
From: Kate Hopper
Sent: 07 September 2018 15:00
To: Developmentplans@scotland.gsi.gov.uk; developmentplans@gov.scot
Cc: Debbie.McLean@gov.scot
Subject: Edinburgh - Supplementary Guidance - Developer Contributions and Infrastructure Delivery - proposal to adopt
Attachments: DCID SG - Letter and Statement for submission September 2018.pdf; Enclosure 1 - DCID SG For Adoption.pdf; Enclosure 2 - Consultation Submissions and Councils Response.pdf; Enclosure 3 - List of changes to DCID SG.pdf; Enclosure 4 - Statement of Conformity - DCID SG.pdf

To: Development Plan Gateway,

The City of Edinburgh Council under Section 22 of the Town and Country Planning (Scotland) Act 1997 (as amended by the 2006 Act) and Regulation 27 of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 hereby gives notice that it proposes to adopt and issue the attached **Supplementary Guidance (SG) on Developer Contributions and Infrastructure Delivery**.

The following documents are attached to this email:

Letter and appended statement

1. Supplementary Guidance: Developer Contributions and Infrastructure Delivery, August 2018
2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.
3. List of changes to the SG
4. Statement of conformity to the tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements

Link to current [LDP Action Programme](#) (January 2018)

Link to – [LDP Education Infrastructure Appraisal](#) (August 2018)

Link to [Transport Appraisals](#) (March 2013, November 2016) and WETA refresh (December 2016)

Link to [LDP Primary Care Appraisal 2016 – 2016](#) (April 2017, updated December 2017)

We hope that the attached is sufficient to allow this Supplementary Guidance to proceed to adoption as soon as practicable. Please feel free to get in touch if you would like to discuss any aspect of this further – either myself or Ben Wilson (Tel 0131 469 3411)

Kind Regards

Kate Hopper

Kate Hopper
Senior Planning Officer

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Mr John McNairney
Chief Planner
Area 2-H (South)
Planning and Architecture Division
The Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

7 September 2018

Dear Mr McNairney

Town and Country Planning (Scotland) Act 1997
Town and Country Planning (Development Planning) (Scotland) Regulations 2008
Supplementary Guidance: Developer Contributions and Infrastructure Delivery

The City of Edinburgh Council under Section 22 of the Town and Country Planning (Scotland) Act 1997 (as amended by the 2006 Act) and Regulation 27 of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 hereby gives notice that it proposes to adopt and issue the enclosed Supplementary Guidance (SG) on Developer Contributions and Infrastructure Delivery.

On 12 September 2017, SG on Developer Contributions and Infrastructure Delivery (dated March 2017) was submitted to Scottish Ministers in accordance with the requirements of the Act and Regulation 22. On 4 December 2017, Scottish Ministers directed the Council not to adopt the finalised Supplementary Guidance. Scottish Ministers reason for this was that procedurally new draft SG should have been prepared and re-consulted upon prior to adoption.

On [18 January 2018](#), Housing and Economy Committee approved new draft SG for consultation purposes. This consultation has now been carried out and a statement prepared with reference to Regulation 27 is enclosed with this letter.

The Council as Planning Authority recognises that Circular 3/2012 (the “Circular”) is an important material consideration that it must have regard to in seeking planning obligations. A statement setting out why the Council consider the SG complies with the Circular and in particular the five Circular tests is also enclosed with this submission.

Planning and Transport, PLACE, City of Edinburgh Council
Waverley Court G.2, 4 East Market Street, Edinburgh EH8 8BG

I hope that the enclosed proposed Supplementary Guidance can be progressed to adoption as soon as possible. If you have any queries regarding this submission, please do not hesitate to contact me at kate.hopper@edinburgh.gov.uk.

Yours sincerely



Kate Hopper
Senior Planning Officer

Enclosures:

Statement (appended below)

1. Supplementary Guidance: Developer Contributions and Infrastructure Delivery, August 2018
2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.
3. List of changes to the SG:
4. Statement of conformity to the tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements
5. Link to – current [LDP Action Programme](#) (January 2018)
6. Link to – [LDP Education Infrastructure Appraisal](#) (August 2018)
7. Link to [Transport Appraisals](#) (March 2013, November 2016) WETA refresh (December 2016)
8. Link to [LDP Primary Care Appraisal 2016 – 2016](#) (April 2017, updated December 2017)

The City of Edinburgh Council under Section 22 of the Town and Country Planning (Scotland) Act 1997 (as amended by the 2006 Act) and Regulation 27 of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 proposes to adopt and issue the enclosed Supplementary Guidance (SG) on Developer Contributions and Infrastructure Delivery (August 2018).

