

Proposed Aberdeen Local Development Plan 2015 Representation Form

Please use this form to make comments on the Proposed Aberdeen Local Development Plan, ensuring that your comments relate to a specific issue, site or policy in either the Proposed Plan, Proposed Supplementary Guidance, Proposed Action Programme or Strategic Environmental Assessment Environmental Report. Please include the relevant paragraph(s) and use a separate form for each issue you wish to raise.

The consultation period runs between Friday 20th March and Monday 1st June 2015. Please ensure all representations are with us by 5pm on Monday 1st June.

Name	Mr <input type="radio"/> Mrs <input checked="" type="radio"/> Miss <input type="radio"/> Ms <input type="radio"/>	Elaine Farquharson-Black
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On behalf of (if relevant)		
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Please tick if you would like to receive all future correspondence by e-mail

What document are you commenting on?	Proposed Plan	<input checked="" type="checkbox"/>
	Proposed Supplementary Guidance	<input checked="" type="checkbox"/>
	Proposed Action Programme	<input type="checkbox"/>
	Strategic Environmental Assessment Environmental Report	<input type="checkbox"/>
Policy/Site/Issue	Objection to Policy H5 and Supplementary Guidance on Affordable Housing	Paragraph(s)

What would you like to say about the issue?

SEE PAPER APART

What change would you like to see made?

SEE PAPER APART

Please return the completed form by:

- post to the Local Development Plan Team, Aberdeen City Council, Business Hub 4, Ground Floor North, Marischal College, Broad Street, Aberdeen AB10 1AB; or
- email to ldp@aberdeencity.gov.uk

The representation form can be filled in, saved, e-mailed and/or printed. You must "save as" to ensure the completed form is saved with the changes you have made. If you need more space, please fill out another representation form or send a word document attachment via e-mail with your completed representation form. **Please ensure all representations are with us by 5pm on Monday 1st June.**

Thank you. For more information, please visit www.aberdeencity.gov.uk/aldp2016 or to contact the Local Development Plan Team call 01224 523470.

Data Protection Statement

The comments you make on the Proposed Plan will be used to inform the Local Development Plan process and the Examination into the Local Development Plan by the Scottish Ministers' Reporter. You must provide your name and address for your representation to be considered valid, and this information will be made publicly available. Other personal contact details such as telephone and e-mail will not be made public, although we will share these with the Reporter, who may use them to contact you about the comments you have made. For more information about how Aberdeen City Council maintains the security of your information, and your rights to access information we hold about you, please contact Andrew Brownrigg (Local Development Plan Team Leader) on 01224 523317.

Aberdeen Local Development Plan 2015

Proposed Plan Response

Paper Apart

Burness Paull LLP

Objection to Policy H5 and Supplementary Guidance on Affordable Housing

What would you like to say about the issue?

We are concerned that there is tension between the wording in Policy H5 of the draft Plan, the introductory text in the Supplementary Guidance and the wording in later parts of the Guidance. There are conflicting statements and clarification is required to enable landowners/developers to understand how the requirement to provide affordable housing on all new housing developments of five units or more will operate in practice.

We set out below our primary concerns:

1. Percentage requirement

Policy H5 requires all new housing developments to contribute no less than 25% of the total number of units as affordable housing, yet the Supplementary Guidance does envisage circumstances where the percentage may be reduced. The Guidance envisages discussions at the time of application or pre-application to determine the actual requirement and form of provision.

It should be made clear that the percentage requirement may be reduced from 25% as part of these discussions, but cannot be increased other than if the applicant proposes a greater provision than required by policy.

Further, the Guidance should provide more detail on what will be taken into account in considering the appropriate percentage requirement. In addition to “exceptional costs”, market conditions and availability of funding will also be relevant.

2. Tenure

Paragraph 3.83 of the Plan advises that “*To maximise the provision of affordable housing it is the aim of the Council to take a flexible approach to its delivery*” and paragraph 6.2.2 of the Supplementary Guidance advises that intermediate housing will have a significant role to play in meeting housing need, yet social rented housing is identified as the Council’s preference for affordable housing. The priority preference runs contrary to having a mix of tenures in new developments, as required by the Strategic Development Plan.

This preference means that an applicant requires to persuade the Council planning officers that other tenures are appropriate for a site.

In practice, legal agreements, particularly for large developments, require to be entered into before the Council or Housing Association knows whether it will have funding for affordable housing in each phase of the developments. Accordingly, the obligation on landowners/developers is normally to come forward with an affordable housing scheme or schemes at an agreed stage in the development. Such scheme must include at least one of the tenures listed in the Supplementary Guidance and justification for the tenure requires to be put forward.

It is submitted that the preference for social rented housing in the Supplementary Guidance should be deleted.

3. Viability

Under the headings "*Instances when Contributions may be reduced*" and "*Developer Viability Statement*", reference is made to any affordable housing requirement being reduced in exceptional circumstances if the cumulative burden of paying for infrastructure would result in the site being unviable. It is not clear from the Guidance what the Council will consider to be "*unviable*" in terms of developer profit nor how this applies to a landowner who is being required to provide the land for affordable housing for little or no value.

Although the text suggests that developers will be expected to take the requirement for affordable housing into account in negotiating a land value with site owners, this does not, in practice, mean that more is paid for the land which will be developed for mainstream housing to compensate for the requirement to provide affordable housing.

Further detail is required on the approach to be adopted in assessing viability for developers and landowners.

4. Affordable Housing Provision

Paragraph 3.83 of the Plan advises that "*To maximise the provision of affordable housing it is the aim of the Council to take a flexible approach to its delivery*". The subsequent paragraph suggests that offsite provision can be agreed with the Council. The introductory text in the Supplementary Guidance, section 6.2.1, advises that discussions with the Council will determine the actual requirement and form of provision and section 6.2.2 identifies three ways in which affordable housing requirements can be made – on-site; off-site; commuted payments- all of which suggests flexibility on the method of provision.

However the subsequent sections on developments of fewer than 20 units or 20 units and above, is more prescriptive and removes the applicant's ability to come forward with a mix of provision. Furthermore, the text on Off-site provision advises that the developer will require to prove that on-site provision is not viable before off-site provision may be made. There is no reference to taking into account the views of RSLs who may indicate that the particular site is

not suitable for them. Paragraph 21 of PAN 2/2010 acknowledges that a site may be unsuitable for affordable housing for a variety of reasons not just viability.

The Supplementary Guidance should implement the flexible approach to provision of affordable housing which the Plan claims to support.

It is noted that there is no reference to paragraph 19 of PAN 2/2010 and the value of serviced land which is to be transferred to an RSL or a local authority. The Guidance should make it clear that the value relates to its end use for affordable housing and is not to be transferred at nil value.

It is also noted that RSLs may be entitled to dispose of social housing units/land which has been provided by a landowner/developer. If this is a disposal at full market value, the landowner/developer should be entitled to a clawback of part of the uplift in value on the sale.

5. Off-site provision

The conditions for provision of off-site affordable housing state that where a developer is not constructing the off-site affordable housing, the affordable housing site must be transferred to the Council or an RSL prior to the delivery of any houses on the primary site. This will not necessarily work in practice and may impact on the delivery of a 5 year effective supply of housing land.

Affordable housing is often brought forward in phases to coincide with funding which is available by the Council or RSLs. It may not be clear at the start of a development how each phase of affordable housing is to be provided. It cannot be a pre-condition of delivery of any houses on the main site that all land for affordable housing must be transferred to the Council or an RSL first.

