supplementary Guidance has been developed in the context of the following policy and Scottish Government advice:
- Scottish Planning Policy 2014
 - Circular 6/2013 - Development Planning
 - Circular 3/2012 - Planning Obligations and Good Neighbour Agreements
 - Strategic Development Plan for South East Scotland (SDP) (2013)
 - West Lothian Local Development Plan (LDP) (2018)

Scottish Planning Policy (SPP) 2014

- 4.4 Scottish Planning Policy requires guidance to indicate how new infrastructure or services are to be delivered and phased, and how and by whom any developer contributions will be made.

Circular 6/2013 - Development Planning

- 4.5 The Circular states that Local Development Plans must identify the items for which financial or other contributions will be sought, and the circumstances where they will be sought. In this way site requirements may be reflected in land values agreed by landowners and developers prior to planning permission being granted. Provisions in the Planning etc. (Scotland) Act 2006 require that planning obligations are publicised by Planning Authorities and that there is greater transparency in negotiating developer contributions. This Supplementary Guidance assists with these objectives and has been prepared in the context of the aforementioned policy and Scottish Government advice.

Planning Conditions

- 4.6 Conditions applied to a grant of planning permission can enable many development proposals to proceed where it might otherwise be necessary to refuse planning permission and the council has wide-ranging powers under the Town and Country Planning (Scotland) Act 1997 (as amended) to impose them, and has done so extensively.

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- 4.7 Where there is a choice between applying planning conditions or entering into a planning obligation, the use of a condition is almost always preferable. Planning obligations, while entirely legitimate and often necessary, are by their nature time consuming and resource intensive and will almost inevitably delay the issuing of planning permission.
- 4.8 Conditions attached to any planning consent must comply with *Circular 4/1998: The Use of Planning Conditions in Planning Permissions* and should only be imposed where they are:
1. necessary
 2. relevant to planning
 3. relevant to the development to be permitted
 4. enforceable;
 5. precise; and
 6. reasonable in all other respects

Circular 4/1998 advocates the use of standard or model planning conditions and provides guidance on a range of the most frequently used. In granting conditional planning permission, the council is also obliged to give clear and precise reasons for the imposition of every condition.

- 4.9 Planning conditions are not however without their limitations. They can only be used to require works on land beyond the application site (as defined by the "red boundary line" on the application plan) where the land in question is under the control of the applicant. Furthermore, conditions cannot be used to secure a financial contribution.

Circular 3/2012 - Planning Obligations and Good Neighbour Agreements

- 4.10 The council will therefore seek to negotiate and enter into a Planning Obligation whenever a development, which is otherwise acceptable in planning terms, requires mitigation and which cannot be secured through planning conditions. In accordance with national policy and advice and the approach taken by the Planning and Environmental Appeals Division (DPEA) Reporters in appeal decisions, the council will only seek to use a planning obligation where the matter(s) cannot be adequately addressed by planning condition(s).
- 4.11 The legislative basis for planning obligations is set out in Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
- 4.12 Contributions secured through a planning obligation (Section 75 agreement or other legal agreement as necessary) shall be consistent with the five tests set out in *Circular 3/2012*. These are as follows:
- Necessary to make a proposal acceptable in planning terms (overcome a barrier to the approval of planning permission);
 - Serve a planning purpose and where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 - Be related to the proposed development either as a direct consequence of it or arising from the cumulative impact of development in an area (there must be a clear direct link between development and the infrastructure to be provided);

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- Must fairly and reasonably relate in scale and kind to the proposed development (provide or contribute to the provision of infrastructure that would not be necessary were it not for the development, on a proportionate pro-rata basis as appropriate, but not to resolve existing deficiencies); and
 - Be reasonable in all other respects.
- 4.13 In seeking to enter into planning obligations with a developer, such arrangements must be operated in accordance with the fundamental principle that planning permission may not be bought or sold. In accordance with Circular 3/2012 planning obligations should only be used where they relate to the development being proposed.
- 4.14 Where a proposed development would either; create a direct need for particular facilities, place additional requirements on infrastructure (cumulative impact) or have a damaging impact on the environment or local amenity that cannot be resolved satisfactorily through the use of planning conditions or another form of legal agreement, a planning obligation could be used provided it would clearly overcome or mitigate those identified barriers to the grant of planning permission. There must however be a clear link between the development and any mitigation offered as part of the developer's contribution. In addition, when determining whether a planning obligation is required, the council will take account of the existence of any other agreements or conditions relating to infrastructure provision that already apply to the development.
- 4.15 A developer can apply to the council to modify or discharge an obligation within a Section 75 legal agreement and has a subsequent right of appeal to the Planning and Environmental Appeals Division (DPEA) if the authority refuses the application. Such applications are made under the terms of Section 75A of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
- 4.16 Planning obligations can take various forms and the nature of the contribution that developers can make will depend on the specific circumstances of the location of the development site and the scale and type of development scheme that is being proposed.
- 4.17 'In Kind' or 'Direct Provision' is where the developer builds or directly provides the proposed subject of the planning obligation. Such provision is often made within the development site in question. The issue of whether the developer should provide the mitigation measures in kind or whether the council, or another organisation, would be in the best position to provide the necessary works will be determined on a case-by-case basis and will be addressed via the negotiation involving all interested parties.
- 4.18 Planning obligations bind successors in title i.e. future purchasers of any part of the land that is subject to the obligations, as they are placed on the title of the land. This means that a planning obligation can be enforced against both the original landowner (this is usually the development site owner) and against anyone who subsequently acquires an interest in the land. As such, it is expected that those parties with an interest in the land in question, at the point in time that the Section 75 agreement is signed, will be expected to enter into planning obligations with the council.

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Strategic Development Plan for South East Scotland (SDP)(2013)

- 4.19 Section 25 of the Town and Country Planning (Scotland) Act 1997, as amended, requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. The SDP and the LDP form part of the 'development plan' that planning applications in West Lothian are assessed against.

- 4.20 The SDP sets the strategic policy context for the securing of developer contributions towards infrastructure. Paragraph 123 states:

'Developer contributions are important and will be required to assist in delivery and to address any shortfalls in infrastructure that arise as a direct result of new developments. LDPs will set out the broad principles for planning obligations including the items for which contributions will be sought and the occasions on which they will be sought. Mechanisms for calculating levels of contributions should be included in supplementary guidance with standard charges and formulae set out in a way that assists landowners and developers.'

- 4.21 The SDP requires the West Lothian LDP to specify the items and identify the circumstances in which developer contributions would be sought, specifically **Policy 9 (Infrastructure)**, which states that:

'LDP's will:

- (a) safeguard land to accommodate the necessary infrastructure;*
- (b) provide policy guidance that will require sufficient infrastructure to be available, or its provision to be committed, before development can proceed; and*
- (c) pursue the delivery of infrastructure through developer contributions, funding from infrastructure providers or other appropriate means, including the promotion of alternative delivery mechanisms. Particular emphasis is to be placed on delivery of the strategic infrastructure requirements that are set out in Figure 2 and in the Action Programme'.*

West Lothian Local Development Plan (LDP)

- 4.22 The policy context for securing developer contributions and negotiating planning obligations is set out in Policies **INF 1 & CDA 1** of the West Lothian Local Development Plan.

- 4.23 Policy **INF 1 (Infrastructure Provision and Developer Contributions)** sets out the rationale for seeking developer contributions in appropriate circumstances and policy **CDA 1 (Development in the Previously Identified Core Development Areas)** complements this by explaining that planning conditions and legal agreements will be used to secure infrastructure. Policies **INF 1 & CDA 1** are reproduced below for information.

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Policy INF 1

The council will seek developer obligations in accordance with Scottish Government Circular 3/2012 ('Planning Obligations and Good Neighbour Agreements'), as interpreted by emerging case law and amended by subsequent amendments and legislation, to mitigate the development's individual or cumulative impacts upon infrastructure, including cross-boundary impacts. Any such obligations will be concluded prior to the issue of planning permission.

Where appropriate developer obligations have been secured, planning permission will normally be granted. In all cases, the council will consider the economic viability of proposals alongside options of phasing or staging payments from developers.

Development will not be permitted to commence unless:

- a. funding (including any contributions from developer obligations) for necessary infrastructure is fully committed and that infrastructure is capable of being delivered; or*
- b. phasing to manage demand on infrastructure has been agreed; or*
- c. in advance of all necessary infrastructure requirements being fully addressed, sufficient infrastructure is available in the interim to accommodate the development.*

Only where infrastructure constraints, identified by the council in conjunction with relevant authorities, cannot be overcome, will there be a presumption against development.

Infrastructure requirements are identified in Appendix Two and further details will be provided in subsequent supplementary guidance and the Action Programme. Any related planning obligations will require to meet the policy and legal tests set out above. Proposed sites for new infrastructure are listed in Chapter 6'.

Policy CDA 1

The council will continue to support housing and mixed used development within those parts of West Lothian previously designated Core Development Area (CDAs) in Armadale, East Broxburn/Winchburgh and Livingston & Almond Valley subject to the preparation of master plans to be approved by the council. Infrastructure requirements are identified in Appendix 2 and further details will be provided in subsequent supplementary guidance and the Action Programme. Any related planning obligations will require to meet the policy and legal tests set out in Policy INF 1.

Planning conditions and legal agreements will be used to secure infrastructure funding and proper phasing of development. Developer contributions will be sought in accordance with Scottish Government Circular 3/2013 'Planning Obligations and Good Neighbour Agreements', as interpreted by emerging case law and amended by subsequent amendments and legislation. Contributions will also be required to remedy deficiencies in local facilities and amenities which result from proposed developments.

A diversity of house types, tenures and densities must be provided within these areas. Within the mixed use areas net housing densities shall average at least 25 residential units per hectare. Affordable housing shall be provided within the previously identified CDAs in accordance with policy HOU 4 (Affordable Housing and relevant Supplementary Guidance).

- 4.24 When assessing planning applications, the council will determine whether planning conditions and/or planning obligations are suitable in order to make otherwise unacceptable development, acceptable.
- 4.25 Appendices 1 & 2 of the LDP provide details on the employment land and housing site allocations in West Lothian and includes commentary on the constraints already identified at site level which may necessitate a requirement for planning conditions or planning obligations in order to make the proposed development acceptable in planning terms. The LDP Action Programme sets out actions required to deliver the plan's policies and proposals and identifies the appropriate parties or organisations that are required to carry out the action(s), including where available anticipated costs of proposals.

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Implementation

- 5.1 In preparing the West Lothian LDP an assessment was made of the likely pressures on services, infrastructure, facilities and amenities within specific settlements and the Core Development Areas as a result of the major housing allocations identified in the LDP and a number of specific projects have been identified. Appendix 2 of the LDP 'Schedule of Housing Sites/Site Delivery Requirements' (p.115) identifies the key infrastructure that is required in order to deliver in full the development strategy set out in the LDP.
- 5.2 When a planning application relating to residential development is submitted to the council for consideration, the council will assess the requirement for the prospective developer to make appropriate developer contribution(s) in accordance with the provisions of this Supplementary Guidance.
- 5.3 Each planning application will be considered in line with Policies **INF 1 & CDA 1** and the terms of this and other relevant guidance. However, this does not preclude the council seeking other contributions not specifically covered by this Supplementary Guidance where they meet the statutory tests (set out in Circulars 4/1998 and 3/2012 - see paragraph 4.8 and 4.12) and enable an otherwise unacceptable development proposal to be acceptable to the council.
- 5.4 Planning obligations should be recognised as a necessary cost of development. Developers should therefore make themselves aware of the likely planning obligation requirements associated with a proposed development and factor in the likely cost of obligations into land acquisition and development costs at an early stage.
- 5.5 Developers will be required to make contributions at the levels set for the particular project or settlement within which the development is proposed.
- 5.6 The requirement for a developer to make appropriate developer contributions will be treated as a material planning consideration in the assessment and determination of planning applications for development.
- 5.7 In exceptional circumstances, the council will consider alternative projects identified by the developer, to an equivalent value for that settlement. It should however be noted that whilst the council is not obliged to accept any alternative project, offer, or other scenario as may be suggested, or proposed by a developer any such proposal will be considered on merit against Local Development Plan requirements and local circumstances.
- 5.8 Where developers are of a view that fulfilling a planning obligation would make the economics of the development unviable and look to amend the levels of contribution, the prospective developer will be required to submit a development appraisal which the council, through the District Valuer, or another independent chartered valuation surveyor agreed by the council, will verify. This appraisal requires to be funded by the developer/applicant. The council will also require documentary evidence necessitating "open-book accounting" to show the viability of a proposal will be curtailed by the requirement for planning obligations. If a development appraisal shows that a site is not viable the council may elect to review developer obligations and consider a degree of 'prioritisation'.

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However, in the event of a development being assessed as unviable the council will consider all the options which will include refusal of the application due to its inability to fund the required levels of infrastructure.

Legal Agreements

5.9 Local authorities have powers to enter into agreements to regulate planning matters under various statutes. Where it is necessary to secure that future, owners and occupiers of the land are bound by a planning obligation (for example where phased financial contributions towards infrastructure are required), it is necessary to secure this by agreement or unilateral undertaking under Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. All planning obligations involve developers entering into legally binding contracts with the council and planning permission will not be issued by the council until the relevant agreement has been formally concluded.

5.10 Whilst Section 75 agreements are bespoke and can be time consuming to negotiate and conclude, they typically contain the following elements:

- date of the agreement;
- identification of the parties involved;
- definition of any terms contained within the document;
- site and development proposal details;
- relevant conditions;
- details of any provisions or restrictions required under the agreement; and
- signatures of all the parties involved.

The Section 75 agreement will usually be drafted by the council's Legal Services. A template Section 75 agreement can be requested from the Development Management case officer in these circumstances.

Key items that will be required to be provided to the council's Legal Services include the following:-

Titles

In every case all title deeds to the land must be provided for examination. These should demonstrate that the landowner has the ability to enter into the planning obligation in respect of the affected property. Where there are other interests in the property further titles may be required and other parties might need to enter into the planning obligation.

Plans

Plans which clearly show the extent of the area of land which is to be subject to the planning obligation should be provided. These should correspond with the title deeds to the land.

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Searches

Searches over the **General Register of Sasines** or **Land Register** brought down to a date as close as possible to the date when the planning obligation is to be sent for recording (or registration). The searches must show no competing interest to the land or matter restricting the ability to enter into the planning obligation. Searches should be provided to Legal Services by the applicant/landowner's solicitor.

Heritable Creditor Consents

Any heritable creditor (e.g. a mortgage lender or floating charge holder) will be required to consent to the granting of the planning obligation. The heritable creditor will need to sign the planning obligation and the landowner will meet any costs associated with procuring such consent. Applicants are encouraged to make contact with any heritable creditor as soon as the requirement for a planning obligation is identified as it can often take some time for the creditor to approve applications for consent. It is important to note that no progress can be made on the planning obligation until Legal Services has received the relevant title deeds or land certificate. It is therefore advisable to provide those documents as quickly as possible to avoid any delay in the proposed development.

- 5.11 Should a planning application be approved subject to the signing of a Section 75 agreement, the council requires the agreement to be negotiated and signed without undue delay. The council's aim is to issue decision notices within 6 months from the date of the council's '*resolution to approve*'. Where evidence is provided by the applicant to the council's satisfaction that the agreement cannot be signed within this period, then a variation on the stipulated time limit will be considered on a case-by-case basis. Should this information not be forthcoming, the council may decide to refuse the planning application based on the non-completion of the Section 75 agreement.
- 5.12 A planning obligation must be registered against the title of the land in either the General Register of Sasines or Land Register of Scotland (as applicable). Once a planning obligation has been registered it becomes binding on all future owners of the land. It may affect tenants and other occupiers, depending on the specific terms. Any restrictions on future use of the land or property will affect all future transfers or sales.
- 5.13 Figure 1 explains the procedures which the council and applicant will typically take to establish a Section 75 agreement.

Figure 1: Step-by-Step Guide to establishing a Section 75 legal agreement

Pre-Application Discussions

Applicants are encouraged to enter into discussions at the earliest possible stage with the council's Development Management (DM) officers prior to submitting a planning application. Such discussions provide a valuable opportunity for all parties to consider the scope and impact of the development proposal. The council offers a service for [pre-planning application advice enquiries](#) (which is a chargeable service accessible through the council's website). This service is separate to any Pre-application Consultation that a developer may be required to undertake in respect of certain planning applications. The DM Case Officer and relevant service area(s) raise potential planning obligations on the proposal if applicable.