Section 22 of the T&CP(S) A 1997 (sections 3 to 5) states that:

- (3) *Subject to any such regulations, the authority proposing to adopt and issue supplementary guidance are to take such steps as will in their opinion secure—*
 - (a) *that adequate publicity of the proposal is given in their district or as the case may be in their strategic development plan area,*
 - (b) *that persons who may be expected to wish to make representations to the authority about the proposal are made aware that they are entitled to do so, and*
 - (c) *that such persons are given an adequate opportunity of making such representations.*
- (4) *Such publicity as is given under subsection (3)(a) is to include intimation of a date by which any such representations require to be received by the authority.*
- (5) *The authority are, before adopting and issuing the supplementary guidance, to consider any such representations timeously made to them.*

Regulation 27(1) states that:

27.—(1) When submitting a copy of any proposed supplementary guidance to the Scottish Ministers in accordance with section 22(6) of the Act the strategic development planning authority or the planning authority, as case may be, must provide to the Scottish Ministers a statement describing—

- (a) *what steps the authority took to secure adequate publicity of the proposal to adopt and issue supplementary guidance in accordance with section 22(3)(a) of the Act;*
- (b) *any representations made to the authority; and*
- (c) *the extent to which such representations were taken account of in the preparation of the proposed supplementary guidance.*

The Council has undertaken the following.

a) Steps taken to secure adequate publicity of the Council's proposal to adopt and issue Supplementary Guidance

- Publicity of the proposal to adopt and issue supplementary guidance was given between 19 January and 2 March 2018.
- A consultative draft SG (dated January 2018) was available on the Council's Consultation Hub and advertised on the @PlanningEdin Twitter account.
- The following groups and organisations were consulted by letter and email: the Scottish Government, community councils, citywide amenity bodies, property investors, commercial property letting agents, traders associations and local residents and businesses.

The Council considers that these steps were sufficient to give adequate publicity of its proposal to adopt and issue SG. They elicited a number of written representations.

b) Representations made to the Council

43 responses were received to the consultation. These were from the Scottish Government, Key Agencies and infrastructure providers, community councils, members of the public, land owners and developers. Responses were received from the following consultees:

Scottish Government - Planning & Architecture Division
Scottish Natural Heritage
Scottish Water
Network Rail
Cllr Amy McNeese-Mechan
Cllr S Webber
Brian Wallace
Linda Hutton
Douglas Read
Nick Bates
Oliver Craig
Pam Mackay
Steph Buckley
Leith Central Community Council
Cammo Residents Association
Cramond & Barnton Community Council
The Edinburgh Association of Community Councils (EACC)
Southside Community Council
Craiglockhart Community Council
Drum Brae Community Council
Spokes Planning Group
Drum Property Group
Port of Leith Housing Association
Taylor Wimpey UK Ltd (Strutt & Parker)

Builyeon Farms LLP (PPCA LTD)
Homes for Scotland
CALA Management Ltd (Geddes Consulting Ltd)
Taylor Wimpey (Geddes Consulting)
Wallace Land Investments (Geddes Consulting)
Barratt David Wilson Homes (Clarendon Planning and Development Ltd)
New Ingliston Ltd • FSH Airport (Edinburgh) Services Ltd • Murray Estates Lothian Ltd (GVA Grimley Ltd)
New Ingliston Ltd (GVA Grimley Ltd)
South East Edinburgh Development Company Ltd (HolderPlanning)
The Trustees of the Foxhall Trust (GVA Grimley Ltd)
West Craigs Ltd (Iceni Projects Ltd)
Duncan Tait J. Smart & Co. (Contractors) PLC
Murray Estates (Holder Planning)
Forth Ports
Scott Hobbs Planning
Scottish Property Federation (SPF)
Axcel Hospitality (Edinburgh) Ltd

c) Extent to which representations were taken account of in preparation of proposed Supplementary Guidance

A report of the consultation was reported to [Planning Committee 22 August 2018](#). The report sets out the representations received, and the Council's response. This is attached as Enclosure 2: Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response. Enclosure 3 sets out the list of changes to the SG following the consultation.