There are similar concerns about preventing units being constructed on the primary site where the developer is also providing units off site. This may result in a hiatus in development on the main site which will lead to longer build times and higher development costs. This ultimately impacts on the price of housing.

The timing of off site provision should be agreed on a site by site basis.

The conditions also require the alternative site to be located in the same submarket area as the primary site. There is no definition of "submarket area". Is this a reference to the three submarket areas identified in Table 1? Paragraph 21 of PAN 2/2010 refers to meeting need in the same housing market area. It is noted that there is no requirement for the Council to use commuted payments in the same submarket area as the primary site.

The requirement for off site provision to be in the same submarket area should be deleted.

The conditions for off-site provision should make it clear that the amount of units provided off site is equivalent to the percentage requirement imposed on the primary site – 25% if there is no on-site provision on the primary site or the a lesser percentage of there is part on-site provision. This clarification is essential as in recent discussions with the Council over off-site provision, the Council has added the total number of units on the primary site to the number of off site units and then applied a 25% requirement, thus inflating the offsite provision. For example, a development of 100 units should provide 25 affordable units. If these are not on-site, the off site provision should be 25 units. The Council claims that the overall development is actually 125 units, thus requiring 31.25 units to be provided off site. In other words, where off-site provision is envisaged, the Council is actually applying a higher percentage requirement to the primary site than H5 permits.

6. Commuted sums

The Supplementary Guidance proposes to introduce new levels for commuted sums in lieu of on site affordable housing. It is not clear how these sums reflect the wording of PAN 2/2010 which says that the commuted sum will be “*a value equivalent to the cost of providing the percentage of serviced land required by the policy*”.

PAN 2/2010 suggests that the value equivalent to the cost of providing serviced affordable housing land should be determined by a valuer, and by arbitration failing agreement. Further the commuted sum should be a matter for negotiation between the developer and the local authority having regard to development costs, other contributions that are being sought and factors such as layout and design.

However, Table 1 advises that the commuted sum will be fixed for three submarket areas and differ for flats and houses. At present the commuted sum is a flat rate of £25,000. It is noted that in the “Prime” area, the commuted sum will increase to £85,000 for houses.

There is no detail provided on the valuations which sits behind these figures or what consideration has been given to the viability of a development in arriving at these numbers.

It is submitted that the proposed amounts listed as commuted sums are deleted. Either the commuted sum should revert to £25,000 or there should be no stated value and the amount will be worked out on a case by case basis, on the understanding that the commuted sum is equal to the price paid for serviced affordable housing land in the relevant settlement.

If the submarket areas are retained, the Council must be obliged to use the commuted sum in the submarket area in which the primary site is located and which formed the basis of the calculation.

7. Low Cost Home Ownership prices

Table 2 sets out the proposed benchmark prices for the sale of Low Cost Home Ownership Units. No information is provided on how these figures have been calculated. Furthermore, it is noted that the prices apply to the relevant size of unit across the City, yet the Council is

seeking different commuted sums from applicants depending on different submarket areas. If the commuted sums are linked to the cost of serviced land in the three areas, the price of Low Cost Home Ownership Units must also vary in the three areas. If the price of Low Cost Home Ownership Units is based on affordability thresholds and is therefore fixed, the Council needs to recognise that not all sites will be suitable for Low Cost Home Ownership Units at these prices.

8. Specialist Housing

It is noted that the Guidance does not consider the provision of student accommodation as affordable housing, yet it acknowledges that student accommodation fulfils a specific need in the City. A lack of student accommodation places pressure on the private rented sector, increasing rental prices and thus making rented accommodation unaffordable for more people. It is clear that provision of student accommodation has a direct impact on affordable housing and should therefore be considered as an alternative method of meeting a site's affordable housing contribution.

9. Key Workers

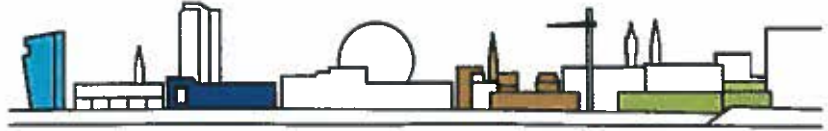
Despite increasing difficulties for key workers accessing housing in the City, the Guidance fails to set out any criteria for providing accommodation for key workers as part of an affordable housing obligation. This conflicts with the Plan's desire to have a flexible approach to affordable housing. It is understood that the Council has prepared key worker criteria, much in the same way as it identifies people to whom Low Cost Home Ownership Units can be sold and the prices for such units. To assist transparency, the Guidance should set out the relevant criteria for key worker accommodation and confirm that it will be considered as provision of affordable housing.

What changes would you like to see made?

The following changes are sought to Policy H5 and the Supplementary Guidance on Affordable Housing:

- 1 It should be made clear that the percentage requirement of affordable housing may be reduced from 25% as part of discussions, but cannot be increased other than if the applicant proposes a greater provision than required by policy. Further, the Guidance should provide more detail on what will be taken into account in considering the appropriate percentage requirement.
- 2 The preference for social rented housing in the Supplementary Guidance should be deleted. The Supplementary Guidance should implement the flexible approach to provision of affordable housing which the Plan claims to support.
- 3 Further detail is required on the approach to be adopted in assessing viability for developers and landowners.

- 4 The Guidance should make it clear that the value of serviced land which is transferred to an RSL or the Council relates to its end use for affordable housing and is not to be transferred at nil value.
- 5 The Guidance should make it clear that if an RSL or the Council disposes of land/units transferred to it at affordable land/housing values at a subsequent date for full open market value, the landowner/developer should be entitled to a clawback of part of the uplift in value on the sale.
- 6 The timing of off site provision should be agreed on a site by site basis.
- 7 The requirement for off site provision to be in the same submarket area should be deleted.
- 8 The conditions for off-site provision should make it clear that the amount of units provided off site is equivalent to the percentage requirement imposed on the primary site, which cannot be more than 25%.
- 9 In the absence of justification for the commuted sums, the proposed amounts listed as commuted sums should be deleted. Either the commuted sum should revert to £25,000 or there should be no stated value and the amount will be worked out on a case by case basis, on the understanding that the commuted sum is equal to the price paid for serviced affordable housing land.
- 10 If the submarket areas are retained, the Council must be obliged to use the commuted sum in the submarket area in which the primary site is located and which formed the basis of the calculation.
- 11 If the commuted sums are linked to the cost of serviced land in the three areas, the price of Low Cost Home Ownership Units must also vary in the three areas. If the price of Low Cost Home Ownership Units is based on affordability thresholds and is therefore fixed, the Council needs to recognise that not all sites will be suitable for Low Cost Home Ownership Units at these prices.
- 12 Provision of student accommodation should be considered as an alternative method of meeting a site's affordable housing contribution.
- 13 To assist transparency, the Guidance should set out the relevant criteria for key worker accommodation and confirm that it will be considered as provision of affordable housing.



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On behalf of (if relevant)		
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What document are you commenting on?	Proposed Plan		<input checked="" type="checkbox"/>
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	Proposed Action Programme		<input type="checkbox"/>
	Strategic Environmental Assessment Environmental Report		<input type="checkbox"/>
Policy/Site/Issue	Objection to Policy I1 and Supplementary Guidance on Infrastructure Delivery and Planning Obligations	Paragraph(s)	

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Aberdeen Local Development Plan 2016

Proposed Plan Response

Paper Apart

Burness Paull LLP

Objection to Policy I1 and Supplementary Guidance on Infrastructure Delivery and Planning Obligations

What would you like to say about the issue?