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**Planning Application Received**

The DM Case Officer makes an initial assessment of Section 75 implications related to the proposal and whether the issues raised at the pre-application stage have been addressed.

**Planning Application Consultation**

Following the submission of a planning application, the formal consultation process will commence with the involvement of all relevant bodies, statutory as well as non-statutory and council services. Their responses will help identify any additional requirements for further planning obligations not already addressed as part of the pre-application discussions.



Comments received. DM Case Office and Legal Services negotiate with developers to agree 'heads of terms' for planning obligations.

**Planning Application Recommendation**

Following the consultation process and subsequent discussion with the applicant, a report may be prepared outlining the DM case officer recommendation and the nature and details of the planning obligation. The council may resolve to grant planning permission, subject to the applicant entering into a Section 75 Agreement, or refuse the planning application.

**Section 75 Agreement - Drafting**

Following a '*resolution to grant planning permission*', the DM Case Officer will instruct Legal Services to draft the Section 75 Agreement. Legal Services in liaison with the DM Case Officer will undertake to co-ordinate any detailed discussions, including with other internal council services, regarding the precise terms of the Agreement should this be required.



The Council's Legal Services send draft agreement to all parties to check and agree.

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**Section 75 Agreement - Signing and Legal Completion**

The Section 75 Agreement is signed, legally completed and details are recorded onto monitoring systems and the Register of Sasines and/or Land Register. The planning decision notice, with the planning permission, is then issued.



Securing the developer contributions

- 6.1 To ensure the necessary infrastructure is in place to take account of the impacts of new developments this Supplementary Guidance applies to **all unconsented residential developments** in West Lothian including the Core Development Areas (CDAs), namely *Armadale, East Broxburn and Winchburgh, , Calderwood (East Calder) and Gavieside (West Livingston) and the strategic development allocation site at Heartlands (Whitburn) and Bangour (Dechmont)*. Developments outwith these areas may also be required to contribute to infrastructure requirements to enable development to proceed.
- 6.2 The specific projects to be implemented or funded by developers are set out in Table 1 and are consistent with Appendix 2 and policies **INF 1** and **CDA 1** of the West Lothian LDP. Reference should also be made to the LDP Proposals Map which defines the geographical extent of the areas listed in Table 1 and hence the areas within which developer contributions will be required towards infrastructure. Developer contribution rates have been informed (where known) by costs set out in the LDP Action Programme which has been prepared to support the LDP and by existing planning consents and associated Section 75 agreements.

It should be noted that developer contributions towards education, transport infrastructure, cemetery provision and public art are set out in separate guidance entitled:

- Supplementary Guidance: Planning and Education
- Supplementary Guidance on Developer Contributions towards Transport Infrastructure
- Supplementary Guidance on Cemetery Provision
- Supplementary Guidance on Developer Contributions Towards Public Art

Developers are required to have regard to these alongside this Supplementary Guidance on general infrastructure requirements.

- 6.3 Developer contributions will be calculated on the basis of whole sites identified in the LDP. Applications for parts of allocated sites will pay a proportion of the total site contributions. This Supplementary Guidance will not be applied retrospectively to sites which already have planning permission in principle or to applications for the approval of matters specified by condition without any requirement to contribute to general infrastructure, provided that the permission remains capable of being implemented. New planning applications, for similar developments on these sites (including applications for renewal of planning permissions), will however be required to comply with the terms of this guidance and to policies set out in the LDP.
- 6.4 The only exemptions will be small developments comprising four or less units, unless they are clearly part of a phased development of a larger site. In such cases the council will seek to agree appropriate sums with the applicant.

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- 6.5 Developer contributions shall be secured by means of agreements concluded between the applicant and the council under Section 75 of the Town and Country Planning (Scotland) Act 1997 or Section 69 of the Local Government (Scotland) Act 1973, prior to the issue of planning permission. In some cases, where a relatively small financial contribution is involved, it may be possible to avoid formal agreements and for the council to collect contributions on the basis of an exchange of letters prior to planning permission being granted or through a section 69 Agreement.
- 6.6 The council recognises that funds received through planning obligations process need to be clearly linked to the provision of specific pieces of infrastructure. To provide this clarity, the council has set up a financial tracker to monitor the source of funds, the purpose for which they are gathered, and how they are spent. All contributions received will be "ring fenced" and will be spent only on funding the projects identified in Table 1.
- 6.7 The costs identified within this guidance will be subject to review on an annual basis, through the LDP Action Programme. These costs will be index linked against the Building Cost Information Service (BCIS) All-in Tender Price Index or similar comparable industry standards and subject to independent verification where necessary. This guidance will be reviewed and updated periodically to ensure that the level of contribution being required of developers remains relevant and takes account of changing circumstances. This will include updating contributions to take account of the BCIS All-in Tender Price Index.
- 6.8 In general, Section 75 agreements contain a pay-back period. A section of the agreement indicates that if the council does not use the contributions within the specified timescales or monies are no longer required for the purpose for which they were collected they will be repaid, on a pro-rata basis, to those parties who made the contributions towards the project. The specified time periods will depend on the project involved.
- 6.9 In some instances, planning contributions will be in the form of infrastructure provided directly by a developer. Direct provision will be factored into the overall contributions that a site will make and where appropriate, this may be offset against total costs of the infrastructure project. Where direct provision of infrastructure is required, bonds or other legal security may also be agreed to safeguard the council from risk.
- 6.10 There may be instances where infrastructure is required in advance of all developer contributions having been received by the council. Where this is the case alternative funding options may be investigated. In these situations, contributions will continue to be sought from developers to meet the full cost of the infrastructure which has been provided. There may also be circumstances where the council has forward funded infrastructure projects to assist in development delivery. Where this is the case the council will seek to recoup monies from developers by way of developer contributions; this approach is consistent with paragraphs 23 of Circular 3/2012.
- 6.11 Over the lifetime of the LDP developers/landowners are likely to seek planning permission for sites not allocated in the West Lothian Local Development Plan - such sites are known as windfall sites. The impact of these sites will not have been considered in any capacity assessments which determine the need for improved or additional infrastructure. Non-exempt windfall sites will be required to provide developer contributions towards infrastructure as set out in this guidance.

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- 6.12 Section 76 (1) (b) of the Town and Country Planning Act (Scotland) 2006, as amended, allows developers to enter into unilateral agreements to make an appropriate contribution in relation to the impact of their proposals. Where a unilateral undertaking is in place, unless it makes provision for all the infrastructure impacts of the proposed development, the need for any additional contributions to meet the requirements set out in this Supplementary Guidance will be secured through a planning obligation.
- 6.13 Depending on the particular circumstances of a proposed residential development and to assist in development delivery, the council may, on application, agree for payments to be made at a later stage in the development process than would otherwise be considered appropriate, for example once houses have been sold, albeit subject to indexation as described above.

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Annex A

General infrastructure requirements

- 1.1 The LDP has identified specific infrastructure requirements for housing sites in the Winchburgh, East Broomburn, Armadale, Calderwood and Mossend/West Livingston CDAs and these are reproduced in Table 1 and should be read in conjunction with the relevant LDP Maps.
- 1.2 In many instances conditional planning permission has already been granted for the development of these allocated sites and any legal agreements which set out the required developer obligations have been concluded and are unchanged as a consequence of this guidance. In these circumstances the scope and cost of related infrastructure projects will already have been established and have not required to be set out here.
- 1.3 Where residential development on 'windfall' sites and as yet unconsented/undeveloped sites within the CDA (and the Heartland Strategic Development Area) are brought forward, they will be subject to the same range of infrastructure requirements with arrangements and costs being determined on a case by case basis through the respective planning applications.

Table 1: Requirements for infrastructure, local facilities and amenities for housing proposals to be implemented or funded by CDA developers

ALL CDAs		
Description of facilities and amenities	Details of planning permission where applicable	Notes
• Land for community facilities		
• Serviced employment land		
• Woodland planting to implement Green Network objectives		
• Management of existing trees and woodlands		
• Open space provision and indoor and outdoor sports facilities in accordance with approved strategies of the council		
• Recycling facilities		

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WINCHBURGH CDA*See LDP Map 2 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Public car park for new town centre; 	Condition 24 of permission 1012/P/05	Implementation required during first phase of Town Centre/by the completion of the 1001 st house.
<ul style="list-style-type: none"> Additional landscaping and improved recreational access and management plan for Claypit and surrounding area; 	Condition 19 of permission 1012/P/05	Implementation required prior to the completion of the 600 th house.
<ul style="list-style-type: none"> Joint preparation (with East Broxburn CDA developers) of a management plan for the scheduled Greendykes and Faucheldean Bings and for the "green corridor" between Winchburgh and East Broxburn and funds to allow implementation of the plan; 		The council owns part of Greendykes Bing and a study funded by Central Scotland Green Network (CSGN) in 2013/14 identified various options for the green network corridor. Supplementary guidance on the Green Network will specifically address this requirement.
<ul style="list-style-type: none"> Preparation of a strategy to restore Niddry Bing and funds to allow implementation of the plan; 	Conditions 5 & 34 of permission 0033/M/09	
<ul style="list-style-type: none"> Joint funding (with East Broxburn CDA developers) of works to rehabilitate the non-scheduled parts of Greendykes Bing; 		Obligation has been placed on the Broxburn CDA developers as being more relevant to that CDA.
<ul style="list-style-type: none"> Preparation of a strategy for the restoration of Auldcathie landfill site and funds to allow implementation of the plan; 	Conditions 5 & 14 of permission 1012/P/05 & 1123/FUL/18	Planning permission (1123/FUL/18) for the formation of a District Park was granted on 28 March 2019 and the park is expected to be delivered in accordance with the planning conditions set out in the consent
<ul style="list-style-type: none"> Enhancement of existing river corridors within master plan area; 	Conditions 18 & 21 of permission 1012/P/05	These requirements are expected to be addressed by developers as part of the wider landscape strategy.
<ul style="list-style-type: none"> Land for canal related facilities having regard to the Edinburgh-West Lothian Union Canal moorings study previously prepared by British Waterways (now Scottish Canals); 	Condition 24 of permission 1012/P/05	Planning permission (0642/MSC/19) for the formation of a marina was granted on 11 September 2019 and, subject to securing Scheduled Monument Consent, the marina will be delivered in accordance with the planning conditions set out in that consent. Active discussion is ongoing between the developer and Scottish Canals on this matter and future phases of development along the Canal.
<ul style="list-style-type: none"> Contribution to library provision; 		Contribution defined in Clause 15 of the planning obligation between WLC/The Winchburgh Trust /Regenco (Winchburgh) Ltd.
<ul style="list-style-type: none"> The current supply of open space in the existing settlements is not of a sufficient size and types to cater for the potential demand from new housing. Winchburgh/East Broxburn should include appropriate levels of each part of the West Lothian open space typology, including district parks, neighbourhood parks, local parks, sports areas, play spaces, green path corridors and amenity greenspace; 	Conditions 17 21 of permission 1012/P/05	Phased implementation required prior to the completion of a specific number of houses, i.e. 501, 551, 1001, 1501, and 2501. See S75 for precise details. The West Lothian Open Space Strategy is currently under review and due to be considered by the council in 2020. This may outline further open space requirements for the Winchburgh area. The planning application for rehabilitation of the adjacent Auldcathie Landfill site for playing pitches and associated open space will go a considerable way to addressing the current identified deficiency.
<ul style="list-style-type: none"> The proposed "Heritage Park" around the scheduled monuments of Greendykes & Faucheldean Bings is in the sensitive countryside gap between the expanded settlements. This concept could address the provision of a district and neighbourhood park acquired from the 2015 WL Open Space Strategy. 		Not a condition nor is it included as part of the planning obligation. Supplementary guidance on the Green Network will specifically address this requirement, as will conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA.

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EAST BROXBURN CDA*See LDP Map 2 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Joint preparation (with Winchburgh CDA developers) of a management plan for the scheduled Greendykes and Faucheldean Bings and for the "green corridor" between Winchburgh and East Broxburn and funds to allow implementation of the plan. 		The council owns part of Greendykes Bing and a study funded by Central Scotland Green Network (CSGN) in 2013/14 identified various options for the green network corridor. Supplementary guidance on the Green Network will specifically address this requirement.
<ul style="list-style-type: none"> Joint funding (with Winchburgh CDA developers) of works to rehabilitate the non-scheduled parts of Greendykes Bing; 		Obligation has been placed on the Broxburn CDA developers as being more relevant to that CDA. Will be subject to conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA.
<ul style="list-style-type: none"> Land for canal related facilities having regard to the Edinburgh – West Lothian Union Canal moorings study previously prepared by British Waterways (now Scottish Canals); 		Obligation likely to be placed on the Broxburn CDA developers as being more relevant to that CDA. Will be subject to conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA.
<ul style="list-style-type: none"> Contribution to improvements at Stewartfield Park; 		Works already implemented including off-site access and signposting.
<ul style="list-style-type: none"> Woodland planting to north of mixed use sites at Pyothall Road, Greendykes Road West and Greendykes Road East as extension of Broxburn Community woodland and green network corridor; 		Will be subject to conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA. .
<ul style="list-style-type: none"> The current supply of open space in the existing settlements is not of a sufficient size or type to cater for the potential demand from new housing. Winchburgh/East Broxburn should include appropriate levels of each part of the West Lothian open space typology, including district parks, neighbourhood parks, local parks, sports areas, play spaces, green path corridors and amenity greenspace. 		Will be subject to conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA. .
<ul style="list-style-type: none"> The proposed "Heritage Park" around the scheduled monuments of Greendykes & Faucheldean Bings is in the sensitive countryside gap between the expanded settlements. This concept could address the provision of a district and neighbourhood park acquired from the 2015 WL Open Space Strategy. 		Not a condition nor is it included as part of the planning obligation. Supplementary guidance on the Green Network will specifically address this requirement, as will conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA.

ARMADALE CDA*See LDP Map 4 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Enhancement of open space area at Black Moss between Avondale Drive and Upper Bathville and formation of community woodland on western edge of Armadale; 		
<ul style="list-style-type: none"> Woodland planting adjacent to A801, to north and east of mixed use allocation at Colinshiel and on the west edge of the allocations at Standhill; 		
<ul style="list-style-type: none"> Extension of Armadale Round Town Walk (re-named Davie Kerr Heritage Trail) into both the Colinshiel and Standhill areas; 		
<ul style="list-style-type: none"> Contribution to improved library facilities; 		See Annex B
<ul style="list-style-type: none"> Management plan for Colinshiel Wood; 		

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<ul style="list-style-type: none"> If facilities of a district level are not able to be provided within the new settlement boundary due to space constraints, then facilities in neighbouring district parks (e.g. Balbardie Park Bathgate and proposed district park in Whitburn), should be extended and upgraded to meet the increased demand. 		
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CALDERWOOD CDA*See LDP Map 5 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Public car park at East Calder; 		Contribution of £50 (indexed to 1 st quarter 2012) per residential unit in the CDA is being taken so that the council can deliver the car park
<ul style="list-style-type: none"> Public car park for new local neighbourhood centre; 	Condition 12 of 0524/P/09	Parking to be provided as part of the neighbourhood centre. First phase of the neighbourhood centre required prior to occupation of the 1001 st residential unit.
<ul style="list-style-type: none"> Native woodland planting adjacent to A71 and to improve screening of Camps Industrial Estate; 	Condition 10 of 0524/P/09	
<ul style="list-style-type: none"> Contribution to improved library facilities; 		Library now provided in the partnership centre.
<ul style="list-style-type: none"> Land for the extension of the existing health centre or for the construction of a new health centre; 		NHS Lothian is considering options for the health centre.
<ul style="list-style-type: none"> Extension of "the Muddies"- Mansefield Park. 	0609/FUL/15	The land for the park extension will be provided by Persimmon as part of its development at Raw Holdings. Contribution of £500 (indexed to 1 st quarter 2012) per residential unit in the CDA is being taken so that the council can deliver the park extension.
<ul style="list-style-type: none"> Landscaping treatments at the eastern and southern boundaries to provide containment and prevent development creepage. 	Condition 10 of 0524/P/09	Landscaping required prior to occupation of the 980 th residential unit.