The Council considers that the approach set out with the guidance complies with the tests set out Circular 3/2012 and the 'Elsick' decision and that its baseline assessments of education, transport and healthcare infrastructure requirements demonstrate the required link to proposed development. Enclosure 4 sets out a statement of conformity to Circular 3/2012 and the Elswick decision.

In addition, it is considered that the supplementary guidance fulfils its purpose, as set out in Policy Del 1 of the LDP, in that it:

- Sets out the Council's approach to infrastructure provision and improvements associated with development and how the required infrastructure has been assessed;
- Addresses community concerns about the timeous delivery of the required infrastructure;
- Ensures that developers make a fair and realistic contribution to the delivery of necessary infrastructure provision and improvement associated with development;
- Provides details of cumulative contribution zones relative to specific transport, education, health, public realm and green space actions;
- Set outs the arrangements for the efficient conclusion of Section 75 legal agreements; and

- The council's approach should the required contributions raise demonstrable commercial viability constraints, and/or where forward or gap funding may be required.

However, it is recommended that a number of changes to the guidance are required to be made in response to the consultation. These are set out in Enclosure 2. In summary the main changes are as follows:

- New West Edinburgh High School - new secondary school capacity is required in West Edinburgh to accommodate the growth in pupils from new housing development. Although the Council's preferred solution is to deliver one or more new secondary schools, there are currently no sites identified within the Action Programme. Therefore, contributions towards new secondary capacity will be based on the estimated cost of providing additional secondary school capacity on a per pupil basis. This is the same approach that is applied across other parts of the city where additional secondary school capacity is required which may be delivered by a replacement building or extension. The finalised SG does not therefore require contributions to be taken in West Edinburgh towards the acquisition, servicing and remediation of land for a new secondary school. The location for new secondary schools infrastructure in West Edinburgh will be progressed through development of a West Edinburgh spatial strategy to be prepared as part of the new Local Development Plan process.
- New Victoria Primary School – clarification has been made as to how costs for the delivery of the new Victoria Primary School are split between the Council and developers.
- School Land Costs – the term 'servicing and remediation' has been replaced with 'remediation and other abnormal costs' and clarification has been provided as to what this accounts for as well as the mechanism by which land costs can be credited if a school site is provided by a development.
- Education Infrastructure Costs – these costs have been reviewed and further clarification has been provided as to how education infrastructure costs have been determined. Detailed information will now be within the Council's Education Appraisal. As a result, the estimated cost of delivering a new primary school and nursery has been reduced which has been reflected in the contribution rates set out in the finalised guidance.
- North Edinburgh Transport Contribution Zones – these have been removed from the Guidance because, unlike the zones for actions identified in the LDP Transport Appraisals or the West Edinburgh Transport Appraisal (WETA), they do not arise directly from an appraisal of the development as set out in the adopted LDP. Instead, individual applications will be assessed using LDP Policy Tra 8.
- West Edinburgh Transport Contribution Zone – reference to providing a spreadsheet tool is retained, and additional text provided to explain that the spreadsheet tool can be updated to reflect any decisions made under City Region Deal governance.
- Queensferry Transport Contribution Zone has been amended to clarify that costings relate solely to cycle parking action at Dalmeny Train Station.
- Text on delivery has been amended to provide further clarification that the Council's preference is for developers to deliver actions where possible, rather than the Council to receive contributions and deliver projects.

- Clarification has been made in regards to the SG's guidance on resident/community ownership of open space, maintenance agreements and costs.
- To clarify the healthcare requirements set out in the SG reference to the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) has been added. This appraisal sets out the evidence base required to allow developer contributions to be collected towards the healthcare actions in the current Action Programme (January 2018).
- A list of the detailed changes to the guidance is provided in Enclosure 3.

SUPPLEMENTARY GUIDANCE

DEVELOPER CONTRIBUTIONS & INFRASTRUCTURE DELIVERY

Finalised version August 2018

Contents

1. Introduction	1
What does this guidance do?	1
Use of this guidance	1
Relevant policies	1
2. Delivering the Edinburgh Local Development Plan	2
Infrastructure requirements associated with new development	2
Contribution Zones	3
2a. Education Infrastructure	4
2b. Transport Infrastructure	6
2c. Greenspace	9
2d. Public Realm	10
2e. Primary healthcare	11
3. Viability and Funding Mechanisms	12
4. Legal Agreements and use of monies.....	13
5. Audit and Review	14
Annex 1 Education Infrastructure	15
Annex 2 Transport Infrastructure.....	33
Annex 3 Greenspace Infrastructure Actions	57
Annex 4 Healthcare Actions	59

1. Introduction

What does this guidance do?