We regularly advise clients on planning obligations which are sought by Aberdeen City Council as part of the planning process.

In light of the practical application of the current policy in the Aberdeen Local Development Plan 2012, we have considerable concerns that Policy I1 and the related Supplementary Guidance is seeking to place the Council's existing practice on a statutory footing without a proper examination of the suitability of the methodology adopted by the Council and the amounts which are set out in the Supplementary Guidance.

Our principal concerns are as follows:

1 Policy I1

Policy I1 advises that the Council will require developers to meet or contribute to the cost of providing or improving infrastructure or facilities where a development will either individually or cumulatively place additional demands on community facilities or infrastructure. This could be by requiring new facilities or exacerbating existing deficiencies. The policy advises that *"The level of provision or contribution required will relate to the development proposed either directly or to the cumulative impact of development in the area and be commensurate to its scale and impact."*

It is surprising that there is no reference either in the policy, the supporting text or the Supplementary Guidance to the policy tests contained in Scottish Government Circular 3/2012.

It is submitted that the wording of Policy I1 requires to be amended to make it clear that the contributions must relate fairly and reasonably in scale and kind to the proposed development as well as being necessary to make the proposed development acceptable in planning terms.

Further it is submitted that the Policy should more clearly reflect that contributions will not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow

permission to be granted for a particular development. This would ensure that the obligations would be in accordance with paragraph 21 of Circular 3/2012.

2 Listed items

It is submitted that the paragraphs below the heading Supplementary Guidance Planning Obligations on page 33 of the Plan must be also be qualified by clarification that contributions will not be required from all developments towards all of the items listed and will be considered on a site by site basis, having regard to the tests in Circular 3/2012. We are concerned that when read in conjunction with Policy I1, this will provide statutory support for requests towards all items. Indeed the Supplementary Guidance on Affordable Housing advises, in section 6.2.2, that “*a list of developer contributions for each site has been prepared and is contained within the Local Development Plan Infrastructure and Planning Obligations Supplementary Guidance.*” This reinforces the Council’s current approach which is to require developers/landowners to make contributions towards all of the items listed, according to the application of a formula, and the burden is on the developer/landowner to demonstrate that the particular contribution is not justified.

3 Supplementary Guidance - Introduction

As with Policy I1, the wording of the Supplementary Guidance requires amendment to comply with Circular 3/2012. The requirements still need to be justified on a case by case basis against the tests in the Circular and the need for, and extent of, contributions should relate to the impact that the specific development would have on a particular item of infrastructure.

It must be made clear that the contributions sought under each heading will relate directly to the impact which the particular development has, in scale and kind, and not just to a general need.

4 Supplementary Guidance – Management of Funds

- (a) The Guidance advises that contributions will be used within 7 years of the date of implementation of a planning permission or the last date of payment where the phased payments are made. No justification is given for the 7 year period. Currently the period in legal agreements is 5 years. Policy I1 states that “*Development must be accompanied by the infrastructure, services and facilities required to support new or expanded communities*” yet under the Guidance the Council’s obligation to use the contributions within 7 years of the last date of payment of a contribution will mean that it in most developments the Council won’t actually provide the facilities which it has deemed necessary for the development to proceed until many years after the development has been completed.

It is submitted that the period should be reduced to 5 years and the Council should be obliged, where possible, to use the contributions in a phased manner to ensure that they themselves comply with Policy I1.

- (b) The Guidance advises that the Council will use 9% of the interest from the contributions which it has on deposit to fund the monitoring and management of the developer obligations fund. This is contrary to the decision in *Oxfordshire CC v Secretary of State for Communities and Local Government, Cala Management Ltd, Freeman, Freeman, Freeman and Cherwell DC* [2015] EWHC 186 (Admin). Although considering the English legislation on planning obligations, the Court held that payment of a monitoring/administration fee was not necessary to make a development acceptable in planning terms; that it is part of a Planning Authority's functions to administer, monitor and enforce planning obligations in legal agreements; and that there was nothing in the legislation nor Government guidance which suggest that authorities could claim administration or monitoring fees. These findings equally apply to the Scottish system. Any interest which has been accrued on monies which the Council has held on deposit (for potentially many years in large developments having regard to point 4(a) above) should be put towards the cost of providing the infrastructure and potentially set off against the index linking which the Council applies to the level of the contribution.

5 Supplementary Guidance – Securing of Contributions

The Council should not be entitled to require the applicant to pay for the Council's costs of preparing a legal agreement dealing with the provision of developer obligations. The execution of a legal agreement is a requirement sought by the Council, not by the applicant, as a precondition for the release of planning permission. It should, therefore, already be covered by the planning fee paid to process the planning application. We have particular concerns that Planning Authorities now routinely appoint external agents to negotiate the terms of draft agreements, without seeking approval for that appointment from the applicant who will be required to pay the external agents' fees. The external agents have then refused to commit to a cap on their fees; refused to provide details of their hourly rates; made an undertaking to pay their fees a pre-condition of issuing the planning permission; and passed on their costs of agreeing a fee undertaking to the applicant. It is submitted that requiring the applicant to pay the Council's fees also contravenes the findings in the *Oxfordshire CC* case referred to above.

The requirement to meet the Council's costs for preparing a legal agreement should be removed from the Supplementary Guidance.

6 Strategic Transport Contributions

The listed items include contributions towards a strategic transport fund which is currently contained within non-statutory guidance which has been adopted by the SDPA and Aberdeen City and Shire Councils. The non-statutory guidance was criticised by the Reporter during the SDP examination (Document BP1) and the SDPA were required to prepare new guidance in order to be able to adopt it as statutory guidance pursuant to the SDP. There has been no opportunity so far to examine the revised supplementary guidance in a public forum. It is inequitable to try to give the non-statutory guidance on STF, and the revised guidance, a statutory status through a cross reference in the LDP without putting forward the guidance for

examination as part of the LDP process. This lacks the transparency which the Chief Planner requires of the development planning process (Document BP2).

Any requirement to contribute towards regional items still requires to be justified on a case by case basis against the tests in Circular 3/2012.

Pending ratification of any supplementary guidance on strategic transport contributions by the Scottish Ministers, the LDP must either remove reference to contributions being required under said guidance, or make the guidance available for examination by the Scottish Ministers as part of the LDP process.

7 Healthcare

The LDP seeks contributions towards medical, dental and community pharmacies which provide NHS funded services. At present, landowners/developers are being required to make land available to the NHS for the construction of/use as medical centres, dental practices and pharmacies. This approach ignores the fact that the majority of medical practices in the area currently own their existing premises either as individuals or as part of their pension plan and the NHS pays them rent. These practices are being gifted land within developments to enable them to move to new facilities, also funded by developer contributions, leaving them free to either sell their existing premises or rent them to other businesses.

In our submission this contravenes the underlying principles of Circular 3/2012.

The Plan should only be able to seek contributions towards the expansion of existing facilities for which the development generates a need or provision of land for new facilities where there is no existing medical centre serving the development.

8 Regional SUDS

The Guidance advises that the Council has identified sites with potential to construct Regional SUDS, No information is provided on where these sites are identified. The Guidance suggest that these may be provided as part of developments, but there is no indication as to how the Council intends to recompense a landowner/developer for the loss of developable land.

9 Methodology

As highlighted above, our main concern is that the Council's approach is to require contributions from all developments towards all facilities listed. We have the following additional concerns with the methods of calculation:

- a) no background information is provided on the contributions/rates which will require to be paid towards SUDS, education, healthcare, core paths, open space, community and sports/ recreation facilities. Justification is required to demonstrate that these amounts are fairly and reasonably related to the provision of the relevant facilities.