WEST LIVINGSTON / MOSSEND CDA*See LDP Map 3 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Public car park for new village centre at Gavieside 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> Management plan for remaining part of Briestonhill Moss and funds to implement plan; 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> The current level of open space provision in the northern part of the Polbeth area is poor. Therefore, the provision of the proposed structure planting should be of a high quality, with a network of connecting paths to Briestonhill Moss area and the existing woodland areas; 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> Safeguard land for extension of Almond Valley Heritage Centre light rail route on north side of River Almond; 		
<ul style="list-style-type: none"> Enhancement of river corridors within master plan area; 		
<ul style="list-style-type: none"> Extension of existing greenway associated with River Almond (between Kirkton and Easter Breich); 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> New greenways associated with West Calder Burn, Harwood Water and Breich Water; 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> Contribution to library provision. 		To be secured through any planning application for the Gavieside allocation.

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<ul style="list-style-type: none"> • New distributor road network to the west of Livingston to serve the new community at Gavieside and bypass Polbeth 		<p>Study and survey work are underway to ascertain the best means of improving the road network at West Livingston that might now no longer require an expensive bridge crossing of the River Almond near the sensitive Almond Pools nature area and an accompanying two land carriageway, with a crawler lane on the north side, to reach Toll Roundabout.</p> <p>Options may include a signalised and expanded junction at Simpson Parkway and Macintosh Road.</p>
<p>Transport assessments will determine the final road network and junction improvements necessary to support the Livingston and Almond Valley CDA proposals.</p> <p>The potential for road closures at Mossend (West Calder), Polbeth Road will be considered and will be promoted if there is community support.</p>		(As above)
Improved access to West Calder railway stations.		<p>The access road to facilitate a new entrance and access to West Calder Station on its north side has been constructed as part of the A71 overbridge raising works related to the electrification of the Edinburgh- Shotts line. However additional work on the platform and related structures will be required with consultation with Network Rail and also a minimum 200 space car park for Park and ride (and land set aside for the extension of this facility) and public transport interchange.</p> <p>The existing access will need to be closed off for passenger use, albeit retained for the business and residential properties that currently use the south access at Limefield Road / A71.</p>
Key public transport requirements include the provision of park and ride facilities at Gavieside, West Calder railway station.		(As above)
The Gavieside "park and ride" facility will allow the Livingston "Fastlink" to be extended to serve the new housing and employment proposed in this part of the CDA. Land should be safeguarded in the masterplan for a possible future extension of this park and ride facility to serve Livingston Town Centre. The CDA Action Plan also envisages that developers will contribute to public transport initiatives.		Likely to be imposed as a planning condition solely on the West Livingston CDA developers when a planning permission is concluded related to the approving the masterplan for this part of the overall Almond Valley and Livingston CDA.
Local neighbourhood centres are envisaged at Gavieside to provide a focus for communities.		Likely to be imposed as a planning condition solely on the West Livingston CDA developers when a planning permission is concluded related to the approving the masterplan for this part of the overall Almond Valley and Livingston CDA.
<p>Land for community facilities will be required at Gavieside but, at this stage, the precise details are not yet known.</p> <p>Further consultation with West Lothian Healthcare NHS Trust will be required on health centre provision on the west side of Livingston.</p>		Likely to be imposed as a planning condition solely on the West Livingston CDA developers when a planning permission is concluded related to the approving the masterplan for this part of the overall Almond Valley and Livingston CDA.

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HEARTLANDS STRATEGIC DEVELOPMENT AREA*See LDP Map 4 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
Planning permission in principle (0493/P/02) was approved in May 2006 and identified a range of infrastructure requirements including:	0493/P/02	
<ul style="list-style-type: none"> South-western distributor road between the A706 and the B7066. 		Work ongoing on design and construction programme. A planning application, reference 0449/FUL/20 and embracing the first phase of the new road (from Longridge Road to connect with Polkemmet Road/Dickson Terrace) was submitted in June 2020.
<ul style="list-style-type: none"> A strategic public access network setting out footpaths and cycleways and the linkages between the development and surrounding land uses including the forests, Polkemmet Country Park and the settlements of Whitburn, Fauldhouse and Longridge. 		Included within the masterplan and being taken forward and implemented on individual phases.
<ul style="list-style-type: none"> Land for the development of a neighbourhood centre; 		Land safeguarded in approved masterplan.
<ul style="list-style-type: none"> A four way grade separated interchange on the M8; 		Completed
<ul style="list-style-type: none"> A new public transport interchange at Cowhill; 		Required by conditions and s75 agreement.
<ul style="list-style-type: none"> Public art, open space and play area provision. 		Strategy document required by condition, which will include timescales for implementation. While a public art strategy has been drafted it has still to be submitted for consideration and approval by the council.

Annex B

Specific infrastructure requirements

1.0 Developer Contributions for Town Centre and Village Improvements

- 1.1 The adopted West Lothian Local Development Plan (LDP) which was adopted on 4 September 2018 supports a sustained level of growth with more than 24,000 new houses being planned for over the plan period.
- 1.2 More than 12,000 of these new houses will be located in the previously established Core Development Areas (CDAs): Armadale, East Broxburn/Winchburgh and Livingston and the Almond Valley (i.e. Calderwood, East Calder and Gavieside, West Livingston) and in excess of 3,500 houses have been identified for development within the strategic development allocation at Heartlands (Whitburn) and Bangour (by Dechmont).
- 1.3 The scale of development planned for these CDAs and the strategic development areas will result in demand for additional facilities and improved town and village centres within the communities close to where the major housing growth is taking place and developers within these areas are therefore required to contribute towards town and village centre improvements. NB: This is essentially a continuation of arrangements established under the previous West Lothian Local Plan (WLLP) and supporting Supplementary Planning Guidance (SPG) in 2007.
- 1.4 There are 2 options by which developers can contribute towards town and village centre improvements: implementation of a package of proposals identified by the developer and agreed with the council; or a financial contribution by the developer to the established town and village centre improvement fund which is administered by the council.

(1) Implementation of a package of proposals by developers

- 1.5 It will be acceptable for developers to be pro-active and identify a package of proposals which they wish to implement themselves to improve town and village centres in adjacent/host communities. This option may be attractive to some developers because, depending on the nature of the works carried out, they may be able to obtain a return on their investment.
- 1.6 Where the developer wishes to be pro-active and implement a package of proposals, the approval process for the package of proposals will be as follows:
 - ▶ The developer will carry out local consultation to assist with identifying deficiencies and desired improvements.
 - ▶ The developer will present the council with a report which identifies the improvements which the developer wishes to carry out and sets out the timescale for the implementation of the works. Deliverability will be essential so the report should demonstrate that there are no known constraints which would prevent the works being implemented. The council will initiate local consultation on the developer's proposals.

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- ▶ If necessary, negotiation between the council and the developer will take place and the package of proposals will be adjusted if required. The council will carry out further consultation if the package of proposals has changed materially.
 - ▶ Once the council's Development Management Manager is satisfied that the package of proposals is acceptable, committee approval will be sought.
- 1.7 In many cases, planning permission will be necessary for the improvement works which are proposed. This will be a wholly separate undertaking to the process described above. Approval in principle of a package of town and village centre improvements will not oblige the council to grant planning permission for any specific proposal. In any event, all planning applications will be determined having regard to the development plan and to material considerations.
- 1.8 The following list identifies the type of works that could be considered for inclusion in a package of proposals for town and village centre improvements:
- redevelopment of gap sites for private housing, affordable housing or other appropriate town centre uses;
 - townscape enhancement;
 - refurbishment of derelict buildings and land (including CPO);
 - landscape improvements;
 - upgrading of footpaths; and
 - car park improvements;
- This list is not exhaustive.
- 1.9 It is anticipated that works may be phased over a period of time and with the arrangements set out in a section 75 agreement.

(2) Financial contribution by developers to a town and village centre improvement fund

- 1.10 As an alternative to carrying out town and village centre improvements themselves, developers may instead choose to contribute to a town and village centre improvement fund which has been established by the council for this purpose. In such cases, a standard contribution of £350 per residential unit (see note below) would apply. It is recognised that town centres may be just one consideration for contribution that will have to be balanced against others in any case. Each proposal will have different impacts and will be considered on a case specific basis. Phasing of contributions will be acceptable with the arrangements being set out in section 75 agreements. There will also be a requirement in the section 75 agreements that any money not spend within an agreed timescale should be returned to the developer.
- 1.11 The following list identifies the type of improvement works that the council could consider carrying out using the funds received from developers:
- landscape works including the provision and maintenance of public space;
 - new or replacement street furniture and lighting;
 - a scheme of townscape enhancements;
 - litter management and recycling (excluding general street cleaning activities);
 - crime prevention measures e.g. CCTV;

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- improved public transport facilities;
- new or replacement signage and information;
- a promotion and marketing campaign;
- car parking improvements and management; and
- town and village centre studies;
- site assembly/site servicing (including CPO); and
- traffic calming/traffic management.

This list is not exhaustive.

1.12 In this instance, a standard contribution of £350 per residential unit would apply and the council will secure developer contributions for town and village centre improvements through section 75 agreements.

1.13 To be clear about which developers will contribute to improvements in specific towns and villages, the following principles will apply:

- Armadale CDA developers will only contribute towards improvements in Armadale town centre;
- Winchburgh CDA developers will only contribute towards improvements in the existing village centre of Winchburgh;
- Broxburn CDA developers will only contribute towards improvements in Broxburn town centre;
- West Livingston/Mossend CDA developers will only contribute towards improvements in the village centres of West Calder and Polbeth;
- Calderwood CDA developers will only contribute towards improvements in the existing village centre in East Calder;
- Polkemmet, Heartlands (Whitburn) developers will only contribute towards improvements in Whitburn town centre; and
- Bangour Village Hospital developers will only contribute towards improvements in the existing village centres of Dechmont and Uphall.

1.14 The LDP aims to improve the physical environment of existing town centres, through the council integrating its own programmes of action with those of agencies, developers, traders and local communities with whom it works in partnership. The council will, therefore, explore opportunities to secure other funding and work in partnership with others to maximise new investment. It is the council's objective that improvements secured through this particular initiative will act as a catalyst for attracting further investment and help maximise benefits.

2.0 Developer Contributions for a Replacement Armadale Library

2.1 There is a specific requirement identified in Appendix 2 of the LDP, Schedule of Housing Sites/Site Delivery Requirements, to improve library facilities in Armadale in order to meet the needs of the new and growing population arising from the housing allocations in the Armadale Core Development Area (CDA). This initiative is essentially a continuation of arrangements established under the previous West Lothian Local Plan (WLLP) and supporting Supplementary Planning Guidance (SPG) in 2009.

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- 2.2 To be clear, contributions are only being sought to meet the additional cost of providing library facilities for the 2,000 plus new homes in the Armadale CDA and all contributions secured will be *ring fenced* and will only be used to recover expenditure incurred by the council on the forward funding of new and improved library facilities in Armadale.
- 2.3 It had been established that there was insufficient land to expand the original Armadale library on its site at West Main Street and this influenced the decision to replace the facility on the current site at North Street, a project which was financed by the council as part of a ten year capital investment plan approved in December 2007.
- 2.4 The total cost of the replacement library, designed to meet the requirements of the existing population and the anticipated growth in population arising from 2,070 houses allocated in the Armadale CDA was originally estimated at £775,000 (but since confirmed as substantially higher at £1,118,000).
- 2.5 The council assumed just under two thirds of the estimated cost to meet the library needs of the existing population with the remainder of £275,000 being the sum directly attributed to facilitating the demand of the new housing allocations and to be financed over time through developer contributions.
- 2.6 An original base tariff of £133 per house was established when the previous SPG was adopted in 2009 (2,070 house units multiplied by £133 = £275,000) and it was advised that this would be updated in successive years by being linked to the Building Tender Price Index (using fourth quarter 2009 as the base date).
- 2.7 In the event the actual total cost of the library was £343,000 greater than the estimate and approximately one third of this figure (£114,333) therefore requires to be added to the sum to be recovered from developers thus creating a revised outstanding balance of £389,333. As of 31 July 2019, the council had received no contributions towards the replacement library.
- 2.8 In addition to the 2,070 houses originally allocated as part of the Armadale CDA, the LDP made a new housing allocation of 320 units at Tarrareoch Farm (H-AM 19). When added together this establishes a pool of 2,390 houses liable to make contributions. When the outstanding balance of £389,333 is divided by 2,390 houses the 'per unit figure' which developers within the Armadale CDA are required to contribute towards the proportional cost of providing the replacement Armadale Library is £163.

(SG) Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision)

Approved by West Lothian Council Executive 23 June 2020
 Subsequently adopted as Supplementary Guidance (SG) **DATE TO BE INSERTED IN DUE COURSE**

West Lothian Council, Development Planning & Environment, Civic Centre, Howden South Road,
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West Lothian
Council

Planning Services
Development Planning & Environment



SUPPLEMENTARY GUIDANCE (SG)
**Developer Obligations for General Infrastructure
for Site Delivery**

Adopted 21 September 2020

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Introduction

- 1.1 This Supplementary Guidance is one of a series supporting policies in the West Lothian Local Development Plan 2018 (LDP). The LDP was adopted by the council on 4 September 2018 and is framed within the context of Scottish Planning Policy (2014); Circular 3/2012: Planning Obligations and Good Neighbour Agreements; and Circular 4/1998: The Use of Planning Conditions in Planning Permissions.
- 1.2 Supplementary Guidance forms part of the LDP and as such is a statutory document in the determination of planning applications. It elaborates on key policies contained in the adopted LDP and provides advice to developers and others on the issues to be taken into account when submitting proposals for planning permission. Supplementary Guidance is a material consideration in the determination of planning applications. It is particularly important in considering and helping to ensure the delivery of the Core Development Areas (CDA) across West Lothian and the strategic allocations of Heartlands, Whitburn and Bangour to create sustainable and well designed and integrated places for new residents and the existing community. This Supplementary Guidance is also relevant for all other development sites identified in the LDP (particularly housing) and is intended to be read alongside the relevant policies of the LDP together with other related and pertinent guidance.
- 1.3 For the avoidance of doubt, all previous Supplementary Planning Guidance (SPG's) with regards to general infrastructure provision contributions are superseded by this guidance from the date it is approved by the council and other Supplementary Guidance prepared in support of the LDP.

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Justification

- 2.1 The West Lothian Local Development Plan (LDP) outlines a development strategy that supports sustainable planned growth across West Lothian up to 2024 and beyond. In particular, it continues to support the previously established Core Development Area (CDA) allocations at three strategic locations: Armadale, East Broxburn/Winchburgh and Livingston and the Almond Valley (i.e. Calderwood, East Calder and Gavieside, West Livingston) together with the strategic development allocation at Heartlands, Whitburn and Bangour.
- 2.2 Although the development strategy will have many positive effects by providing new homes, jobs and economic development, it is recognised that new development also creates a requirement for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect on existing communities, local amenity and the quality of the environment.
- 2.3 In order to deliver the planned growth set out in the LDP, improvements to infrastructure must be delivered alongside development. The planning system allows, and indeed expects developers to mitigate the impact of their development and to pay for, or contribute towards, improvements to infrastructure that arises as a direct consequence of the development, or from the cumulative impact of the development and which would not otherwise be needed.
- 2.4 This Supplementary Guidance has been prepared to explain how the council, through relevant policies of the LDP and with regard to the LDP Action Programme, will secure such improvements. Development will therefore only be supported if:
- (a) funding (including any contributions from developer obligations) for necessary infrastructure is fully committed and that infrastructure is capable of being delivered;
 - (b) phasing to manage demand on infrastructure has been agreed; or
 - (c) in advance of all necessary infrastructure requirements being fully addressed, sufficient infrastructure is available in the interim to accommodate the development.
- 2.5 Development proposals will be assessed with regard to their impact on the capacity of infrastructure, (either on an individual or cumulative basis) and such provision will ordinarily be secured through planning conditions or planning obligations / legal agreements.

three

Purpose and scope of the guidance

- 3.1 It is important to be aware that this Supplementary Guidance does not make, replace or amend existing Local Development Plan policy but is intended to provide further guidance to developers, their agents and communities on the application and interpretation of planning policy generally and policies **CDA 1** (*Development in the Previously Identified Core Development Areas*) and **INF 1** (*Infrastructure Provision and Developer Obligations*) of the LDP in particular.
- 3.2 In many instances development will have commenced, and in some, be at an advanced stage. In these situations it is very probable that developer contributions will have already been agreed through the related planning consent/legal agreement and these arrangements will therefore prevail. The provisions and requirements of this Supplementary Guidance will consequently only be pertinent to the development of sites where there is no approved planning consent in place on the date this guidance is approved by the council.
- 3.3 This Supplementary Guidance is an important material consideration in the determination of planning applications and will form the basis for discussions on individual planning applications and the drafting of planning conditions and / or planning obligations.
- 3.4 The main objectives of this Supplementary Guidance are:
- to set out the council's policies and procedures in respect of the use of planning conditions and planning obligations;
 - to explain the circumstances under which the council will collect financial contributions to mitigate the impacts of a development;
 - to provide clear guidance on the council's approach so that it is applied in a fair, consistent and transparent manner; and
 - to provide certainty for developers and to help ensure the timely provision of environmentally sustainable forms of infrastructure to support growth.
- 3.5 This Supplementary Guidance outlines the national and local legislative and policy framework for planning obligations and provides additional detail on topic areas for which West Lothian Council will ordinarily seek planning obligations, these include community facilities required in support of the CDAs and open space provision.
- 3.6 For an appreciation of developer obligations in the wider context it is recommended that this Supplementary Guidance should be read in conjunction with separate guidance relating to Affordable Housing, Education infrastructure, Transport infrastructure, Developer contributions towards Cemetery Provision and Public Art and, in due course the Green Network. The full programme of proposed supplementary and planning guidance is set out in Appendix 4 of the LDP. All Supplementary Guidance which has been prepared to date can be viewed on the council's [website](#). Other Planning Guidance (PG) may also be prepared in support of the LDP where need arises.