This guidance:

- Sets out the Council's approach to infrastructure provision and improvements associated with development; and,
- Ensures that developers make a fair and realistic contribution to the delivery of necessary infrastructure provision and improvement associated with development.

Use of this guidance

This Supplementary Guidance applies to all development in Edinburgh.

This guidance should be read alongside the current Local Development Plan Action Programme.

Relevant policies

This Supplementary Guidance has been prepared in accordance with the following sections of the Edinburgh Local Development Plan:

- Section 1, Part 4
- Policy Del 1: Developer Contributions and Infrastructure Delivery
- Appendix C – Table of Financial and Other Contributions

This guidance should also be read alongside the following LDP Policies:

Tra 8	Provision of Transport Infrastructure
Hou 1	Housing Development
Hou 10	Community Facilities
Other policies	Del 2 - City Centre Del 3 - Edinburgh Waterfront Del 4 - Edinburgh Park/South Gyle Special Economic Areas Emp 2-7. Hou 3. Env 18, 19 and 20 Des 8
Other parts of the Plan	LDP Part 1 Section 5: Site briefs for housing sites in West, South East and East Edinburgh and Queensferry.
Other relevant documents	LDP Action Programme (December 2016).

Strategic Development Plan policies are also relevant, including Policy 9 - Infrastructure and Policy 11 – Delivering the Green Network

This guidance takes account of Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements and other relevant government advice on contributions and legal agreements.

Guidance on commuted sums for affordable housing provision is provided in separate non-statutory guidance on affordable housing.

2. Delivering the Edinburgh Local Development Plan

The Local Development Plan (LDP) aims to:

1. support the growth of the city economy;
2. help increase the number and improve the quality of new homes being built;
3. help ensure that the citizens of Edinburgh can get around easily by sustainable transport modes to access jobs and services;
4. look after and improve our environment for future generations in a changing climate; and,
5. help create strong, sustainable and healthier communities, enabling all residents to enjoy a high quality of life.

Infrastructure is key to the delivery of the aims and strategy of the adopted LDP. The Plan recognises that the growth of the city, through increased population and housing, business and other development, will require new and improved infrastructure. Without infrastructure to support Aims 1 and 2, the Plan will not help achieve Aims 3, 4, and 5. The Action Programme sets out how the infrastructure and services required to support the growth of the city will be delivered.

To meet this aim, Policy Del 1 of the LDP requires that 'development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time'.

The infrastructure requirements to support the LDP are set out in the accompanying statutory Action Programme. The Action Programme is a statutory document, which is adopted by Planning Authorities and submitted to Scottish Ministers on at least a two yearly basis.

To support the delivery of the Plan, this Supplementary Guidance sets out the Council's approach to the assessment of infrastructure requirements associated with new development and a framework for the collection of developer contributions. It also aims to address community concerns about the timely delivery of the required infrastructure.

Infrastructure requirements associated with new development

The impact of the growth of the city on schools, roads and other transport requirements, green space and primary healthcare infrastructure, has been considered by the Council during the Plan preparation process.

This consideration has been carried out through cumulative appraisals of the impact of new housing land releases on education and transport infrastructure, and by revisiting earlier transport studies. It has involved using the standards in the Open Space Strategy and partnership working with NHS Lothian. In addition, cross boundary transport impacts and actions to address them are being considered by SESplan with Transport Scotland.

General Developer Contributions Approach

Proposals will be required to contribute to the following infrastructure provision, as set out in Table 1, where relevant and necessary to mitigate* any negative additional impact (either on an individual or cumulative basis) and where commensurate to the scale of the proposed development.

*further assessments may be required to detail the required mitigation.