For example, the Council requires to demonstrate that the costs for education facilities relate to the Scottish Futures Trust standard for schools.

- b) no detail is provided on assessing the impact of developer contributions on the viability of a development and what this means both to a developer and to a landowner.
- c) the Council's use of a formula based on floorspace to establish the requirements for healthcare and community facilities does not reflect a proper assessment of whether a development creates a need for additional facilities. Applying a formula based on every house requiring a specified amount of community facilities (which is what the Council do in practice) ignores the availability of existing facilities, potential for longer opening hours etc, and is designed to support a requirement to make contributions for every house. This conflicts with Circular 3/2012.
- d) It would appear that the Council is now going to seek contributions from residential developments where the school roll is expected to exceed "planned capacity". The Guidance does not specify how this is to be calculated, but it is believed to be 80% of the maximum capacity of the school. It is not clear why the Council need to retain 20% capacity within the school. If there is 20% spare capacity within the school, how can it be argued that the development is creating a need for additional provision?
- e) The methodology for calculating the impact of a development on a school (ie the "Over Capacity") is flawed and lacking in transparency. As demonstrated by Figure 2, regardless of the phasing of a development, the Council calculate Over Capacity by identifying the number of pupils which they think will be produced by the development (total number of units x pupil product ratio) and then assume that all of those children will be entering the relevant school within a 5 year period. Indeed the worked example assumes that all 200 units of a development are constructed in year 2015, yet they then assume that the school roll increases in the next 5 years is attributable to that development. This ignores the actual phasing of the development where the number of units constructed may only be 20 units per year over 10 years. It must be borne in mind that as the development proceeds existing children in the school will be leaving and so space will be released within the school which pupils from the new development will take up, helping to maintain the school roll.

The baseline table shows development of 20 units per annum being added and the school roll actually reducing in 5 of the years between 2015 and 2020. Presuming all 200 units are constructed in one year, or even 5 years, is artificially inflating the impact which a development will have on the school. By using this methodology, the Council is requiring contributions from a development based on an artificially created Over Capacity Figure.

It is submitted that the Council require to look at the proposed phasing of the development properly to ascertain the anticipated impact over the construction of the

development, building in review clauses as necessary if that phasing goes beyond the Council's current school roll forecasting horizon.

- (f) In terms of providing land for the school, this should only be provided at nil cost for the proportion needed in support of the new development. It is not proportionate or fair for a development to provide land to meet existing need outwith the site in question.

What change would you like to see made?

1. The wording of Policy II requires to be amended to make reference to the policy tests in Circular 3/2012 and it should be clear that the contributions must relate fairly and reasonably in scale and kind to the proposed development as well as being necessary to make the proposed development acceptable in planning terms.
2. The Policy should more clearly reflect that contributions will not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow permission to be granted for a particular development.
3. The paragraphs on page 33 of the Plan and the Supplementary Guidance itself must be qualified by clarification that contributions will not be required from all developments towards all of the items listed and will be considered on a site by site basis, having regard to the tests in Circular 3/2012.
4. It must be made clear that the contributions sought under each heading will relate directly to the impact which the particular development has, in scale and kind, and not just to a general need.
5. The requirement to meet the Council's costs for monitoring payment of developer contribution and preparing a legal agreement should be removed from the Supplementary Guidance.
6. Pending ratification of any supplementary guidance on strategic transport contributions by the Scottish Ministers, the LDP must either remove reference to contributions being required under said guidance, or make the guidance available for examination by the Scottish Ministers as part of the LDP process.
7. The Plan should only be able to seek contributions towards the expansion of existing healthcare facilities for which the development generates a need or provision of land for new healthcare facilities where there is no existing medical centre serving the development. The developer/landowner should not be required to provide land free of charge to a medical practice/pharmacy/dental practice which owns existing premises.
8. Clarification is require don how developers who are required to provide Regional SUDS facilities as part of their development will be recompensed for the loss of developable land.

9. That evidence be brought forward to demonstrate that the rates set out in the Supplementary Guidance are fairly and reasonably related to the cost of provision of the relevant facilities.
10. Evidence should be brought forward to demonstrate how the impact of developer contributions on the viability of a development will be assessed and what this means both to a developer and to a landowner.
11. The use of a formula based on floorspace to establish the requirements for healthcare and community facilities should be deleted and the need assessed in accordance with the test in Circular 3/2012.
12. The requirement to pay contributions towards a school which is not at 100% capacity should be deleted.
13. The methodology for calculating the impact of a development on a school (i.e. the "Over Capacity") should be revised. The Council requires to look at the proposed phasing of the development properly to ascertain the anticipated impact over the construction period of the development, building in review clauses as necessary if that phasing goes beyond the Council's current school roll forecasting horizon.

Documents

- BP1 Reporter's Findings on Strategic Transport Fund from Aberdeen City & Shire SDP examination
- BP2 Letter from Chief Planner dated 15 January 2015

Issue 9	Strategic Transport Fund	
Development plan reference:	Chapter 5 (Page 40, para 5.8 & 5.9)	Reporter: Stephen Hall
Body or person(s) submitting a representation raising the issue (including reference number):		
<p><u>Support</u> Nestrans (PP052)</p> <p><u>Concerns or Amendments Suggested</u> ASDA Stores Ltd (PP021) Graham Homes Ltd (PP034b) Sandlaw Farming Ltd (PP040b) Kirkwood Homes Ltd (PP094) Elsie Development Co (PP100a) Grandhome Trust (PP108a) Stewart Milne Homes (PP121) Union Square Developments Ltd (PP130) Dunecht Estates (PP146b) Drum Property Group Ltd (PP202) Aberdeen Cycle Forum (PP214b) Homes for Scotland (PP229) Colin & Esther Tawse (PP238b) Bancon Developments Ltd (PP246b)</p>		
Provision of the development plan to which the issue relates:	Putting this plan into practice	
Planning authority's summary of the representation(s):		
<p><u>Support</u></p> <p>PP052 – Reference to the Strategic Transport Fund in para 5.9 is welcomed. Support the creation of statutory supplementary guidance, building on the existing non-statutory guidance which is already established and operating successfully.</p> <p><u>Concerns or Amendments Suggested</u></p> <p>PP021 – There should be clearer recognition that a blanket contribution would not be required and would not be in accordance with Circular 3/2012. The plan should be clear about the circumstances when contributions will be required. The SDP should recognise that a need for new or improved services, facilities or infrastructure, relating directly to proposed developments, must be clearly identified.</p> <p>PP034b, PP040b, PP146b – Development charging proposed through Supplementary Guidance advocating a Strategic Transport Fund is unacceptable. Contributions sought from the development are unlikely to relate directly to the impacts arising from that development and as such, could be considered contrary to the principle set out in</p>		

BP1

Circular 3/2012. Strategic Transport Fund is tantamount to a "roof tax" and imposes yet another burden over and above developer contributions and is more likely to discourage rather than encourage development.

PP094 – While accepting the principle of local mitigation, contributions to fund wider impacts should not be sought unless these can be properly justified. The strategic Transport Fund is currently being applied even without statutory status, is based on an out-of-date study and is almost entirely based on projects in Aberdeen City. Its legality is questioned as there appears to be little link between contributions and infrastructure requirements. Industry concerns raised during the 2011 consultation on the guidance were ignored. This is a tax for which there is questionable legal basis.