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- 3.7 A key aim of this Supplementary Guidance is to provide a clear framework for developers to identify if a planning obligation is required as part of a planning application. It is important that the process of securing appropriate developer contributions does not result in undue delays in the determination of planning applications and the council is therefore keen to assist those considering the development of land to understand, at an early stage in the planning application process, the likely scope and scale of any developer contributions which the council will require.
- 3.8 Developers and landowners seeking to submit planning applications for residential development are encouraged to make use of the council's pre-application enquiry service in order that any site specific requirements are identified and discussed at an early stage. Details of this service can be accessed on the *council's website*. *Please note that this is a chargeable service.*

four

Policy context and legal basis

- 4.1 Section 75 of The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 allows planning authorities to secure developer contributions, through the use of planning obligations, to overcome obstacles to the granting of planning permission.
- 4.2 Legal agreements can also be made under other legislation including the Local Government (Scotland) Act 1973, the Countryside (Scotland) Act 1967, Sewerage (Scotland) Act 1986 and the Roads (Scotland) Act 1984 and provide a possible alternative mechanism to secure developer contributions. They are useful where the nature of the contribution is relatively straightforward, involves a one-off payment and/or does not require to be secured through successors in title. For this reason they can help speed up the development process. The council has used, and will continue to use alternative agreements where appropriate and where they are considered to speed up the development process.
- 4.3 This Supplementary Guidance has been developed in the context of the following policy and Scottish Government advice:
 - Scottish Planning Policy 2014
 - Circular 6/2013 - Development Planning
 - Circular 3/2012 - Planning Obligations and Good Neighbour Agreements
 - Strategic Development Plan for South East Scotland (SDP) (2013)
 - West Lothian Local Development Plan (LDP) (2018)

Scottish Planning Policy (SPP) 2014

- 4.4 Scottish Planning Policy requires guidance to indicate how new infrastructure or services are to be delivered and phased, and how and by whom any developer contributions will be made.

Circular 6/2013 - Development Planning

- 4.5 The Circular states that Local Development Plans must identify the items for which financial or other contributions will be sought, and the circumstances where they will be sought. In this way site requirements may be reflected in land values agreed by landowners and developers prior to planning permission being granted. Provisions in the Planning etc. (Scotland) Act 2006 require that planning obligations are publicised by Planning Authorities and that there is greater transparency in negotiating developer contributions. This Supplementary Guidance assists with these objectives and has been prepared in the context of the aforementioned policy and Scottish Government advice.

Planning Conditions

- 4.6 Conditions applied to a grant of planning permission can enable many development proposals to proceed where it might otherwise be necessary to refuse planning permission and the council has wide-ranging powers under the Town and Country Planning (Scotland) Act 1997 (as amended) to impose them, and has done so extensively.

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- 4.7 Where there is a choice between applying planning conditions or entering into a planning obligation, the use of a condition is almost always preferable. Planning obligations, while entirely legitimate and often necessary, are by their nature time consuming and resource intensive and will almost inevitably delay the issuing of planning permission.
- 4.8 Conditions attached to any planning consent must comply with *Circular 4/1998: The Use of Planning Conditions in Planning Permissions* and should only be imposed where they are:
1. necessary
 2. relevant to planning
 3. relevant to the development to be permitted
 4. enforceable;
 5. precise; and
 6. reasonable in all other respects

Circular 4/1998 advocates the use of standard or model planning conditions and provides guidance on a range of the most frequently used. In granting conditional planning permission, the council is also obliged to give clear and precise reasons for the imposition of every condition.

- 4.9 Planning conditions are not however without their limitations. They can only be used to require works on land beyond the application site (as defined by the "red boundary line" on the application plan) where the land in question is under the control of the applicant. Furthermore, conditions cannot be used to secure a financial contribution.

Circular 3/2012 - Planning Obligations and Good Neighbour Agreements

- 4.10 The council will therefore seek to negotiate and enter into a Planning Obligation whenever a development, which is otherwise acceptable in planning terms, requires mitigation and which cannot be secured through planning conditions. In accordance with national policy and advice and the approach taken by the Planning and Environmental Appeals Division (DPEA) Reporters in appeal decisions, the council will only seek to use a planning obligation where the matter(s) cannot be adequately addressed by planning condition(s).
- 4.11 The legislative basis for planning obligations is set out in Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
- 4.12 Contributions secured through a planning obligation (Section 75 agreement or other legal agreement as necessary) shall be consistent with the five tests set out in *Circular 3/2012*. These are as follows:
- Necessary to make a proposal acceptable in planning terms (overcome a barrier to the approval of planning permission);
 - Serve a planning purpose and where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 - Be related to the proposed development either as a direct consequence of it or arising from the cumulative impact of development in an area (there must be a clear direct link between development and the infrastructure to be provided);

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- Must fairly and reasonably relate in scale and kind to the proposed development (provide or contribute to the provision of infrastructure that would not be necessary were it not for the development, on a proportionate pro-rata basis as appropriate, but not to resolve existing deficiencies); and
 - Be reasonable in all other respects.
- 4.13 In seeking to enter into planning obligations with a developer, such arrangements must be operated in accordance with the fundamental principle that planning permission may not be bought or sold. In accordance with Circular 3/2012 planning obligations should only be used where they relate to the development being proposed.
- 4.14 Where a proposed development would either; create a direct need for particular facilities, place additional requirements on infrastructure (cumulative impact) or have a damaging impact on the environment or local amenity that cannot be resolved satisfactorily through the use of planning conditions or another form of legal agreement, a planning obligation could be used provided it would clearly overcome or mitigate those identified barriers to the grant of planning permission. There must however be a clear link between the development and any mitigation offered as part of the developer's contribution. In addition, when determining whether a planning obligation is required, the council will take account of the existence of any other agreements or conditions relating to infrastructure provision that already apply to the development.
- 4.15 A developer can apply to the council to modify or discharge an obligation within a Section 75 legal agreement and has a subsequent right of appeal to the Planning and Environmental Appeals Division (DPEA) if the authority refuses the application. Such applications are made under the terms of Section 75A of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
- 4.16 Planning obligations can take various forms and the nature of the contribution that developers can make will depend on the specific circumstances of the location of the development site and the scale and type of development scheme that is being proposed.
- 4.17 'In Kind' or 'Direct Provision' is where the developer builds or directly provides the proposed subject of the planning obligation. Such provision is often made within the development site in question. The issue of whether the developer should provide the mitigation measures in kind or whether the council, or another organisation, would be in the best position to provide the necessary works will be determined on a case-by-case basis and will be addressed via the negotiation involving all interested parties.
- 4.18 Planning obligations bind successors in title i.e. future purchasers of any part of the land that is subject to the obligations, as they are placed on the title of the land. This means that a planning obligation can be enforced against both the original landowner (this is usually the development site owner) and against anyone who subsequently acquires an interest in the land. As such, it is expected that those parties with an interest in the land in question, at the point in time that the Section 75 agreement is signed, will be expected to enter into planning obligations with the council.

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Strategic Development Plan for South East Scotland (SDP)(2013)

4.19 Section 25 of the Town and Country Planning (Scotland) Act 1997, as amended, requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. The SDP and the LDP form part of the 'development plan' that planning applications in West Lothian are assessed against.

4.20 The SDP sets the strategic policy context for the securing of developer contributions towards infrastructure. Paragraph 123 states:

'Developer contributions are important and will be required to assist in delivery and to address any shortfalls in infrastructure that arise as a direct result of new developments. LDPs will set out the broad principles for planning obligations including the items for which contributions will be sought and the occasions on which they will be sought. Mechanisms for calculating levels of contributions should be included in supplementary guidance with standard charges and formulae set out in a way that assists landowners and developers.'

4.21 The SDP requires the West Lothian LDP to specify the items and identify the circumstances in which developer contributions would be sought, specifically **Policy 9 (Infrastructure)**, which states that:

'LDP's will:

- (a) safeguard land to accommodate the necessary infrastructure;*
- (b) provide policy guidance that will require sufficient infrastructure to be available, or its provision to be committed, before development can proceed; and*
- (c) pursue the delivery of infrastructure through developer contributions, funding from infrastructure providers or other appropriate means, including the promotion of alternative delivery mechanisms. Particular emphasis is to be placed on delivery of the strategic infrastructure requirements that are set out in Figure 2 and in the Action Programme'.*

West Lothian Local Development Plan (LDP)

4.22 The policy context for securing developer contributions and negotiating planning obligations is set out in Policies **INF 1 & CDA 1** of the West Lothian Local Development Plan.

4.23 Policy **INF 1 (Infrastructure Provision and Developer Contributions)** sets out the rationale for seeking developer contributions in appropriate circumstances and policy **CDA 1 (Development in the Previously Identified Core Development Areas)** complements this by explaining that planning conditions and legal agreements will be used to secure infrastructure. Policies **INF 1 & CDA 1** are reproduced below for information.

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Policy INF 1

The council will seek developer obligations in accordance with Scottish Government Circular 3/2012 ('Planning Obligations and Good Neighbour Agreements'), as interpreted by emerging case law and amended by subsequent amendments and legislation, to mitigate the development's individual or cumulative impacts upon infrastructure, including cross-boundary impacts. Any such obligations will be concluded prior to the issue of planning permission.

Where appropriate developer obligations have been secured, planning permission will normally be granted. In all cases, the council will consider the economic viability of proposals alongside options of phasing or staging payments from developers.

Development will not be permitted to commence unless:

- a. funding (including any contributions from developer obligations) for necessary infrastructure is fully committed and that infrastructure is capable of being delivered; or*
- b. phasing to manage demand on infrastructure has been agreed; or*
- c. in advance of all necessary infrastructure requirements being fully addressed, sufficient infrastructure is available in the interim to accommodate the development.*

Only where infrastructure constraints, identified by the council in conjunction with relevant authorities, cannot be overcome, will there be a presumption against development.

Infrastructure requirements are identified in Appendix Two and further details will be provided in subsequent supplementary guidance and the Action Programme. Any related planning obligations will require to meet the policy and legal tests set out above. Proposed sites for new infrastructure are listed in Chapter 6'.

Policy CDA 1

The council will continue to support housing and mixed used development within those parts of West Lothian previously designated Core Development Area (CDAs) in Armadale, East Broxburn/Winchburgh and Livingston & Almond Valley subject to the preparation of master plans to be approved by the council. Infrastructure requirements are identified in Appendix 2 and further details will be provided in subsequent supplementary guidance and the Action Programme. Any related planning obligations will require to meet the policy and legal tests set out in Policy INF 1.

Planning conditions and legal agreements will be used to secure infrastructure funding and proper phasing of development. Developer contributions will be sought in accordance with Scottish Government Circular 3/2013 'Planning Obligations and Good Neighbour Agreements', as interpreted by emerging case law and amended by subsequent amendments and legislation. Contributions will also be required to remedy deficiencies in local facilities and amenities which result from proposed developments.

A diversity of house types, tenures and densities must be provided within these areas. Within the mixed use areas net housing densities shall average at least 25 residential units per hectare. Affordable housing shall be provided within the previously identified CDAs in accordance with policy HOU 4 (Affordable Housing and relevant Supplementary Guidance).

- 4.24 When assessing planning applications, the council will determine whether planning conditions and/or planning obligations are suitable in order to make otherwise unacceptable development, acceptable.
- 4.25 Appendices 1 & 2 of the LDP provide details on the employment land and housing site allocations in West Lothian and includes commentary on the constraints already identified at site level which may necessitate a requirement for planning conditions or planning obligations in order to make the proposed development acceptable in planning terms. The LDP Action Programme sets out actions required to deliver the plan's policies and proposals and identifies the appropriate parties or organisations that are required to carry out the action(s), including where available anticipated costs of proposals.

five

Implementation

- 5.1 In preparing the West Lothian LDP an assessment was made of the likely pressures on services, infrastructure, facilities and amenities within specific settlements and the Core Development Areas as a result of the major housing allocations identified in the LDP and a number of specific projects have been identified. Appendix 2 of the LDP 'Schedule of Housing Sites/Site Delivery Requirements' (p.115) identifies the key infrastructure that is required in order to deliver in full the development strategy set out in the LDP.
- 5.2 When a planning application relating to residential development is submitted to the council for consideration, the council will assess the requirement for the prospective developer to make appropriate developer contribution(s) in accordance with the provisions of this Supplementary Guidance.
- 5.3 Each planning application will be considered in line with Policies **INF 1 & CDA 1** and the terms of this and other relevant guidance. However, this does not preclude the council seeking other contributions not specifically covered by this Supplementary Guidance where they meet the statutory tests (set out in Circulars 4/1998 and 3/2012 - see paragraph 4.8 and 4.12) and enable an otherwise unacceptable development proposal to be acceptable to the council.
- 5.4 Planning obligations should be recognised as a necessary cost of development. Developers should therefore make themselves aware of the likely planning obligation requirements associated with a proposed development and factor in the likely cost of obligations into land acquisition and development costs at an early stage.
- 5.5 Developers will be required to make contributions at the levels set for the particular project or settlement within which the development is proposed.
- 5.6 The requirement for a developer to make appropriate developer contributions will be treated as a material planning consideration in the assessment and determination of planning applications for development.
- 5.7 In exceptional circumstances, the council will consider alternative projects identified by the developer, to an equivalent value for that settlement. It should however be noted that whilst the council is not obliged to accept any alternative project, offer, or other scenario as may be suggested, or proposed by a developer any such proposal will be considered on merit against Local Development Plan requirements and local circumstances.
- 5.8 Where developers are of a view that fulfilling a planning obligation would make the economics of the development unviable and look to amend the levels of contribution, the prospective developer will be required to submit a development appraisal which the council, through the District Valuer, or another independent chartered valuation surveyor agreed by the council, will verify. This appraisal requires to be funded by the developer/applicant. The council will also require documentary evidence necessitating "open-book accounting" to show the viability of a proposal will be curtailed by the requirement for planning obligations. If a development appraisal shows that a site is not viable the council may elect to review developer obligations and consider a degree of 'prioritisation'.

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However, in the event of a development being assessed as unviable the council will consider all the options which will include refusal of the application due to its inability to fund the required levels of infrastructure.

Legal Agreements

5.9 Local authorities have powers to enter into agreements to regulate planning matters under various statutes. Where it is necessary to secure that future, owners and occupiers of the land are bound by a planning obligation (for example where phased financial contributions towards infrastructure are required), it is necessary to secure this by agreement or unilateral undertaking under Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. All planning obligations involve developers entering into legally binding contracts with the council and planning permission will not be issued by the council until the relevant agreement has been formally concluded.