Table 1 - Financial and Other Contributions

Item	Circumstances <ul style="list-style-type: none"> • Types of development • Location & Policy
Education capacity, including new schools	<ul style="list-style-type: none"> • Residential development - houses (Use Class 9) and sui generis flatted developments of all tenures including affordable housing and/or build for rent housing. • Citywide through contribution zones. New schools within LDP Table 5 and site briefs. The Action Programme and Annex 1 of this guidance.
Edinburgh Tram Project	<ul style="list-style-type: none"> • Local, major & national development as defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations • In identified contribution zone.
Transport improvements including public transport	<ul style="list-style-type: none"> • Local, major & national developments as defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations. • Citywide, including in contribution zones and other locations if required by Policies Del 1, the Action Programme or a site specific action set out in a LDP site brief.
Public realm and other pedestrian and cycle actions	<ul style="list-style-type: none"> • Local, major & national development as defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations. • Citywide, including in contribution zones and other locations if required by Policies Del 1, Hou 3, Env 18, 19 or 20 or where identified in Council's public realm strategy*, or as site specific action in Action Programme.
Traffic management, including strategic infrastructure from the SDP, and junction improvements	<ul style="list-style-type: none"> • Local, major & national development as defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations. • Citywide including in contribution zones and other locations if required by Policies Del 1 and Tra 8
Green space actions	<ul style="list-style-type: none"> • Residential development - houses (Use Class 9) and sui generis flatted developments of all tenures including affordable housing and/or build for rent housing if required by Policy Hou 3. Other local, major or national development as defined by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations if required by Policy Env 18, 19 or 20. • Citywide, including in contribution zones
Primary healthcare infrastructure capacity	<ul style="list-style-type: none"> • Residential development - houses (Use Class 9) and sui generis flatted developments of all tenures including affordable housing and/or build for rent housing, care homes (Use Class 8) and student housing developments. • In identified contribution zones

Table 1 is based on LDP Annex C, reordered to reflect the hierarchy of transport modes

Contribution Zones

Where infrastructure appraisals have identified cumulative impacts i.e. arising from more than one development, a contribution zone is established. The geographical extent of a contribution zone relates to the type and nature of the action in relation to transport, education, public realm, green space and primary healthcare.

The total cost of delivering infrastructure with zones, including land requirements will be shared proportionally and fairly between all developments which fall within the zone.

The infrastructure actions identified by the assessments and the Contribution Zone requirements are set out in the Action Programme, and for each individual form of infrastructure, in the following sections.

2a. Education Infrastructure

Education infrastructure, including new primary and secondary schools, as well as school extensions, is required to support planned population and housing growth within the city.

Education Infrastructure Requirements and Contribution Zones

The Council has assessed the impact of the growth set out in the LDP through an Education Appraisal (August 2018). To do this, an assumption has been made as to the amount of new housing development which will come forward ('housing output'). This takes account of new housing sites allocated in the LDP and other land within the urban area. The number of new pupils expected from this housing development is then identified using pupil generation rates, as set out in Annex 1.

The Council's assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional pupils from development. Education infrastructure 'actions' have been identified and are set out in the Action Programme and Annex 1 to this guidance. Actions include the delivery of new schools and school extensions.

Information about how the cost of these actions has been determined is set out in the Education Appraisal (August 2018).

To ensure that the total cost of delivering the new education infrastructure is shared proportionally and fairly between developments, Education Contribution Zones have been identified and 'per house' and 'per flat' contribution rates established. These are set out in Annex 1.

Where land is required to be safeguarded for a school site, the value of the land, as well as potential abnormal site costs are included within the relevant Contribution Zone. This allows the land costs to be attributed to, and recouped from, all the sites within a Zone.

Education Contribution Zones are based on the catchment areas of secondary and primary schools.

Developer Contributions for Education Infrastructure

- A. Residential development is required to contribute towards the cost of education infrastructure to ensure that the cumulative impact of development can be mitigated. Residential development includes houses (Use Class 9) and sui generis flatted development, and includes affordable housing, and build for rent housing.
- B. The Council will assess the cumulative impact of all new development on education infrastructure. This assessment will consider school roll projections and an assumption about potential developments within the area, at the time of the assessment.
- C. The required contribution from a development will be determined using the following principles:
 - i) If appropriate education infrastructure actions are identified in the current Action Programme, the contribution will be based on the established 'per house' and 'per flat' rate for the appropriate part of the Zone. The current actions and contribution rates for all Zones are set out in Annex 1. For Zones which include proposals for a new school(s), a contribution towards the cost of securing land for the school(s) is also required.
 - ii) If the education infrastructure actions identified in the current Action Programme are not sufficient to accommodate an increase in the cumulative number of new pupils expected in that area as a result of the development (for example greenfield/greenbelt sites being considered under LDP Policy Hou 1, part 2) the Council will consider if it is appropriate to revise the action(s) and associated Contribution Zones.

The established 'per house' and 'per flat' contribution rates will be applied if they are sufficient to cover the cost of the notional new set of actions. This will ensure that sites not allocated within the LDP do not contribute proportionally less to the delivery of new education infrastructure than housing sites allocated in the LDP. If the established contribution rates will not cover the cost of the revised set of actions, the proposed development will be required to make a contribution that is sufficient to cover the revised set of actions, in order that the infrastructure requirements can be delivered.