PP100a, PP108a – It is unclear whether the existing non statutory guidance is to be carried forward. If that is the intention, previous objections to it will be maintained. The guidance needs to be available for public scrutiny through an SDP examination, in the same way that policies in Local Development Plans on developer contributions are critically examined at LDP examinations.

PP121 - Whilst we recognise the need to improve infrastructure in the North East, particularly in terms of the strategic road network we do not accept the principles of the Strategic Transport Fund (STF). The SDPA has to remain realistic about the delivery of the infrastructure required, a matter that requires significant thought, debate and testing. The figures do not give sufficient information to test the validity of each approach at this stage and we would welcome an early engagement to discuss and review and financially test any options being considered. There are significant limitations to the STF. There are still concerns from the development industry that too much reliance is being placed on contributions coming forward as part of new development which should only be used to help enable infrastructure improvements at the most local of levels. If the SDPA continue with the move towards the Strategic Transport Fund there requires to be greater clarity of detail as to how this will be implemented. Infrastructure funding needs to be looked at holistically with all other developer contributions considered and not as a stand-alone fund.

PP130 - It is essential that any requirement for further developer contributions complies fully with the requirements and policy tests set out in Scottish Government Circular 1/2010 "Planning Agreements".

PP202 - It is fair to say that the Strategic Transport Fund (STF) has been met with mixed reviews, but the basic theory behind it makes sense. Delivery of local (off-site) transport interventions not covered by the STF, but normally paid for by the developer would benefit from a local transport fund that could help alleviate delay and ransom situations in cases of multiple ownership.

PP214b - Strategic Transport Fund's exclusion of cycling is unacceptable. The cumulative transport impact of developments will in part be mitigated by the provision of a high quality, safe and attractive cycle network. Piecemeal developer contributions are not a satisfactory means to deliver such a network. A share of the STF would be a fair and appropriate means of supporting the delivery of a strategic cycle network.

PP229, PP246b - Do not believe that this draft Supplementary Guidance provides a clear and direct link between the individual developments within the LDP's and the mitigation being proposed at a strategic level.

PP238b - The Strategic Transport Fund causes particular concern and further information is required so that the principle and the detail of the strategic schemes can be debated at an examination.

Modifications sought by those submitting representations:

Support - PP052 – None sought (supportive)

Concerns or Amendments Suggested

PP021 – There should be clearer recognition that a blanket contribution would not be required and would not be in accordance with Circular 3/2012. The plan should be clear about the circumstances when contributions will be required. The SDP should recognise that a need for new or improved services, facilities or infrastructure, relating directly to proposed developments, must be clearly identified.

PP034b, PP040b, PP146b – The entire section of the Plan under Providing Infrastructure requires to be reviewed to more accurately reflect Circular 3/2012. As currently worded, it places an undue burden on landowners and developers and is contrary to the terms of the Circular.

PP094 – A full and meaningful consultation on the guidance is required and the text of paragraphs 5.8 – 5.10 amended as set out below:

5.8 Developers will be expected to contribute towards necessary infrastructure, services and facilities within their own site. Contributions may also be sought from developers to deal with impacts which lie beyond the immediate development site where this has been demonstrated to be relevant.

5.9 We will consult on and prepare supplementary guidance in support of this plan. This will include all aspects of financial and developer gain contributions including education and transport projects which are needed as a result of the combined effect of new development.

5.10 New infrastructure will be funded by the public sector both local and central government and through contributions from developers and landowners as mitigation for any detrimental impacts of their developments.

PP100a – More information is required on the supplementary guidance for the principle of the guidance to be critically examined at the SDP examination.

PP108a – insufficient evidence has been brought forward to consider the principle of any strategic contributions based scheme. All references should be deleted.

PP121 – Remove any reference to the Strategic Transport Fund as no agreed policy has been set.

PP130 – Add sentence to paragraph 5.9 to read: "The provisions of such supplementary guidance will comply fully with Scottish Government requirements regarding developer contributions as set out in Circular 1/2010".

PP202 – The SDP should include discussion of local works associated with sites and the impact this can have on delivery of development in the SGA where requirements for local interventions can create ransom situations. In reference to providing infrastructure the SDP should open up the opportunity for a potential Local Transport Fund to be considered through future Local Development Plans and Supplementary Guidance.

PP214b - The Strategic Transport Fund should acknowledge that higher cycling levels are one way of mitigating the cumulative impact of developments and thus the development of a high quality strategic cycle network along the strategic growth corridors should be eligible for STF funding.

PP238b - Paragraph 5.9 requires more detail on the proposed STF so that further representations can be submitted and the issue debated at an examination into the Plan.

Summary of responses (including reasons) by planning authority:

Support - PP052 – Support Welcomed

Concerns or Amendments Suggested

PP021, PP034b, PP040b, PP094, PP100a, PP108a, PP121, PP130, PP146b, PP214b, PP202, PP229, PP238b, PP246b – The SDP proposes significant levels of development over the period to 2035, well in excess of what has been seen in the area before. This scale of development will have significant impacts on the transport network which will need to be mitigated if the area is to thrive economically and retain its high quality of live.

The public sector is spending well over £1bn on the transport infrastructure of Aberdeen City and Shire over the next two decades, expenditure which goes well beyond the Aberdeen Western Peripheral Route. The plan itself highlights this (para 5.10). There are limits to the resources of the public sector and it is not unreasonable for the private sector to make a contribution as well where it is required as a consequence of new development. The Strategic Transport Fund is not a mechanism to get the private sector to pay for infrastructure which should be delivered by the public sector. It is designed to provide an up-front indication of the costs of development and ensure that those costs are fairly spread out among development sites.

The current structure plan (CC/Doc2, para 5.8) highlighted the need for development to contribute towards infrastructure to mitigate its wider effects, where a range of sites in both council areas are required to contribute. Supplementary Planning Guidance on the Strategic Transport Fund (CC/Doc 18) was approved by the SDPA in late 2011 and ratified by the two councils in early 2012 and has been operational since then as non-statutory guidance. This followed extensive engagement with the development industry and two rounds of consultation on the guidance itself. The guidance has successfully been applied by both councils to a range of development sites that have come forward over the last year. As at end May 2013, contributions totalling £1,787,000 had been agreed, with £135,000 of this already paid (SuppSDP/Doc32).

It is unreasonable to suggest that there is insufficient information available about the nature of the proposed supplementary guidance. Paragraph 5.9 is clear in its focus and scope for the intended guidance and non-statutory guidance already exists which performs this function (albeit that this guidance will be reviewed).

The preparation of the SDP provides the first opportunity to introduce it as part of the development plan. There are clear legal requirements for the preparation of supplementary guidance (s22 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006). However, it would be the intention of the SDPA to go beyond these minimum requirements. The intention would be to adopt the supplementary guidance soon after the approval of the strategic development plan in early 2014. There is no need to be explicit about this process within the plan itself.

The Cumulative Transport Appraisal (SuppSDP/Doc33) is not out-of-date as has been suggested. It was completed in July 2010 and identifies the cumulative transport implications of the new development proposed in the current structure plan and proposed SDP. The appraisal will be reviewed on a five-year cycle and be used to inform the Main Issues Report for the next SDP.

The Strategic Transport Fund is not a tax but a way of apportioning the cost of specified infrastructure between a range of development sites, based on the scale and nature of development proposed. Impacts on site viability are an important consideration but there is no attempt to place unreasonable burdens on landowners or developers – the guidance seeks to facilitate rather than prevent development.