5.10 Whilst Section 75 agreements are bespoke and can be time consuming to negotiate and conclude, they typically contain the following elements:

- date of the agreement;
- identification of the parties involved;
- definition of any terms contained within the document;
- site and development proposal details;
- relevant conditions;
- details of any provisions or restrictions required under the agreement; and
- signatures of all the parties involved.

The Section 75 agreement will usually be drafted by the council's Legal Services. A template Section 75 agreement can be requested from the Development Management case officer in these circumstances.

Key items that will be required to be provided to the council's Legal Services include the following:-

Titles

In every case all title deeds to the land must be provided for examination. These should demonstrate that the landowner has the ability to enter into the planning obligation in respect of the affected property. Where there are other interests in the property further titles may be required and other parties might need to enter into the planning obligation.

Plans

Plans which clearly show the extent of the area of land which is to be subject to the planning obligation should be provided. These should correspond with the title deeds to the land.

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Searches

Searches over the **General Register of Sasines** or **Land Register** brought down to a date as close as possible to the date when the planning obligation is to be sent for recording (or registration). The searches must show no competing interest to the land or matter restricting the ability to enter into the planning obligation. Searches should be provided to Legal Services by the applicant/landowner's solicitor.

Heritable Creditor Consents

Any heritable creditor (e.g. a mortgage lender or floating charge holder) will be required to consent to the granting of the planning obligation. The heritable creditor will need to sign the planning obligation and the landowner will meet any costs associated with procuring such consent. Applicants are encouraged to make contact with any heritable creditor as soon as the requirement for a planning obligation is identified as it can often take some time for the creditor to approve applications for consent. It is important to note that no progress can be made on the planning obligation until Legal Services has received the relevant title deeds or land certificate. It is therefore advisable to provide those documents as quickly as possible to avoid any delay in the proposed development.

- 5.11 Should a planning application be approved subject to the signing of a Section 75 agreement, the council requires the agreement to be negotiated and signed without undue delay. The council's aim is to issue decision notices within 6 months from the date of the council's '*resolution to approve*'. Where evidence is provided by the applicant to the council's satisfaction that the agreement cannot be signed within this period, then a variation on the stipulated time limit will be considered on a case-by-case basis. Should this information not be forthcoming, the council may decide to refuse the planning application based on the non-completion of the Section 75 agreement.
- 5.12 A planning obligation must be registered against the title of the land in either the General Register of Sasines or Land Register of Scotland (as applicable). Once a planning obligation has been registered it becomes binding on all future owners of the land. It may affect tenants and other occupiers, depending on the specific terms. Any restrictions on future use of the land or property will affect all future transfers or sales.
- 5.13 Figure 1 explains the procedures which the council and applicant will typically take to establish a Section 75 agreement.

Figure 1: Step-by-Step Guide to establishing a Section 75 legal agreement

Pre-Application Discussions

Applicants are encouraged to enter into discussions at the earliest possible stage with the council's Development Management (DM) officers prior to submitting a planning application. Such discussions provide a valuable opportunity for all parties to consider the scope and impact of the development proposal. The council offers a service for [pre-planning application advice enquiries](#) (which is a chargeable service accessible through the council's website). This service is separate to any Pre-application Consultation that a developer may be required to undertake in respect of certain planning applications. The DM Case Officer and relevant service area(s) raise potential planning obligations on the proposal if applicable.

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**Planning Application Received**

The DM Case Officer makes an initial assessment of Section 75 implications related to the proposal and whether the issues raised at the pre-application stage have been addressed.

**Planning Application Consultation**

Following the submission of a planning application, the formal consultation process will commence with the involvement of all relevant bodies, statutory as well as non-statutory and council services. Their responses will help identify any additional requirements for further planning obligations not already addressed as part of the pre-application discussions.



Comments received. DM Case Office and Legal Services negotiate with developers to agree 'heads of terms' for planning obligations.

**Planning Application Recommendation**

Following the consultation process and subsequent discussion with the applicant, a report may be prepared outlining the DM case officer recommendation and the nature and details of the planning obligation. The council may resolve to grant planning permission, subject to the applicant entering into a Section 75 Agreement, or refuse the planning application.

**Section 75 Agreement - Drafting**

Following a '*resolution to grant planning permission*', the DM Case Officer will instruct Legal Services to draft the Section 75 Agreement. Legal Services in liaison with the DM Case Officer will undertake to co-ordinate any detailed discussions, including with other internal council services, regarding the precise terms of the Agreement should this be required.



The Council's Legal Services send draft agreement to all parties to check and agree.

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**Section 75 Agreement - Signing and Legal Completion**

The Section 75 Agreement is signed, legally completed and details are recorded onto monitoring systems and the Register of Sasines and/or Land Register. The planning decision notice, with the planning permission, is then issued.

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Securing the developer contributions

- 6.1 To ensure the necessary infrastructure is in place to take account of the impacts of new developments this Supplementary Guidance applies to **all unconsented residential developments** in West Lothian including the Core Development Areas (CDAs), namely *Armadale, East Broxburn and Winchburgh, , Calderwood (East Calder) and Gavieside (West Livingston) and the strategic development allocation site at Heartlands (Whitburn) and Bangour (Dechmont)*. Developments outwith these areas may also be required to contribute to infrastructure requirements to enable development to proceed.
- 6.2 The specific projects to be implemented or funded by developers are set out in Table 1 and are consistent with Appendix 2 and policies **INF 1** and **CDA 1** of the West Lothian LDP. Reference should also be made to the LDP Proposals Map which defines the geographical extent of the areas listed in Table 1 and hence the areas within which developer contributions will be required towards infrastructure. Developer contribution rates have been informed (where known) by costs set out in the LDP Action Programme which has been prepared to support the LDP and by existing planning consents and associated Section 75 agreements.

It should be noted that developer contributions towards education, transport infrastructure, cemetery provision and public art are set out in separate guidance entitled:

- Supplementary Guidance: Planning and Education
- Supplementary Guidance on Developer Contributions towards Transport Infrastructure
- Supplementary Guidance on Cemetery Provision
- Supplementary Guidance on Developer Contributions Towards Public Art

Developers are required to have regard to these alongside this Supplementary Guidance on general infrastructure requirements.

- 6.3 Developer contributions will be calculated on the basis of whole sites identified in the LDP. Applications for parts of allocated sites will pay a proportion of the total site contributions. This Supplementary Guidance will not be applied retrospectively to sites which already have planning permission in principle or to applications for the approval of matters specified by condition without any requirement to contribute to general infrastructure, provided that the permission remains capable of being implemented. New planning applications, for similar developments on these sites (including applications for renewal of planning permissions), will however be required to comply with the terms of this guidance and to policies set out in the LDP.
- 6.4 The only exemptions will be small developments comprising four or less units, unless they are clearly part of a phased development of a larger site. In such cases the council will seek to agree appropriate sums with the applicant.

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- 6.5 Developer contributions shall be secured by means of agreements concluded between the applicant and the council under Section 75 of the Town and Country Planning (Scotland) Act 1997 or Section 69 of the Local Government (Scotland) Act 1973, prior to the issue of planning permission. In some cases, where a relatively small financial contribution is involved, it may be possible to avoid formal agreements and for the council to collect contributions on the basis of an exchange of letters prior to planning permission being granted or through a section 69 Agreement.
- 6.6 The council recognises that funds received through planning obligations process need to be clearly linked to the provision of specific pieces of infrastructure. To provide this clarity, the council has set up a financial tracker to monitor the source of funds, the purpose for which they are gathered, and how they are spent. All contributions received will be "ring fenced" and will be spent only on funding the projects identified in Table 1.
- 6.7 The costs identified within this guidance will be subject to review on an annual basis, through the LDP Action Programme. These costs will be index linked against the Building Cost Information Service (BCIS) All-in Tender Price Index or similar comparable industry standards and subject to independent verification where necessary. This guidance will be reviewed and updated periodically to ensure that the level of contribution being required of developers remains relevant and takes account of changing circumstances. This will include updating contributions to take account of the BCIS All-in Tender Price Index.
- 6.8 In general, Section 75 agreements contain a pay-back period. A section of the agreement indicates that if the council does not use the contributions within the specified timescales or monies are no longer required for the purpose for which they were collected they will be repaid, on a pro-rata basis, to those parties who made the contributions towards the project. The specified time periods will depend on the project involved.
- 6.9 In some instances, planning contributions will be in the form of infrastructure provided directly by a developer. Direct provision will be factored into the overall contributions that a site will make and where appropriate, this may be offset against total costs of the infrastructure project. Where direct provision of infrastructure is required, bonds or other legal security may also be agreed to safeguard the council from risk.
- 6.10 There may be instances where infrastructure is required in advance of all developer contributions having been received by the council. Where this is the case alternative funding options may be investigated. In these situations, contributions will continue to be sought from developers to meet the full cost of the infrastructure which has been provided. There may also be circumstances where the council has forward funded infrastructure projects to assist in development delivery. Where this is the case the council will seek to recoup monies from developers by way of developer contributions; this approach is consistent with paragraphs 23 of Circular 3/2012.
- 6.11 Over the lifetime of the LDP developers/landowners are likely to seek planning permission for sites not allocated in the West Lothian Local Development Plan - such sites are known as windfall sites. The impact of these sites will not have been considered in any capacity assessments which determine the need for improved or additional infrastructure. Non-exempt windfall sites will be required to provide developer contributions towards infrastructure as set out in this guidance.

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- 6.12 Section 76 (1) (b) of the Town and Country Planning Act (Scotland) 2006, as amended, allows developers to enter into unilateral agreements to make an appropriate contribution in relation to the impact of their proposals. Where a unilateral undertaking is in place, unless it makes provision for all the infrastructure impacts of the proposed development, the need for any additional contributions to meet the requirements set out in this Supplementary Guidance will be secured through a planning obligation.
- 6.13 Depending on the particular circumstances of a proposed residential development and to assist in development delivery, the council may, on application, agree for payments to be made at a later stage in the development process than would otherwise be considered appropriate, for example once houses have been sold, albeit subject to indexation as described above.

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Annex A

General infrastructure requirements

- 1.1 The LDP has identified specific infrastructure requirements for housing sites in the Winchburgh, East Broomburn, Armadale, Calderwood and Mossend/West Livingston CDAs and these are reproduced in Table 1 and should be read in conjunction with the relevant LDP Maps.
- 1.2 In many instances conditional planning permission has already been granted for the development of these allocated sites and any legal agreements which set out the required developer obligations have been concluded and are unchanged as a consequence of this guidance. In these circumstances the scope and cost of related infrastructure projects will already have been established and have not required to be set out here.
- 1.3 Where residential development on 'windfall' sites and as yet unconsented/undeveloped sites within the CDA (and the Heartland Strategic Development Area) are brought forward, they will be subject to the same range of infrastructure requirements with arrangements and costs being determined on a case by case basis through the respective planning applications.

Table 1: Requirements for infrastructure, local facilities and amenities for housing proposals to be implemented or funded by CDA developers

ALL CDAs		
Description of facilities and amenities	Details of planning permission where applicable	Notes
• Land for community facilities		
• Serviced employment land		
• Woodland planting to implement Green Network objectives		
• Management of existing trees and woodlands		
• Open space provision and indoor and outdoor sports facilities in accordance with approved strategies of the council		
• Recycling facilities		

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WINCHBURGH CDA*See LDP Map 2 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Public car park for new town centre; 	Condition 24 of permission 1012/P/05	Implementation required during first phase of Town Centre/by the completion of the 1001 st house.
<ul style="list-style-type: none"> Additional landscaping and improved recreational access and management plan for Claypit and surrounding area; 	Condition 19 of permission 1012/P/05	Implementation required prior to the completion of the 600 th house.
<ul style="list-style-type: none"> Joint preparation (with East Broxburn CDA developers) of a management plan for the scheduled Greendykes and Faucheldean Bings and for the "green corridor" between Winchburgh and East Broxburn and funds to allow implementation of the plan; 		The council owns part of Greendykes Bing and a study funded by Central Scotland Green Network (CSGN) in 2013/14 identified various options for the green network corridor. Supplementary guidance on the Green Network will specifically address this requirement.
<ul style="list-style-type: none"> Preparation of a strategy to restore Niddry Bing and funds to allow implementation of the plan; 	Conditions 5 & 34 of permission 0033/M/09	
<ul style="list-style-type: none"> Joint funding (with East Broxburn CDA developers) of works to rehabilitate the non-scheduled parts of Greendykes Bing; 		Obligation has been placed on the Broxburn CDA developers as being more relevant to that CDA.
<ul style="list-style-type: none"> Preparation of a strategy for the restoration of Auldcaithie landfill site and funds to allow implementation of the plan; 	Conditions 5 & 14 of permission 1012/P/05 & 1123/FUL/18	Planning permission (1123/FUL/18) for the formation of a District Park was granted on 28 March 2019 and the park is expected to be delivered in accordance with the planning conditions set out in the consent
<ul style="list-style-type: none"> Enhancement of existing river corridors within master plan area; 	Conditions 18 & 21 of permission 1012/P/05	These requirements are expected to be addressed by developers as part of the wider landscape strategy.
<ul style="list-style-type: none"> Land for canal related facilities having regard to the Edinburgh-West Lothian Union Canal moorings study previously prepared by British Waterways (now Scottish Canals); 	Condition 24 of permission 1012/P/05	Planning permission (0642/MSC/19) for the formation of a marina was granted on 11 September 2019 and, subject to securing Scheduled Monument Consent, the marina will be delivered in accordance with the planning conditions set out in that consent. Active discussion is ongoing between the developer and Scottish Canals on this matter and future phases of development along the Canal.
<ul style="list-style-type: none"> Contribution to library provision; 		Contribution defined in Clause 15 of the planning obligation between WLC/The Winchburgh Trust /Regenco (Winchburgh) Ltd.
<ul style="list-style-type: none"> The current supply of open space in the existing settlements is not of a sufficient size and types to cater for the potential demand from new housing. Winchburgh/East Broxburn should include appropriate levels of each part of the West Lothian open space typology, including district parks, neighbourhood parks, local parks, sports areas, play spaces, green path corridors and amenity greenspace; 	Conditions 17 21 of permission 1012/P/05	Phased implementation required prior to the completion of a specific number of houses, i.e. 501, 551, 1001, 1501, and 2501. See S75 for precise details. The West Lothian Open Space Strategy is currently under review and due to be considered by the council in 2020. This may outline further open space requirements for the Winchburgh area. The planning application for rehabilitation of the adjacent Auldcaithie Landfill site for playing pitches and associated open space will go a considerable way to addressing the current identified deficiency.
<ul style="list-style-type: none"> The proposed "Heritage Park" around the scheduled monuments of Greendykes & Faucheldean Bings is in the sensitive countryside gap between the expanded settlements. This concept could address the provision of a district and neighbourhood park acquired from the 2015 WL Open Space Strategy. 		Not a condition nor is it included as part of the planning obligation. Supplementary guidance on the Green Network will specifically address this requirement, as will conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA.

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EAST BROXBURN CDA*See LDP Map 2 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Joint preparation (with Winchburgh CDA developers) of a management plan for the scheduled Greendykes and Faucheldean Bings and for the "green corridor" between Winchburgh and East Broxburn and funds to allow implementation of the plan. 		The council owns part of Greendykes Bing and a study funded by Central Scotland Green Network (CSGN) in 2013/14 identified various options for the green network corridor. Supplementary guidance on the Green Network will specifically address this requirement.
<ul style="list-style-type: none"> Joint funding (with Winchburgh CDA developers) of works to rehabilitate the non-scheduled parts of Greendykes Bing; 		Obligation has been placed on the Broxburn CDA developers as being more relevant to that CDA. Will be subject to conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA.
<ul style="list-style-type: none"> Land for canal related facilities having regard to the Edinburgh – West Lothian Union Canal moorings study previously prepared by British Waterways (now Scottish Canals); 		Obligation likely to be placed on the Broxburn CDA developers as being more relevant to that CDA. Will be subject to conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA.
<ul style="list-style-type: none"> Contribution to improvements at Stewartfield Park; 		Works already implemented including off-site access and signposting.
<ul style="list-style-type: none"> Woodland planting to north of mixed use sites at Pyothall Road, Greendykes Road West and Greendykes Road East as extension of Broxburn Community woodland and green network corridor; 		Will be subject to conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA. .
<ul style="list-style-type: none"> The current supply of open space in the existing settlements is not of a sufficient size or type to cater for the potential demand from new housing. Winchburgh/East Broxburn should include appropriate levels of each part of the West Lothian open space typology, including district parks, neighbourhood parks, local parks, sports areas, play spaces, green path corridors and amenity greenspace. 		Will be subject to conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA. .
<ul style="list-style-type: none"> The proposed "Heritage Park" around the scheduled monuments of Greendykes & Faucheldean Bings is in the sensitive countryside gap between the expanded settlements. This concept could address the provision of a district and neighbourhood park acquired from the 2015 WL Open Space Strategy. 		Not a condition nor is it included as part of the planning obligation. Supplementary guidance on the Green Network will specifically address this requirement, as will conditions and planning obligations relative to future planning approvals for developments in the Broxburn CDA.