Scottish Government Circular 3/2012 (SuppRep/Doc48) was published after the Proposed SDP had been agreed but before the period for representations. However, Circular 1/2010 (CC/Doc22) set the context for the current non-statutory guidance and there are no fundamental changes between the documents as far as their implications for the Strategic Transport Fund. There is no disagreement that the Strategic Transport Fund must operate within the policy framework set by Circular 3/2012. However, there is no need to state this explicitly in the text of the plan.

Two representations suggested expanding the scope of the mechanism to include either other infrastructure elements (such as education) or local transport interventions. While worthy of further discussion on the back of the successful operation of the Strategic Transport Fund, there are no plans to move in this direction at the current time and it would not be appropriate to make this a requirement within the text of the SDP.

The interventions required to address the cumulative transport impacts may have cycling infrastructure components but the scale of interventions required mean that significant infrastructure improvements will be required to mitigate the impacts of the new development.

In light of the above, no amendments to the plan are required as a result of these representations.

Reporter's conclusions:

1. The Strategic Transport Fund is a proposed mechanism for the gathering of (mainly) financial contributions from developers to be spent on strategic transport projects. Non-statutory guidance regarding the Fund is already in place. The authority's intention is to review this guidance and then adopt it as supplementary guidance following the approval of the strategic development plan.
2. Concerns have been raised regarding:
 - the level of detail the proposed plan contains regarding the Fund, including whether the

strategic development plan should be more explicit about the level of contributions, the mechanics of how payments are made and managed, and who should pay;

- the principle of the fund, and in particular the pooling of contributions in such a way that monies contributed by a developer in one part of the city-region could potentially fund transport infrastructure in another part of the area where, it is argued, no obvious mitigation of the impacts of the development would occur;
- whether the Fund will serve to discourage development by affecting site viability;
- whether contributions are being sought for the right schemes;
- how the strategic development plan should refer to the supplementary guidance;
- whether there could also be a local transport fund; and
- the treatment of cycling infrastructure.

Level of detail

3. The Strategic Transport Fund is a significant initiative, aiming to accumulate and spend an estimated £86.6 million on transport projects in the region. In doing so, it is intended to unlock the delivery of the strategic development plan's spatial strategy and so deliver significant levels of growth. Paragraph 170 of Scottish Planning Policy states that development plans should identify required new transport infrastructure, and set out the intended approach to developer contributions linked to the transport implications of a proposed development. It is therefore right that the principle of the fund should be established in the development plan. The fund operates across the areas of both Aberdeen City and Aberdeenshire, and often seeks to mitigate the impacts of development in one authority through investment in another. The fund is therefore a strategic matter that is most appropriately covered in the strategic development plan and/or in supplementary guidance connected to the strategic development plan.

4. Paragraph 139 of Circular 6/2013: Development Planning identifies as a matter that should be covered in the plan itself, and not in supplementary guidance, "items for which financial or other contributions ... will be sought, and the circumstances (locations, types of development) where they will be sought". Whereas it states that, provided there is an appropriate context in the plan, a suitable topic for supplementary guidance can be "exact levels of developer contributions or methodologies for their calculation". It is therefore appropriate for the authority to both prepare supplementary guidance regarding the Strategic Transport Fund and also to have included a contextual statement in the plan itself.

5. The section of the proposed plan dealing with the Strategic Transport Fund (paragraph 5.9) is brief, but it does establish a number of things. These are firstly that the authority will prepare supplementary guidance on the topic; secondly that the fund will be concerned with transport projects that are required as a result of development; thirdly that it will consider the combined effects of development; and fourthly the locations within which the fund will apply.

6. Regarding the use to which contributions will be put, the existing non-statutory guidance refers to a "package of defined transport projects" identified in the Cumulative Transport Assessment that the Fund is intended to deliver. The items in the list are all included (with some minor variation in wording) in Schedule 2 of the proposed plan, along with many other schemes. However in the Cumulative Transport Assessment itself this list is referred to as a "conceptual package" (section 6.2), "relatively high level options for consideration" (paragraph 6.2.2) and "by no means exhaustive" (paragraph 6.2.4). It is not therefore clear how much certainty can be ascribed to this list as representing the

schemes that will actually be delivered by the Fund. Nor is it clear from the proposed plan itself which schemes the Strategic Transport Fund is intended to deliver. However, in response to a further information request, the authority has confirmed that the projects listed under the final bullet point of schedule 2 of the proposed plan, together with Kintore Station, are those to which the Fund is intended to apply. In order to comply with paragraph 139 of Circular 6/2013 I conclude that this should be clarified in the plan, and I recommend a modification to achieve this.

7. I have considered whether the descriptions of the schemes listed in schedule 2 are sufficiently specific. It is clearly beyond the scope of a strategic development plan to provide a detailed technical specification for its transport proposals. Paragraph 41 of Circular 6/2013 states that the spatial strategies of strategic development plans "should be specific enough to limit the options available to subsequent LDPs to those that would have a broadly similar impact on other planning authorities in the SDPA; and strategic infrastructure ... networks". This indicates that there is a limit to the level of detail that strategic development plans are expected to enter into about particular schemes. The proposed plan does broadly identify the transport interventions that are required in order to deliver the spatial strategy. In my view the proposed plan complies with national expectations in respect of the level of detail that is included about these schemes. I also note that in some cases it appears that the exact nature and location of the proposed schemes has yet to be finalised. On balance I conclude that the plan contains a sufficiently precise description of the schemes that are to be supported by the Strategic Transport Fund.

8. While Paragraph 5.9 of the proposed plan describes the locations where the Strategic Transport Fund will apply, it does not describe the types of development that will be expected to make a payment. The existing non-statutory guidance states that the authority's intention is to seek contributions from all housing, business, industrial, retail and commercial leisure developments (subject to criteria). In response to a further information request, the authority stated that they do not currently intend to consult on any change to this position. In order to comply with paragraph 139 of Circular 6/2013 I consider that the types of development that will be expected to contribute to the Strategic Transport Fund should be stated in the plan itself, and I recommend a modification to achieve this. I note the particular concerns regarding mixed use development raised by representees in response to further information requests, but consider this to be a matter of detail that can be addressed in the supplementary guidance.

9. Subject to the two changes referred to above, I conclude that the level of detail in the plan, and the proposed use of supplementary guidance, is appropriate.

Principle of pooling contributions to fund regional infrastructure

10. Representees have questioned whether the approach of pooling contributions from developers throughout the Aberdeen Housing Market Area into a single fund is compatible with the policy tests set out for developer contributions in Circular 3/2012: Planning Obligations and Good Neighbour Agreements. In particular it has been questioned whether there is a sufficient link between the impact of individual sites and the regional infrastructure that the Fund will deliver. Some have argued that regional infrastructure should instead be funded by the Scottish Government or local authorities.

11. Paragraph 17 of Circular 3/2012 requires there to be a clear link between the development and any mitigation offered as part of the developer's contribution. In this

case, the Cumulative Transport Appraisal demonstrates firstly that the overall growth in traffic brought about by the level of development promoted in the plan will, without mitigation, have harmful effects on the operation of the network in terms of increased journey times and congestion. Secondly it shows that a defined package of interventions will assist in mitigating these impacts at various key locations. While the interventions that have been identified at this stage have not yet been subject to detailed appraisal, design or feasibility work, they have emerged out of a process that Transport Scotland has stated (in response to a further information request) is suitably robust for this tier of plan-making. The Cumulative Transport Appraisal has been carried out by recognised professional consultants in association with Transport Scotland as well as the local authorities. I have seen no convincing evidence that would lead me to question its applicability to strategic development planning.