ARMADALE CDA*See LDP Map 4 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Enhancement of open space area at Black Moss between Avondale Drive and Upper Bathville and formation of community woodland on western edge of Armadale; 		
<ul style="list-style-type: none"> Woodland planting adjacent to A801, to north and east of mixed use allocation at Colinshiel and on the west edge of the allocations at Standhill; 		
<ul style="list-style-type: none"> Extension of Armadale Round Town Walk (re-named Davie Kerr Heritage Trail) into both the Colinshiel and Standhill areas; 		
<ul style="list-style-type: none"> Contribution to improved library facilities; 		See Annex B
<ul style="list-style-type: none"> Management plan for Colinshiel Wood; 		

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<ul style="list-style-type: none"> If facilities of a district level are not able to be provided within the new settlement boundary due to space constraints, then facilities in neighbouring district parks (e.g. Balbardie Park Bathgate and proposed district park in Whitburn), should be extended and upgraded to meet the increased demand. 		
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CALDERWOOD CDA*See LDP Map 5 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Public car park at East Calder; 		Contribution of £50 (indexed to 1 st quarter 2012) per residential unit in the CDA is being taken so that the council can deliver the car park
<ul style="list-style-type: none"> Public car park for new local neighbourhood centre; 	Condition 12 of 0524/P/09	Parking to be provided as part of the neighbourhood centre. First phase of the neighbourhood centre required prior to occupation of the 1001 st residential unit.
<ul style="list-style-type: none"> Native woodland planting adjacent to A71 and to improve screening of Camps Industrial Estate; 	Condition 10 of 0524/P/09	
<ul style="list-style-type: none"> Contribution to improved library facilities; 		Library now provided in the partnership centre.
<ul style="list-style-type: none"> Land for the extension of the existing health centre or for the construction of a new health centre; 		NHS Lothian is considering options for the health centre.
<ul style="list-style-type: none"> Extension of "the Muddies"- Mansefield Park. 	0609/FUL/15	The land for the park extension will be provided by Persimmon as part of its development at Raw Holdings. Contribution of £500 (indexed to 1 st quarter 2012) per residential unit in the CDA is being taken so that the council can deliver the park extension.
<ul style="list-style-type: none"> Landscaping treatments at the eastern and southern boundaries to provide containment and prevent development creepage. 	Condition 10 of 0524/P/09	Landscaping required prior to occupation of the 980 th residential unit.

WEST LIVINGSTON / MOSSEND CDA*See LDP Map 3 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
<ul style="list-style-type: none"> Public car park for new village centre at Gavieside 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> Management plan for remaining part of Briestonhill Moss and funds to implement plan; 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> The current level of open space provision in the northern part of the Polbeth area is poor. Therefore, the provision of the proposed structure planting should be of a high quality, with a network of connecting paths to Briestonhill Moss area and the existing woodland areas; 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> Safeguard land for extension of Almond Valley Heritage Centre light rail route on north side of River Almond; 		
<ul style="list-style-type: none"> Enhancement of river corridors within master plan area; 		
<ul style="list-style-type: none"> Extension of existing greenway associated with River Almond (between Kirkton and Easter Breich); 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> New greenways associated with West Calder Burn, Harwood Water and Breich Water; 		To be secured through any planning application for the Gavieside allocation.
<ul style="list-style-type: none"> Contribution to library provision. 		To be secured through any planning application for the Gavieside allocation.

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<ul style="list-style-type: none"> • New distributor road network to the west of Livingston to serve the new community at Gavieside and bypass Polbeth 		<p>Study and survey work are underway to ascertain the best means of improving the road network at West Livingston that might now no longer require an expensive bridge crossing of the River Almond near the sensitive Almond Pools nature area and an accompanying two land carriageway, with a crawler lane on the north side, to reach Toll Roundabout.</p> <p>Options may include a signalised and expanded junction at Simpson Parkway and Macintosh Road.</p>
<p>Transport assessments will determine the final road network and junction improvements necessary to support the Livingston and Almond Valley CDA proposals.</p> <p>The potential for road closures at Mossend (West Calder), Polbeth Road will be considered and will be promoted if there is community support.</p>		(As above)
Improved access to West Calder railway stations.		<p>The access road to facilitate a new entrance and access to West Calder Station on its north side has been constructed as part of the A71 overbridge raising works related to the electrification of the Edinburgh-Shotts line. However additional work on the platform and related structures will be required with consultation with Network Rail and also a minimum 200 space car park for Park and ride (and land set aside for the extension of this facility) and public transport interchange.</p> <p>The existing access will need to be closed off for passenger use, albeit retained for the business and residential properties that currently use the south access at Limefield Road / A71.</p>
Key public transport requirements include the provision of park and ride facilities at Gavieside, West Calder railway station.		(As above)
The Gavieside "park and ride" facility will allow the Livingston "Fastlink" to be extended to serve the new housing and employment proposed in this part of the CDA. Land should be safeguarded in the masterplan for a possible future extension of this park and ride facility to serve Livingston Town Centre. The CDA Action Plan also envisages that developers will contribute to public transport initiatives.		Likely to be imposed as a planning condition solely on the West Livingston CDA developers when a planning permission is concluded related to the approving the masterplan for this part of the overall Almond Valley and Livingston CDA.
Local neighbourhood centres are envisaged at Gavieside to provide a focus for communities.		Likely to be imposed as a planning condition solely on the West Livingston CDA developers when a planning permission is concluded related to the approving the masterplan for this part of the overall Almond Valley and Livingston CDA.
<p>Land for community facilities will be required at Gavieside but, at this stage, the precise details are not yet known.</p> <p>Further consultation with West Lothian Healthcare NHS Trust will be required on health centre provision on the west side of Livingston.</p>		Likely to be imposed as a planning condition solely on the West Livingston CDA developers when a planning permission is concluded related to the approving the masterplan for this part of the overall Almond Valley and Livingston CDA.

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HEARTLANDS STRATEGIC DEVELOPMENT AREA*See LDP Map 4 for general location of requirements*

Description of facilities and amenities	Details of planning permission where applicable	Notes
Planning permission in principle (0493/P/02) was approved in May 2006 and identified a range of infrastructure requirements including:	0493/P/02	
<ul style="list-style-type: none"> South-western distributor road between the A706 and the B7066. 		Work ongoing on design and construction programme. A planning application, reference 0449/FUL/20 and embracing the first phase of the new road (from Longridge Road to connect with Polkemmet Road/Dickson Terrace) was submitted in June 2020.
<ul style="list-style-type: none"> A strategic public access network setting out footpaths and cycleways and the linkages between the development and surrounding land uses including the forests, Polkemmet Country Park and the settlements of Whitburn, Fauldhouse and Longridge. 		Included within the masterplan and being taken forward and implemented on individual phases.
<ul style="list-style-type: none"> Land for the development of a neighbourhood centre; 		Land safeguarded in approved masterplan.
<ul style="list-style-type: none"> A four way grade separated interchange on the M8; 		Completed
<ul style="list-style-type: none"> A new public transport interchange at Cowhill; 		Required by conditions and s75 agreement.
<ul style="list-style-type: none"> Public art, open space and play area provision. 		Strategy document required by condition, which will include timescales for implementation. While a public art strategy has been drafted it has still to be submitted for consideration and approval by the council.

Annex B

Specific infrastructure requirements

1.0 Developer Contributions for Town Centre and Village Improvements

- 1.1 The adopted West Lothian Local Development Plan (LDP) which was adopted on 4 September 2018 supports a sustained level of growth with more than 24,000 new houses being planned for over the plan period.
- 1.2 More than 12,000 of these new houses will be located in the previously established Core Development Areas (CDAs): Armadale, East Broxburn/Winchburgh and Livingston and the Almond Valley (i.e. Calderwood, East Calder and Gavieside, West Livingston) and in excess of 3,500 houses have been identified for development within the strategic development allocation at Heartlands (Whitburn) and Bangour (by Dechmont).
- 1.3 The scale of development planned for these CDAs and the strategic development areas will result in demand for additional facilities and improved town and village centres within the communities close to where the major housing growth is taking place and developers within these areas are therefore required to contribute towards town and village centre improvements. NB: This is essentially a continuation of arrangements established under the previous West Lothian Local Plan (WLLP) and supporting Supplementary Planning Guidance (SPG) in 2007.
- 1.4 There are 2 options by which developers can contribute towards town and village centre improvements: implementation of a package of proposals identified by the developer and agreed with the council; or a financial contribution by the developer to the established town and village centre improvement fund which is administered by the council.

(1) Implementation of a package of proposals by developers

- 1.5 It will be acceptable for developers to be pro-active and identify a package of proposals which they wish to implement themselves to improve town and village centres in adjacent/host communities. This option may be attractive to some developers because, depending on the nature of the works carried out, they may be able to obtain a return on their investment.
- 1.6 Where the developer wishes to be pro-active and implement a package of proposals, the approval process for the package of proposals will be as follows:
 - ▶ The developer will carry out local consultation to assist with identifying deficiencies and desired improvements.
 - ▶ The developer will present the council with a report which identifies the improvements which the developer wishes to carry out and sets out the timescale for the implementation of the works. Deliverability will be essential so the report should demonstrate that there are no known constraints which would prevent the works being implemented. The council will initiate local consultation on the developer's proposals.

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- ▶ If necessary, negotiation between the council and the developer will take place and the package of proposals will be adjusted if required. The council will carry out further consultation if the package of proposals has changed materially.
 - ▶ Once the council's Development Management Manager is satisfied that the package of proposals is acceptable, committee approval will be sought.
- 1.7 In many cases, planning permission will be necessary for the improvement works which are proposed. This will be a wholly separate undertaking to the process described above. Approval in principle of a package of town and village centre improvements will not oblige the council to grant planning permission for any specific proposal. In any event, all planning applications will be determined having regard to the development plan and to material considerations.
- 1.8 The following list identifies the type of works that could be considered for inclusion in a package of proposals for town and village centre improvements:
- redevelopment of gap sites for private housing, affordable housing or other appropriate town centre uses;
 - townscape enhancement;
 - refurbishment of derelict buildings and land (including CPO);
 - landscape improvements;
 - upgrading of footpaths; and
 - car park improvements;
- This list is not exhaustive.
- 1.9 It is anticipated that works may be phased over a period of time and with the arrangements set out in a section 75 agreement.

(2) Financial contribution by developers to a town and village centre improvement fund

- 1.10 As an alternative to carrying out town and village centre improvements themselves, developers may instead choose to contribute to a town and village centre improvement fund which has been established by the council for this purpose. In such cases, a standard contribution of £350 per residential unit (see note below) would apply. It is recognised that town centres may be just one consideration for contribution that will have to be balanced against others in any case. Each proposal will have different impacts and will be considered on a case specific basis. Phasing of contributions will be acceptable with the arrangements being set out in section 75 agreements. There will also be a requirement in the section 75 agreements that any money not spend within an agreed timescale should be returned to the developer.
- 1.11 The following list identifies the type of improvement works that the council could consider carrying out using the funds received from developers:
- landscape works including the provision and maintenance of public space;
 - new or replacement street furniture and lighting;
 - a scheme of townscape enhancements;
 - litter management and recycling (excluding general street cleaning activities);
 - crime prevention measures e.g. CCTV;

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- improved public transport facilities;
- new or replacement signage and information;
- a promotion and marketing campaign;
- car parking improvements and management; and
- town and village centre studies;
- site assembly/site servicing (including CPO); and
- traffic calming/traffic management.

This list is not exhaustive.

1.12 In this instance, a standard contribution of £350 per residential unit would apply and the council will secure developer contributions for town and village centre improvements through section 75 agreements.

1.13 To be clear about which developers will contribute to improvements in specific towns and villages, the following principles will apply:

- Armadale CDA developers will only contribute towards improvements in Armadale town centre;
- Winchburgh CDA developers will only contribute towards improvements in the existing village centre of Winchburgh;
- Broxburn CDA developers will only contribute towards improvements in Broxburn town centre;
- West Livingston/Mossend CDA developers will only contribute towards improvements in the village centres of West Calder and Polbeth;
- Calderwood CDA developers will only contribute towards improvements in the existing village centre in East Calder;
- Polkemmet, Heartlands (Whitburn) developers will only contribute towards improvements in Whitburn town centre; and
- Bangour Village Hospital developers will only contribute towards improvements in the existing village centres of Dechmont and Uphall.

1.14 The LDP aims to improve the physical environment of existing town centres, through the council integrating its own programmes of action with those of agencies, developers, traders and local communities with whom it works in partnership. The council will, therefore, explore opportunities to secure other funding and work in partnership with others to maximise new investment. It is the council's objective that improvements secured through this particular initiative will act as a catalyst for attracting further investment and help maximise benefits.

2.0 Developer Contributions for a Replacement Armadale Library

2.1 There is a specific requirement identified in Appendix 2 of the LDP, Schedule of Housing Sites/Site Delivery Requirements, to improve library facilities in Armadale in order to meet the needs of the new and growing population arising from the housing allocations in the Armadale Core Development Area (CDA). This initiative is essentially a continuation of arrangements established under the previous West Lothian Local Plan (WLLP) and supporting Supplementary Planning Guidance (SPG) in 2009.

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- 2.2 To be clear, contributions are only being sought to meet the additional cost of providing library facilities for the 2,000 plus new homes in the Armadale CDA and all contributions secured will be *ring fenced* and will only be used to recover expenditure incurred by the council on the forward funding of new and improved library facilities in Armadale.
- 2.3 It had been established that there was insufficient land to expand the original Armadale library on its site at West Main Street and this influenced the decision to replace the facility on the current site at North Street, a project which was financed by the council as part of a ten year capital investment plan approved in December 2007.
- 2.4 The total cost of the replacement library, designed to meet the requirements of the existing population and the anticipated growth in population arising from 2,070 houses allocated in the Armadale CDA was originally estimated at £775,000 (but since confirmed as substantially higher at £1,118,000).
- 2.5 The council assumed just under two thirds of the estimated cost to meet the library needs of the existing population with the remainder of £275,000 being the sum directly attributed to facilitating the demand of the new housing allocations and to be financed over time through developer contributions.
- 2.6 An original base tariff of £133 per house was established when the previous SPG was adopted in 2009 (2,070 house units multiplied by £133 = £275,000) and it was advised that this would be updated in successive years by being linked to the Building Tender Price Index (using fourth quarter 2009 as the base date).
- 2.7 In the event the actual total cost of the library was £343,000 greater than the estimate and approximately one third of this figure (£114,333) therefore requires to be added to the sum to be recovered from developers thus creating a revised outstanding balance of £389,333. As of 31 July 2019, the council had received no contributions towards the replacement library.
- 2.8 In addition to the 2,070 houses originally allocated as part of the Armadale CDA, the LDP made a new housing allocation of 320 units at Tarrareoch Farm (H-AM 19). When added together this establishes a pool of 2,390 houses liable to make contributions. When the outstanding balance of £389,333 is divided by 2,390 houses the 'per unit figure' which developers within the Armadale CDA are required to contribute towards the proportional cost of providing the replacement Armadale Library is £163.

(SG) Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision)

Approved by West Lothian Council Executive 23 June 2020
 Subsequently adopted as Supplementary Guidance (SG) 21 September 2020

West Lothian Council, Development Planning & Environment, Civic Centre, Howden South Road,
 Livingston, EH54 6FF Tel: 01506 28 00 00 Email: dpgeneral@westlothian.gov.uk





SEA SCREENING REPORT

**DEVELOPER OBLIGATIONS FOR GENERAL
INFRASTRUCTURE FOR SITE DELIVERY**
(excluding transport and education infrastructure,
cemetery and public art provision)

STEP 1 – DETAILS OF THE PLAN

Responsible Authority:

West Lothian Council

Title of the plan:

Supplementary Guidance : 'Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision)'.