12. Paragraph 168 of Scottish Planning Policy refers to the potential need to address cumulative effects. Paragraph 20 of Circular 3/2012 allows planning authorities to take the cumulative impact of a number of proposed developments into account and use planning obligations to share costs proportionately. It goes on to say that an effect of such infrastructure investment may be to confer some wider community benefit but contributions should always be proportionate to the scale of the proposed development.

13. However there is a distinction to be made between sharing costs among developments which cumulatively require a particular transport investment, and the funding of a basket of measures, not all of which are relevant to every development. According to table 7.2 of the Cumulative Transport Appraisal, none of the individual development areas shown generate traffic that will make significant use of all the proposed new infrastructure. Some developments are shown as having a measurable impact on only one or two new infrastructure components. It therefore appears that the authority's intention is to gather funds from developments which may be spent on transport interventions that do not clearly and directly benefit those developments.

14. As mentioned above, paragraph 17 of Circular 3/2012 requires there to be "a clear link between the development and any mitigation offered as part of the developer's contribution". Paragraph 18 resists the use of planning obligations to extract payments not "directly related to the proposed development". Paragraph 21 states that contributions should not be used to achieve objectives "not strictly necessary to allow permission to be granted for the particular development". Finally, paragraphs 24 and 25 indicate that a developer contribution (at least through a planning obligation) would generally not be appropriate if the development would be acceptable without it. I conclude that the mechanism currently envisaged by the authority in the Strategic Transport Fund would not comply with national policy as expressed in Circular 3/2012, because the relationship between the development supplying the contribution and the infrastructure improvement to be delivered is not sufficiently clear or direct.

15. The authority argues that their proposed approach is justified because (a) the sharing of costs will mean no one development is solely liable for the cost of a specific project or delayed by its implementation, and (b) it is a simple and transparent mechanism as desired by the development industry. These are valid arguments but are not ones that are unique to Aberdeen City and Shire. They are considerations that the Scottish Ministers could have taken into account in preparing Circular 3/2012, which is an up-to-date expression of national policy. I am not therefore persuaded that a departure from national policy has been justified.

16. This examination relates to the content of the strategic development plan and not to the detailed mechanics of the Strategic Transport Fund. But paragraph 139 of Circular 6/2013 confirms that main policy principles should be established in the strategic development plan itself, as should any departures from national policy. I consider that the issue of whether contributions from across the region may be pooled into a single fund and potentially spent on infrastructure unrelated to the contributing development is a sufficiently important policy principle as to need to be established in the plan itself. This is particularly the case given my conclusion at paragraph 14 above that such an approach would be a departure from national policy.

17. Turning to the wording of paragraph 5.9, this refers to "a Strategic Transport Fund". The use of the singular in this phrase could be taken to necessarily imply the pooling of contributions and the loss of any link between the contributing development and the infrastructure improvement. However I consider that the use of this phrase is acceptable on the basis that the authority can, within the scope set by the strategic development plan, further define the characteristics of the fund (including, for instance, whether it may be sub-divided into a number of separate accounts) in supplementary guidance. Paragraph 5.9 then refers to the funding of "transport projects which are needed as a result of the combined effect of new development". I also find this phrase to be acceptable as it could refer to ordinary cumulative impacts as envisaged by Circular 3/2012 (where several developments jointly have an effect on a particular infrastructure component that requires to be mitigated). Where combined effects do not exist there is less need for a strategic fund, as any necessary mitigation can be secured through the normal development management process.

18. I therefore conclude that the existing wording in the proposed plan is acceptable, but requires adding to in order to address well-founded concerns that the principles of Circular 3/2012 should be adhered to. In particular, paragraph 5.9 needs to establish that the fund will only be used to gather contributions towards infrastructure improvements that are related to the developments concerned and strictly necessary in order to make any individual development acceptable in planning terms. I recommend a form of words to achieve this.

19. Regarding the question of whether investment in regional infrastructure should come from government or through developer contributions, there is no clear dividing line between the scales of infrastructure that should be funded privately or publicly. However I note the significant investment being made in the transport network of North East Scotland by Transport Scotland, as described in Paragraph 5.11 of the proposed plan. Given that the scale of new development envisaged in the spatial strategy of the plan will impact upon the regional transport network, I believe on balance that it is appropriate for developers to make some contribution to necessary upgrades.

Development viability

20. Where there are demonstrable impacts from development that require mitigation, it is reasonable for the planning authorities to seek developer contributions. But it would be counter-productive if such a requirement was so onerous as to prevent development happening. No specific evidence has been submitted to demonstrate that the Strategic Transport Fund would threaten the viability of any particular development. However, given the scale of contributions that may be sought (the current non-statutory guidance gives a range of figures around £2,000 per house) it must be possible that the viability of some developments may be affected. This possibility is touched upon at Paragraph 22 of

Circular 3/2012, which refers to the use of staged or phased payments as a potential resolution.

21. It will be the role of the forthcoming supplementary guidance to describe any exceptions or variations to the developer contribution as part of the detailed policy. I would not expect this level of detail to necessarily be included in the strategic development plan itself. In preparing that guidance, the authority will wish to address the need to maintain development viability. Furthermore, in identifying development sites in local development plans, the planning authorities could usefully satisfy themselves that the sites are viable, including taking cognisance of the impact of any requirement for developer contributions.

Schemes supported by the Strategic Transport Fund

22. I have already concluded that the package of measures that are to be supported by the Strategic Transport Fund should be clearly identified in the plan.

23. Representations have questioned whether the package of measures identified currently in the non-statutory guidance and the Cumulative Transport Appraisal is correct. In particular, if a purpose of the Fund is to support measures with a regional benefit that mitigate the impact of a range of proposals, it has been questioned whether some of the schemes are actually specific to certain developments. In response to a further information request, the authority has confirmed that the identified projects do all mitigate the impact of a range of developments. In relation to certain of the road-based schemes this view is supported by the evidence in Table 7.2 of the Cumulative Transport Appraisal which shows all the proposed infrastructure items being used by at least 2 developments. At paragraph 11 above I noted Transport Scotland's evidence that the Appraisal represented a suitably robust process for this tier of plan-making. Overall I am satisfied that the list of projects has been generated in an adequately robust way.

24. Regarding whether a new junction onto the Fastlink at Chapelton of Elsick should be included in the list of schemes to benefit from the Strategic Transport Fund, I note that this and the Loirston A90 link are the only road-based interventions identified in Table 6.2 of the Cumulative Transport Appraisal not to be included in this list. Paragraph 7.2.13 of the appraisal indicates that this scheme may provide wider benefits than solely for the Chapelton of Elsick development. However the authority's evidence is that this junction is not required before 2027, if at all. I therefore conclude that this matter can be revisited when the plan is reviewed and does not require a modification at this time.

25. One representee has noted that all but one of the projects to be supported are in the area of Aberdeen City. I see no need to give particular consideration to the distribution of transport projects between the administrative areas of Aberdeen City and Aberdeenshire. What is important is which projects are required to mitigate the impacts of the spatial strategy. Given that the road and rail networks in the city region focus on the city, I do not find it surprising that most of the interventions identified are within Aberdeen City.

Reference to supplementary guidance

26. There is clearly strong interest in the development sector in the detail of the Strategic Transport Fund, and calls for the supplementary guidance to be subject to full and meaningful consultation. The authority has commendably stated its intention to go beyond the statutory minimum requirements when it comes to consult on the guidance. It

is not appropriate for me to recommend modifications to the plan to define the form this consultation will take. The statutory requirement to consult is set out in Section 22(3) of the Town and Country Planning (Scotland) Act 1997 (as amended).

27. It has also been argued that the supplementary guidance should encompass not only the Strategic Transport Fund but also other forms of developer contribution. There may be benefits in considering the package of potential contributions together, particularly so that the cumulative impact of contributions can be assessed. But it should be possible for the planning authorities to consider these matters in the round without necessarily setting out all their requirements in one piece of guidance. The Future Infrastructure Requirements for Services (FIRS) Group provides a forum for this to happen. It is also the case that while policy around some developer contributions is best considered across the city region as a whole, other requirements may be best formulated at the level of the individual authority. Therefore I conclude that it is not necessary to modify the plan to require this supplementary guidance to be broadened in scope.

Local Transport Fund

28. A suggestion has been made that the plan should also consider local transport works that are required to provide access to sites and the potential for a local transport fund to help deliver these. I note that the authority states that it has no plans for such a fund. Also, local delivery considerations regarding individual sites are more properly a matter for local development plans. I therefore conclude that no modification to the plan is necessary.

Cycling

29. Regarding the comments from the Aberdeen Cycle Forum, it is the case that investment in cycling infrastructure may be expected to help mitigate the transport impacts of new development. Paragraph 167 of Scottish Planning Policy states that "development should be supported in locations that are accessible by...cycling..., making best use of or adding to existing networks and creating new networks". The Strategic Transport Fund is based on evidence in the Cumulative Transport Assessment, which does not appear to have addressed cycling measures. Therefore I do not have the evidence with which to justify recommending a modification to the plan to bring cycling measures within the scope of the Strategic Transport Fund. However this is an issue which could profitably be addressed in any review of the Assessment and, in due course, of the plan.

Reporter's recommendations:

I recommend that the following modifications be made:

1. Amend Paragraph 5.9 to read:

"We will prepare supplementary guidance in support of this plan. This will allow (through a 'Strategic Transport Fund') transport projects which are needed as a result of the combined effect of new development to be funded and delivered. The transport projects that will benefit from the Fund are identified in Schedule 2. Contributions will generally be sought from housing, business, industrial, retail and commercial leisure developments in the strategic growth areas within the Aberdeen Housing Market Area, subject to detailed criteria to be set out in the supplementary guidance. Contributions will only be used to support projects that are related to the developments concerned and are necessary to

make those developments acceptable in planning terms."

2. Amend the final bullet point of schedule 2 to read:

"The following transport measures supported through the Strategic Transport Fund to deal with the combined effect of new development on the transport network:

- *a new station at Kintore;*
- *[list continues as in proposed plan]"*

3. Delete "*a new station at Kintore and*" from the sixth bullet of schedule 2.

All Heads of Planning



15 January 2015

Dear Colleague

Development Plans – Supplementary Guidance

As you will be aware, Planning and Architecture Division was restructured earlier this year. We established a new development planning team to provide a more co-ordinated approach to our processing of plans and promote their alignment with NPF3 and SPP. This change has allowed us to gain a clearer overview of issues which are commonly arising in development planning across Scotland.

It has become increasingly apparent that planning authorities are taking different approaches to the use of supplementary guidance and their consideration of the legislative context. We have therefore been closely monitoring issues arising from the statutory supplementary guidance that has been submitted to Scottish Ministers for approval.

As a result of this work, I have three main concerns about supplementary guidance:

- **The sufficiency of the express statement regarding the guidance within the plan itself.** In order to qualify as supplementary guidance under section 22(1) of the Act, and so on adoption form part of the development plan in accordance with section 24, the guidance must meet the requirements of Regulation 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008. For supplementary guidance to be issued in connection with a local development plan, this means that the guidance may only deal with the provision of further information or detail in respect of policies or proposals set out in the local development plan and then only provided those are matters which are expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance.

It is therefore essential that supplementary guidance is limited to the provision of further information or detail and that the local development plan expressly identifies the matters to be dealt with in supplementary guidance.

In the absence of the necessary statement identifying such matters, section 22(9) provides that it remains open to the planning authority to bring forward guidance in connection with a plan. This guidance does not require to be submitted to Ministers as it is not "supplementary guidance" within the meaning of the Act and it would not form part of the development plan.

- **Compliance with national policy – specifically National Planning Framework (NPF) 3 and the Scottish Planning Policy.** Whilst in some cases this is a consequence of the timing of the preparation process, in a growing number of cases this lack of compliance is less easily explained.
- **The appropriateness of the subject matter being covered by the guidance.** There is significant variation in the issues that are addressed, the level of detail and the proportionate relationship with the content of the plan itself. A very high level of reliance on supplementary guidance raises questions about the transparency of the development planning process as a whole. It may also have implications for resources as all statutory supplementary guidance must be reviewed alongside the development plan and there is no expedited route for updating or continuing it once in place.

There are practical limits to the extent to which we can make modifications to supplementary guidance that is submitted to Ministers for approval. As a result, and in the interest of transparency, I believe it would be helpful to clarify the approach we are now taking. Based on recent experience, there are four main scenarios:

1. If guidance is submitted to us which has a sufficient express statement regarding the guidance within the plan (as referred to above), which has been appropriately consulted upon and which is compliant with NPF3 and the SPP, we will aim to clear it back to you within the 28 day period.
2. If guidance is submitted to us which requires only minor modifications to comply with policy, we will endeavour to adjust it as appropriate and to return it to you within 28 days if possible.
3. If guidance is submitted which requires major modifications (involving more substantive changes that would trigger additional consultation or environmental assessment), Ministers will direct that it cannot be adopted without significant change. The supplementary guidance will require to be resubmitted to us in an acceptable form. A few legitimate exceptions may apply – for example where consultation on the guidance significantly pre-dates the adoption of the SPP. We will therefore carefully consider the specific circumstances in each case. This is likely to require extension of the 28 day timescale.
4. If there is no, or an insufficient, express statement regarding the supplementary guidance within the plan, it cannot be adopted as statutory supplementary guidance. It may be that consideration can be given to the document being non-statutory guidance. Again, delays to the process are likely.

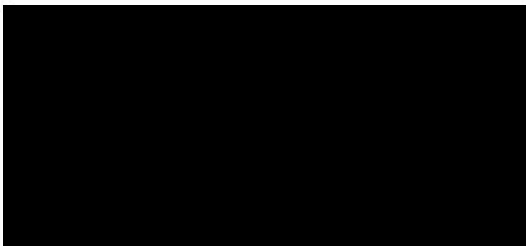
At present, we are not taking formal action where supplementary guidance is submitted to Ministers which, in our view, deals with inappropriate content. Examples of this include information and evidence which merely supports the plan or, at the other end of the spectrum, policy which should form a core part of the development strategy and be articulated within the plan itself. However, Planning and Architecture officials will continue to work with you to identify how a better balance can be struck between the content of development plans and their associated supplementary guidance.

As we committed to at the Heads of Planning discussion in early November, we provided a clearer steer on our experiences and expectations of supplementary guidance to development plan teams at the National Development Plan Forum on 6 December. Information from that event will be available on-line. We shared examples of good practice that may be helpful for your teams during the plan preparation process.

We remain committed to a plan-led system, but that system depends on all of us continuing to aspire to have in place better, more up to date and delivery focused strategic and local development plans. We also remain committed to working with planning authorities throughout the country, to provide support and advice where required and as our resources allow. I therefore hope you find this clarification of our position helpful.

If you have any queries on this letter or in relation to development planning more generally, please do not hesitate to contact the development planning team via the developmentplans@scotland.gsi.gov.uk

Yours sincerely



John McNairney
Chief Planner