What prompted the plan:

(e.g. a legislative, regulatory or administrative provision)

The adopted West Lothian Local Development Plan 2018 gives an undertaking to produce statutory Supplementary Planning Guidance (SG) in relation to a variety of policy topics including details of specific developer contributions for a range of infrastructure requirements.

The guidance explicitly supports LDP policies **CDA 1** (*Development in the Previously Identified Core Development Areas*) and **INF 1** (*Infrastructure Provision and Developer Obligations*).

The strategic policy context for the securing developer contributions towards its provision of infrastructure is provided for by Policy 9 of the Strategic Development Plan for South East Scotland (2013).

Plan subject:

(e.g. transport)

Town and Country Planning

Screening is required by the Environmental Assessment (Scotland) Act 2005.

Based on Boxes 3 and 4, our view is that:

☐

An SEA is required, as the environmental effects are likely to be significant: Please indicate below what Section of the 2005 Act this plan falls within

☐

Section 5(3)

☐

Section 5(4)

☒

An SEA is not required, as the environmental effects are unlikely to be significant: Please indicate below what Section of the 2005 Act this plan falls within

☒

Section 5(3)

☐

Section 5(4)

Contact details:

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Date:

29 June 2020

STEP 2 – CONTEXT AND DESCRIPTION OF THE PLAN

Context of the Plan:

The West Lothian Local Development Plan (Adopted September 2018) sets out the Council's approach to developer contributions and the delivery of infrastructure linked closely with the Action Programme (Adopted February 2019).

Policy **INF 1** (*Infrastructure Provision and Developer Contributions*) sets out the rationale for seeking developer contributions in appropriate circumstances and policy **CDA 1** (*Development in the Previously Identified Core Development Areas*) complements this by explaining that planning conditions and legal agreements will be used to secure infrastructure.

Appendix 2 of the LDP identifies all of the infrastructure projects specific to housing developments that are required to support delivery of the Core Development Areas (CDAs). As such it includes requirements related to education infrastructure, transport infrastructure, cemetery provision and public art provision which are being addressed by separate bespoke guidance.

Description of the Plan:

This supplementary guidance has been prepared in connection with the adopted West Lothian Local Development Plan Policies INF 1 and CDA 1 in relation to Developer Obligations for General Infrastructure for Site Delivery.

The guidance is intended to help implement the provisions of the adopted West Lothian Local Development Plan and specifically aims to ensure that the impact of new development set out in the Plan is mitigated. The guidance is intended to update, strengthen and streamline existing arrangements.

The guidance was the subject of external consultation between **September and October** 2019 and was approved by West Lothian Council Executive on **23 June 2020**.

What are the key components of the plan?

In order to deliver the planned growth set out in the LDP, improvements to infrastructure must be delivered alongside development. The planning system allows, and indeed expects developers to mitigate the impact of their development and to pay for, or contribute towards, improvements to infrastructure that arises as a direct consequence of the development, or from the cumulative impact of the development and which would not otherwise be needed and this guidance has been prepared to explain how the council, through relevant policies of the LDP and with regard to the LDP Action Programme, will secure such improvements and help achieve the outcomes expected from development proposals across West Lothian.

This SG will be an important material consideration in the determination of planning applications and will form the basis for discussions on individual planning applications and the drafting of planning conditions and / or planning obligations.

The guidance provides the justification for requiring developer contributions in respect of infrastructure provision and elaborates on its purpose and scope. It

	<p>explains the policy and legal context in some detail before going on to address the practical mechanics of securing developer contributions and sets out detailed arrangements for the efficient conclusion of Section 75 legal agreements. It concludes by identifying a series of site-specific infrastructure project requirements.</p> <p>The SG seeks to ensure that developers make a fair and realistic contribution to the delivery of necessary infrastructure provision and improvement associated with their development.</p>
<p>Have any of the components of the plan been considered in previous SEA work?</p>	<p>Supplementary Guidance (SG) Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) has been prepared within the context of the West Lothian Local Development Plan which has been subject to a full SEA. The Plan's policies, including those on Developer Obligations for General Infrastructure have therefore previously been assessed and this SG implements these policies.</p> <p>The LDP itself sits within the context of the Strategic Development Plan for South East Scotland (2013), which was the subject of a separate SEA. The scale and location of growth which the infrastructure actions aim to accommodate has therefore been environmentally assessed separately.</p> <p>The SG relates primarily to the collection of financial contributions towards the cost of infrastructure actions needed to mitigate the impact of development. The actions themselves are all either identified in the LDP and/or its Action Programme. All lie within the areas identified for development in the Plan itself.</p> <p>They therefore are considered to fall within the scope of the LDP's spatial strategy, and do not require further strategic environmental assessment as references in this SG.</p>
<p>In terms of your response to Boxes 7 and 8 above, set out those components of the plan that are likely to require screening:</p>	<p>None</p>

**STEP 3 – IDENTIFYING INTERACTIONS OF THE PLAN WITH THE ENVIRONMENT AND
CONSIDERING THE LIKELY SIGNIFICANCE OF ANY INTERACTIONS**

Plan Components	Environmental Topic Areas										Explanation of Potential Environmental Effects	Explanation of Significance
	Biodiversity, flora and fauna	Population and human health	Soil	Water	Air	Climatic factors	Material assets	Cultural heritage	Landscape	Inter-relationship issues		
Supplementary Guidance: 'Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision)'	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	<p>The SG is intended to have a positive benefit on the environment, aiming to ensure that the impact of new development is mitigated through appropriate developer contributions. The SG sits within a wider development plan context which has undergone SEA.</p> <p>The SG shares the strategic objectives of the LDP which include promoting development in the most sustainable locations where its impact can be minimised; promoting community regeneration through the development of brownfield sites; ensuring that all essential infrastructure and facilities are</p>	<p>The SEA for the LDP considered any potential effects. The SG is not considered to have any additional significant environmental effects.</p>

											provided to support development; promoting and enhancing the natural and built environment; providing an improved network of linked open spaces and having regard to climate change by minimising the carbon footprint of development and supporting mitigation and adaption measures.	
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STEP 4 – STATEMENT OF THE FINDINGS OF THE SCREENING

Summary of interactions with the environment and statement of the findings of the Screening:

(Including an outline of the likely significance of any interactions, positive or negative, and explanation of conclusion of the screening exercise.)

In conclusion, it is the view of the responsible authority that SEA is not required for the following reasons:

- ☐ The guidance will not create a new policy framework but provide updated detail and clarification to inform the application of LDP Policies INF 1 and CDA 1;
- ☐ The SG will have no consequential environmental effects

When completed send to: SEA.gateway@gov.scot or to the SEA Gateway, Scottish Government, Area 2H (South), Victoria Quay, Edinburgh, EH6 6QQ.



Environmental Assessment (Scotland) Act 2005

Strategic Environmental Assessment (SEA) Screening Determination

Supplementary Guidance (SG)

Developer Obligations for General Infrastructure for Site Delivery
(excluding transport and education infrastructure, cemetery and public art provision)

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1. Introduction

This statement sets out West Lothian Council's determination in accordance with Section 10(1) of the Environmental Assessment (Scotland) Act 2005 on whether or not a Strategic Environmental Assessment (SEA) is required for Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision).

Screening is the first stage in the SEA process. The purpose of screening is to establish whether or not a Plan, Programme or Strategies (PPS) will have significant environmental effects. Screening takes the form of a formal submission, where the responsible authority (the Council) seeks the views of the following Consultation Authorities on whether a PPS is likely to have significant environmental effects and therefore whether a SEA is required:

- ◆ Historic Environment Scotland (HES)
- ◆ Scottish Environmental Protection Agency (SEPA), and
- ◆ Scottish Natural Heritage (SNH)

As well as consulting the above bodies, responsible authorities are required to take into account the criteria set out in Schedule 2 of the 2005 Act when determining whether or not the plan is likely to have significant effects. The details of this process are contained within the Screening Report.

If the responsible authority and the consultation authorities agree that the plan or programme is unlikely to have significant environmental effects, the responsible authority is required to make a determination to that effect under section 8(1) of the 2005 Act.

2. Record of SEA Determination and Publicity Requirements

Title of Plan, Programme or Strategy:	Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision).
Responsible Authority:	West Lothian Council

Record of SEA Determination:

In accordance with section 9(1) of the 2005 Act, West Lothian Council submitted to the Consultation Authorities a screening report summarising its views as to whether West Lothian Local Development Plan Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) will have significant environmental effects.

In formally determining under Section 8(1) of the Act whether a SEA is required, the Council has taken into account the views of the three Consultation Authorities; Scottish Environment Protection Agency, Scottish Natural Heritage and Historic Environment Scotland which were issued through the SEA Gateway on 13 August 2020.

West Lothian Council and the Consultation Authorities are in agreement that the West Lothian Local Development Plan Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) is not likely to have significant environmental effects and the Council has therefore determined that an SEA will not be required for the plan under Regulation 13(1) of the 2005 Act.

CONSULTATION AUTHORITY	LIKELIHOOD OF SIGNIFICANT ENVIRONMENTAL EFFECTS
Historic Environment Scotland	No
Scottish Environment Protection Agency	No
Scottish Natural Heritage	No
OVERALL VIEW ON LIKELIHOOD OF SIGNIFICANT ENVIRONMENTAL EFFECTS	No

Formal Determination	Statement of Reason
21 August 2020	<p>West Lothian Council's reasoning for determining that there are no overall likelihood of significant environmental effects is as follows:</p> <p>West Lothian Council has prepared a Local Development Plan to replace the West Lothian Local Plan 2009 (WLLP 2009) in accordance with the requirements of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) etc. Act 2006.</p>

	<p>The new West Lothian Local Development Plan (LDP) was adopted on 4 September 2018 and is consistent with the Strategic Development Plan for Edinburgh and South East Scotland (SDP).</p> <p>The LDP focuses on providing for, and managing, future land use change across the council area in line with SESplan SDP requirements. The LDP comprises a development strategy for the period to 2024 and a detailed policy framework to guide future land use in a way which best reflects the SDP vision, strategic aims and objectives.</p> <p>The West Lothian Local Development Plan Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) sets out a framework that West Lothian Council will use to assess planning applications for development on sites in the adopted West Lothian Local Development Plan. The role of the West Lothian Local Development Plan Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) is simply to help interpret and provide further detail in respect of policies that are already set out in the adopted West Lothian Local Development Plan which was subject of a full Strategic Environmental Assessment and which will also be reviewed in the Post Adoption Strategic Environmental Assessment.</p>
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Publicity Requirements for the Determination:

In accordance with section 10(1) of the Environmental Assessment (Scotland) Act 2005, within 28 days of the determination having been made, the Council will send a copy of the formal determination and related statement of reasons (prepared in accordance with section 8(2)(b) to the Scottish Government SEA Gateway and the three Consultation Authorities.

In accordance with section 10(2) of the 2005 Act, within 14 days of the determination having been made, a copy of the determination, along with the Screening Report, shall be provided for inspection by the public at West Lothian Council's principal office at the West Lothian Civic Centre, Howden South Road, Livingston, EH54 6FF or on request from wldp@westlothian.gov.uk.

The determination shall also be published in the West Lothian Courier and Linlithgow Journal & Gazette newspapers to notify the public and will be available to view at www.westlothian.gov.uk from 27 August 2020. A copy of the statutory notice is provided as Appendix 2.

Signature:

Craig McCorriston,
Head of Planning, Economic Development &
Regeneration

Date:

21 August 2020

3. SEA Screening Report

Cover Note

Part 1

To:

SEA.Gateway@gov.scot

or

SEA Gateway
Scottish Government
2-H (South)
Victoria Quay
Edinburgh
EH6 6QQ

Part 2

An SEA Screening Report is attached for the plan, programme or strategy (PPS) entitled:

Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery
(excluding transport and education infrastructure, cemetery and public art provision)

The Responsible Authority is:

West Lothian Council

Complete Part 3 or 4 or 5

Part 3

Screening is required by the Environmental Assessment (Scotland) Act 2005. Our view is that:

☐

An SEA is required because the PPS falls under the scope of Section 5 (3) of the Act and is likely to have significant environmental effects.

☐

An SEA is required because the PPS falls under the scope of Section 5(4) of the Act and is likely to have significant environmental effects.

☒

An SEA is not required because the PPS is unlikely to have significant environmental effects.

Part 4
<input type="checkbox"/> The PPS does not require a SEA under the Act. However we wish to carry out a SEA on a voluntary basis. We accept that because the SEA is voluntary the Statutory 28 days timescale for views from the Consultation Authorities cannot be guaranteed.
Part 5
<input type="checkbox"/> None of the above apply. We have prepared this screening report because:
Part 6
<p>Contact Name: Steve Lovell</p> <p>Job Title: Principal Planning Officer</p> <p>Contact Address: c/o Civic Centre, Howden South, Livingston, EH54 6FF</p> <p>Contact Phone: 01506 282430</p> <p>Contact email: steve.lovell@westlothian.gov.uk</p>
Part 7
<p>Signature: Steve Lovell</p> <p>Date: 21 August 2020</p>

Key Facts	
<p>West Lothian Council has undertaken screening of Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) with regard to the requirements of section 9 of the Environment Assessment (Scotland) Act 2005.</p> <p>The Screening Report has been submitted to the Scottish Government SEA Gateway, setting out the views of West Lothian Council on the likelihood of the significant environmental effects of Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) with regard to the requirements of section 9 of the Environment Assessment (Scotland) Act 2005 and the potential for requiring a SEA.</p>	
Responsible Authority:	West Lothian Council
Title of PPS:	Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site

	Delivery (excluding transport and education infrastructure, cemetery and public art provision)
Purpose of PPS:	<p>The purpose of this Supplementary Guidance (SG) is to support Local Development Plan Policies INF 1 (Infrastructure Provision and Developer Obligations) and Policy CDA 1 (Development in the Previously Identified Core Development Areas).</p> <p>The strategic policy context for the securing developer contributions towards its provision of infrastructure is provided for by Policy 9 of the Strategic Development Plan for South East Scotland (2013).</p> <p>The guidance provides the justification for requiring developer contributions in respect of infrastructure provision and elaborates on its purpose and scope. It explains the policy and legal context in some detail before going on to address the practical mechanics of securing developer contributions and sets out detailed arrangements for the efficient conclusion of Section 75 legal agreements. It concludes by identifying a series of site specific infrastructure project requirements.</p>
What promoted the PPS: (e.g. a legislative, regulatory or administrative provision)	<p>An extensive suite of Supplementary Planning Guidance (SPG) governing developer contributions (with a strong bias to education infrastructure) was previously produced to support Policies IMP1 to 4 and IMP 17 of the West Lothian Local Plan (2009).</p> <p>West Lothian Council adopted the West Lothian Local Development Plan (LDP) on 4 September 2018 after Scottish Ministers confirmed the council could do so. It now forms part of the Development Plan for West Lothian along with the Strategic Development Plan (SDP) for Edinburgh and South-east Scotland.</p> <p>The Council has a programme to prepare a suite of new guidance to support the adopted West Lothian Local Development Plan.</p> <p>Specifically, Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure,</p>

	cemetery and public art provision) has been written with the intention of becoming statutory planning guidance (SG). SG becomes part of the development plan, giving it the same weight in decision making as the LDP. It has already been subject to consultation but will require to be approved by Scottish Ministers prior to its adoption.
PPS Subject: (e.g. transport)	Land use planning
Period covered by the PPS:	Anticipated date of adoption (September 2020) onwards.
Frequency of updates:	Supplementary Guidance will ordinarily be reviewed in tandem with the replacement of the Local Development Plan.
Area Covered by the PPS:	<p>This SG covers the West Lothian Local Development Plan area.</p> <p>To ensure the necessary infrastructure is in place to take account of the impacts of new developments this SG applies to all new and unconsented residential developments in West Lothian including the Core Development Areas (CDAs), namely <i>Armadales, East Broxburn and Winchburgh, , Calderwood (East Calder) and Gavieside (West Livingston) and the strategic development allocation site at Heartlands (Whitburn) and Bangour (Dechmont)</i>. Developments outwith these areas may also be required to contribute to infrastructure requirements to enable development to proceed.</p>
Summary of nature/content of PPS:	<p>A Local Development Plan (LDP) is prepared by the local planning authority, in this case West Lothian Council. It sets out a local interpretation of the requirements of national and strategic policy. In particular it must conform to the approved Strategic Development Plan (SDP) which has been prepared by the strategic planning authority (SESplan) and its purpose is to implement requirements on a more detailed site-specific basis than exists within the SDP.</p> <p>The LDP comprises a written statement detailing a spatial strategy, including policies</p>

	<p>and proposals together with a Proposals Map.</p> <p>LDP's are intended to provide the vision and strategy for how communities will grow and develop in the future and also to provide certainty for communities and prospective investors about where development should take place and where it should not. LDP's also identify detailed policies and proposals which are the basis for decision making on future planning applications.</p> <p>In order to deliver the planned growth set out in the LDP, improvements to infrastructure must be delivered alongside development and the council is entitled to require developers to mitigate the impact of their development and to pay for, or contribute towards, improvements to infrastructure that arises as a direct consequence of the development, or from the cumulative impact of the development and which might not otherwise be needed.</p> <p>The guidance is helpful in establishing the requirement for infrastructure and services that are attributable to a development early in the planning process and ensures that the burden of additional infrastructure is fairly absorbed by the landowner and developer and not by the council.</p> <p>The guidance sets out detailed criteria to assist the development and assessment of proposals for development across the plan area and specifically supports policies IMP 1 and CDA 1 of the LDP in order to facilitate the delivery of housing in West Lothian.</p>
Are there any plan objectives?	No
Copy of PPS attached	Yes
Date:	21 August 2020

Likely Significance of Effects on the Environment
<p>The Council has considered the likely significance of effects on the environment of the Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) with regard to the requirements of section 9 of the Environment Assessment (Scotland) Act 2005. The screening was undertaken with references to the criteria in Schedule 2 of the 2005 Act and is set out in Table 1 (below).</p>

Table 1: Likely Significance of Effects on the Environment

Criteria for determining the likely significance of effects on the environment <i>[The paragraph numbers in the table 1(a), 1(b), 2(a), 2(b) etc. refer to paragraphs in Schedule 2 of the Environmental Assessment (Scotland) Act 2005.]</i>	Likely to have significant environmental effects? (Yes / No)	Summary of significant environmental effects (negative and positive)
The characteristics of plans and programme		
1(a): The degree to which the PPS sets a framework for the projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources.	<p>No</p>	<p>The adopted Local Development Plan sets a framework for assessing applications for new development and this SG sets out the mechanisms and options the Council will use to secure infrastructure contributions to assist the delivery of housing in West Lothian.</p> <p>The guidance provides additional detail and ensures that Policies INF 1 and CDA 1 are accurately and satisfactorily interpreted.</p> <p>The guidance does not seek to set the framework for projects and other activities.</p> <p>The implementation of the Supplementary Guidance is unlikely to result in significant environmental effects that are additional to those previously identified when Policies IMP 1 and CDA 1 underwent SEA assessment as part of the adopted Local Development Plan.</p>
1(b): The degree to which the PPS influences other PPS including those in the hierarchy.	<p>No</p>	<p>Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) provides background guidance to policy within the adopted Local Development Plan and does not seek to directly influence other programmes and strategies.</p> <p>Although in itself new, this SG is largely an update of previous Supplementary Planning Guidance (SPG) which supported the now superseded West Lothian Local Plan.</p> <p>The guidance sets out detailed criteria to assist the development and assessment of</p>

		<p>proposals for development across the plan area and specifically supports policies INF 1 (Infrastructure Provision and Developer Obligations) and Policy CDA 1 (Development in the Previously Identified Core Development Areas).</p> <p>It is at the same time consistent with the wider objectives of the overarching West Lothian Local Development Plan which has itself already undergone SEA.</p> <p>As the purpose of the SG is to provide further details on the scale and nature of developer contributions towards infrastructure provision it does not seek to directly influence other programmes and strategies.</p>
1(c): The relevance of the PPS for the integration of environmental considerations in particular with a view to promoting sustainable development.	No	The SG focuses on the context, requirements and methods of securing developer contributions to fund the infrastructure required to deliver new housing development and is not considered that this criteria has significant relevance.
1(d): Environmental problems relevant to the PPS	No	<p>The SEA of the adopted West Lothian Local Development Plan has previously had regard to the multitude of environmental issues which have the potential to affect West Lothian.</p> <p>The SG does not introduce any new policy considerations and consequently no negative environmental consequences are foreseen as being directly attributable to the SG.</p>
1(e): The relevance of the PPS for the implementation of Community legislation on the environment (for example PPS linked to waste management or water protection)	No	None identified. The SG does not introduce any new policy considerations and would not be directly relevant to this issue. If subsequently applicable, however, this could be considered in the assessment of individual planning applications.

The characteristics of the effects and the area likely to be effected		
2(a): The probability, duration frequency and reversibility of the effects	No	There are no significant environmental effects that can be attributed to the SG.

2(b): The cumulative nature of the effects	No	There are no significant environmental effects that can be attributed to the SG.
2(c): Trans-boundary nature of the effects (i.e. environmental effects on other EU Members States	No	No trans-boundary effects have been identified. The SG is in itself unlikely to have significant environmental impact beyond West Lothian.
2(d): The risks to human health or the environment (for example due to accidents)	No	No significant effects have been identified. Development proposals allied to the provision of infrastructure will in any event be assessed in detail as and when planning applications are submitted.
2(e): The magnitude and spatial extent of the effects (geographical area and size of population likely to be affected)	No	No significant effects have been identified. The SG will support other relevant policies in the LDP which will be relied upon to help determine the acceptability of new development but the SG only relates to development that takes place within the administrative area of West Lothian and its effect is invariably constrained.
2(f): The value and vulnerability of the area likely to be affected due to: <div style="margin-left: 40px;"> (i) Special natural characteristics or cultural heritage (ii) Exceeded environmental quality standards or limit values; <u>or</u> (iii) Intensive land use </div>	No	<p>The overarching SEA for the LDP has previously considered any potential significant environmental effects and provided mitigation measures where necessary.</p> <p>It is considered that adherence to the requirements of the SG will be of negligible consequence and will not in any event adversely affect the value and vulnerability of the criterion.</p>
2(g) The effects on areas or landscapes which have a recognised national, Community or international protection status.	No	<p>Any development will need to comply with the development plan which includes a range of policies to ensure the cumulative impact of development does not adversely affect designated landscapes and the principal landscape character/type of the area. There will be no implications for this PPS.</p> <p>The overarching SEA for the LDP has previously considered potential effects. It is</p>

		considered that adherence to the requirements of the SG will be of negligible consequence and will not in any event adversely affect the value and vulnerability of the criterion.
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Summary of Environmental Effects

The Council has considered the likely significance of effects on the environment of Supplementary Guidance (SG) – Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) and these are set out below.

Table 2: Summary of Environmental Effects

Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) supports Local Development Plan Policies INF 1 (Infrastructure Provision and Developer Obligations) and Policy CDA 1 (Development in the Previously Identified Core Development Areas) by providing further guidance and detail on the circumstances in which developers will be required to contribute towards infrastructure provision and the mechanism for doing so.

The SG is intended to help implement the provisions of the adopted West Lothian Local Development Plan and specifically aims to ensure that the infrastructure impact of new development as set out in the LDP is mitigated. The guidance is intended to update, strengthen and streamline existing arrangements.

The SG does not create any new policy and is unlikely to have any significant effect on the environment as it deals only with the detail of infrastructure delivery allied to development which is for the most part already allocated in the LDP or which the LDP would support in principle.

The West Lothian Local Development Plan has itself already undergone an extensive SEA examining its policies, proposals and land use allocations and the council therefore concludes that Supplementary Guidance (SG) – Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision) does not require a Strategic Environmental Assessment.

4. Responses from Consultation Authorities

CONSULTATION AUTHORITY	LIKELIHOOD OF SIGNIFICANT ENVIRONMENTAL EFFECTS
Historic Environment Scotland	No
Scottish Environment Protection Agency	No
Scottish Natural Heritage	No
OVERALL VIEW ON LIKELIHOOD OF SIGNIFICANT ENVIRONMENTAL EFFECTS	No

- SEA GATEWAY
- SEPA
- HISTORIC ENVIRONMENT SCOTLAND
- SCOTTISH NATURAL HERITAGE

5. Appendices

Appendix 1 – Supplementary Guidance (SG) – Developer Obligations for General Infrastructure for Site Delivery (excluding transport and education infrastructure, cemetery and public art provision)

Appendix 2 - Statutory Notice

Local Government and Communities Directorate
Planning and Architecture Division

a b c d

T: 0131-244 7242
E: SEA.Gateway@gov.scot

Steve Lovell
Principal Planning Officer
Development Planning

01580 - Screening - West Lothian Council - Developer Obligations for General Infrastructure for Site Delivery –

13 August 2020

Dear Steve,

With reference to the Screening document you submitted on 13 July 2020.

The Consultation Authorities have now considered your screening request as per **Section 9(3)** of the **Environmental Assessment (Scotland) Act 2005**. I have attached the individual letters from the Consultation Authorities, outlining their views and opinions.

Please note, these are the views and opinions of the Consultation Authorities on the likelihood of significant environmental effects arising from the plan or programme and not a judgement on whether an SEA is required. It is therefore for the Responsible Authority to determine whether an SEA is required in the circumstances. Where possible the Consultation Authorities may have offered supplementary information and/or advice for you to consider, which you should find helpful.

As the Consultation Authorities have now notified you of their views, you should now refer to the 2005 Act to consider your next step. You should of course take into account the advice offered by the Consultation Authorities.

You should note, as per Section 10 of the 2005 Act, that within 28 days of your determination about whether an SEA is required or not, a copy of the determination and any related statement of reasons must be passed to the Consultation Authorities. This may be done via the SEA Gateway.

If you have any queries or would like me to clarify any points, please call me on 0131 244 7242.

Kind regards,

Antonia Georgieva

Environmental Assessment and Policy Officer

Our ref: PCS/172302
SG ref: SEA/01580/SCR

If telephoning ask for:
Silvia Cagnoni-Watt

4 August 2020

Steve Lovell
Principal Planning Officer West Lothian Council Civic Centre
Howden South Road
Livingston
EH54 6FF

By email only to: SEA_Gateway@gov.scot

Dear Steve

Environmental Assessment (Scotland) Act 2005
West Lothian Council
Supplementary Guidance - Developer Obligations for General Infrastructure for Site Delivery - Screening Report

Thank you for your Screening Report consultation which SEPA received via the Scottish Government SEA Gateway on 24 July 2020.

In accordance with Section 9(3) of the Environmental Assessment (Scotland) Act 2005 we have considered your screening report using the criteria set out in Schedule 2 for determining the likely significance of effects on the environment. Having reviewed the Screening Report, we consider that in respect of our main areas of interest (air, water, soil, human health, material assets (of which we have a specific interest in waste) and climatic factors) the Supplementary Guidance (SG) - Developer Obligations for General Infrastructure for Site Delivery is unlikely to have significant environmental effects. Although we are of the view that significant environmental effects are not likely, it is for the West Lothian Council as Responsible Authority to make a formal determination taking into account the consultation responses received.

We understand that the guidance will not create a new policy framework but provide updated detail and clarification to inform the application of LDP Policies INF 1 and CDA 1, which were already assessed under the SEA of the Local Development Plan.

Please note that although we do not consider that the SG will have significant strategic effects on the environment we do consider that it may have some effects. We would therefore welcome consultation on the draft proposals which should be directed to our local Planning Service team at planning.se@sepa.org.uk.

If it is formally determined that SEA is required, you will be aware that the next stage requires the Responsible Authority to consult the Consultation Authorities on the proposed scope and level of detail to be included within the Environmental Report. This can be undertaken through preparation



Chairman
Bob Downes
Chief Executive
Terry A'Hearn

SEPA Edinburgh Office
Silvan House, 3rd Floor, 231 Corstorphine Road,
Edinburgh EH12 7AT.
www.sepa.org.uk • customer enquiries 03000 99 66 99

of a concise Scoping Report. We would encourage you to use the scoping process to focus the assessment on those SEA issues upon which there are likely to be significant environmental effects, to outline the baseline information you consider as most relevant and explain your proposed method of assessment. To assist with this process we have produced [SEA topic guidance](#) for those issues which fall within our remit. Further information on scoping can be found in the [Scottish Government SEA Guidance](#) (sections 3.4 to 3.8 in particular).

We are committed to providing early and focused advice and supporting continuous engagement and therefore if it is determined that SEA is required we would welcome the opportunity to meet with you and discuss these issues prior to the formal consultation.

Should you wish to discuss this screening consultation please do not hesitate to contact me via our SEA Gateway at sea.gateway@sepa.org.uk.

Yours sincerely

Silvia Cagnoni-Watt
Senior Planning Officer

Ecopy: sea.gateway@hes.scot; SEA_GATEWAY@nature.scot



By email to: sea_gateway@gov.scot

Mr Steve Lovell
Principal Planning Officer
SESplan
Development Planning
West Lothian Council

Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Enquiry Line: 0131-668-8716
Switchboard: 0131 668 8600
HMConsultations@hes.scot

Our case ID: 300020246
Your ref: 01580 – Screening

12 August 2020

Dear Mr Lovell

Environmental Assessment (Scotland) Act 2005
01580 - Screening - West Lothian Council - Developer Obligations for General
Infrastructure for Site Delivery

Screening Report

Thank you for your consultation which we received on <<date>> about the above screening report. We have reviewed this report in our role as a Consultation Authority under the above Act, in accordance with the requirements of Section 9(3). In doing so we have used the criteria set out in Schedule 2 for determining the likely significance of the effects on the environment.

Historic Environment Scotland's view

In light of the information and reasoning set out within the screening report, we are content to agree with your view that there are unlikely to be significant environmental effects for the historic environment.

Historic Environment Scotland's comments

We understand that the guidance will not create a new policy framework but will provide updated detail and clarification to inform the application of Local Development Plan (LDP) Policies INF 1 and CDA 1, which have been subject to environmental assessment as part of the LDP process. You consider that the guidance will not have any additional environmental effects, and we agree with this view in relation to effects on the historic environment.

Next steps

The Environmental Assessment (Scotland) Act 2005 requires you as the Responsible Authority to determine within 28 days whether an environmental assessment is required and to inform the Consultation Authorities accordingly. This may be done via the SEA Gateway (sea_gateway@gov.scot).



We hope our advice is helpful to you in making this determination. Please feel welcome to contact us if you have any questions about this response. The officer managing this case is Virginia Sharp who can be contacted by phone on 0131 668 8704 or by email at Virginia.Sharp@hes.scot.

Yours sincerely

Historic Environment Scotland



Steve Lovell
Principal Planning Officer
West Lothian Council Civic Centre
Howden South Road
Livingston EH54 6FF

Sent by email via: sea.gateway@gov.scot

Date: 03 August 2020
Our ref: CEA159951

Dear Steve

Environmental Assessment (Scotland) Act 2005: Developer Obligations for General Infrastructure for Site Delivery – Screening Determination

I refer to your screening consultation submitted on 29 June 2020 via the Scottish Government SEA Gateway in respect of the above plan. In accordance with Section 9(3) of the Environmental Assessment (Scotland) Act 2005, we have considered your screening report using the criteria set out in Schedule 2 for determining the likely significance of effects on the environment.

We understand that the Supplementary Guidance has been prepared in support of Local Development Plan (LDP) Policies CDA1 and INF1 with the intention of updating and streamlining existing arrangements. It does not itself identify development beyond that already assessed during preparation of the LDP. On that basis, we agree that the guidance is not likely to have significant environmental effects.

Please note that this consultation response provides a view solely on the potential for the plan or programme to have significant environmental effects. We cannot comment on whether or not the plan or programme meets other criteria determining the need for SEA as set out in the Act.

Should you wish to discuss this screening determination, please do not hesitate to contact me on 0131 316 2644 or via SNH's SEA Gateway at sea.gateway@nature.scot.

Yours sincerely

Vivienne Gray
Planning Advisor
Supporting Good Development Team

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