In some circumstances it may be appropriate to establish a new Contribution Zone or Sub-Area with its own contribution requirements, for example if a development comes forward that would require a new school to be added to the Action Programme.

iii) In certain circumstances the full 'per unit' contribution will not be required.

- No contribution is required from developments that are not expected to generate at least one additional primary school pupil.
- If a development is expected to generate at least one primary school pupil but less than one secondary school pupil, only the 'primary school contribution' is required.
- If a development is expected to generate at least one primary school pupil and at least one secondary school pupil, a 'full contribution' is required.

The 'full contribution' is based on all identified actions. The 'primary school contribution' is based on identified actions for non-denominational and Roman Catholic primary schools only.

- D. Where a development proposal is likely to give rise to an impact on education infrastructure which cannot be appropriately mitigated in line with the Council's cumulative approach, it should be noted that planning permission may be refused.
- E. Development should only progress where it is demonstrated that required education infrastructure can be delivered, and at the appropriate time. The Council will assess whether new development will impact on the education actions set out in the Action Programme, and the current education delivery programme, as set in Annex 1. Third party delays in infrastructure delivery will not normally be allowed to prevent the granting of planning permission or the undertaking of development.
- F. If the pupils from a new development cannot be accommodated until education actions have been delivered, conditions may be used to phase the development to reflect the delivery programme for the required infrastructure.

- G. The Action Programme, costs and potential housing output set out in Annex 1 are reviewed on an annual basis. The circumstances within which this guidance will be reviewed are set out in Section 5

Delivery of Education Infrastructure

The Council's current programme for the delivery of education infrastructure is set out in the Action Programme and Annex 1 of this guidance.

In setting the programme, the Council aims to balance the need for early provision of infrastructure with the risk of housing development stalling. Education infrastructure capacity will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The Council reserves the right to adjust the timing of the education delivery programme to take account of relevant circumstances.

The establishment of any proposed new school (both the intended site and catchment area), would be subject to a statutory consultation and could only be implemented following that process, if approved by the Council.

If the number of additional classrooms that are delivered is no more than what is necessary to accommodate the number of pupils expected to be cumulatively generated from development sites, developer contributions from the relevant part of the Contribution Zone will be expected to cover the full cost of delivering the new infrastructure.

The Council may identify a need to provide education infrastructure over and above what is required to accommodate the number of pupils expected to be cumulatively generated from development sites. This will be set out in the Action Programme, and the Council's appropriate share of the infrastructure identified. The Council will not seek developer contributions to deliver its share of this infrastructure; instead the Council will seek an alternative funding mechanism.

2b. Transport Infrastructure

There is a clear link between most new development and impact on the transport network. Future growth based on excessive car use and dependency would have serious consequences in terms of congestion and deteriorating air quality, as well as impacting on the economy and environment and disadvantaging people who do not have access to a car.

Therefore, reducing the need to travel and promoting use of sustainable modes of transport are key principles underpinning the LDP strategy, and a central objective of the Council's Local Transport Strategy. These outcomes are also sought by national and regional planning policy.

Transport Infrastructure Requirements and Contribution Zones

The Council has prepared a transport appraisal to understand the impact on transport of the new planned growth set out in the LDP and to identify the transport interventions needed to mitigate it.

The Council has also refreshed transport appraisals for its strategic mixed-use development areas, including the West Edinburgh Transport Appraisal (WETA) to support development proposals at Edinburgh Airport, the Royal Highland Centre and International Business Gateway and an earlier study for north Edinburgh relating to the now-superseded local plan's proposals for Edinburgh Waterfront. The latter actions are grouped into packages of actions in geographical sub-areas across north Edinburgh, each with a contribution zone.

SEsplan and Transport Scotland have progressed work to establish actions necessary to address cross boundary traffic flows related to the cumulative impacts of developments in the SEsplan area.

The transport improvements identified by the above studies are set out in the Action Programme. These interventions include:

- the delivery of Edinburgh tram,
- access to bus services and park and ride facilities,
- improvements to the public realm and other pedestrian and cycle actions, and,

- traffic management, including junction improvements.

Some of these interventions relate only to a single development site. These are only shown in the Action Programme.

Where transport interventions have been identified due to the cumulative impact of several developments, a transport contribution zone has been established. These are shown in the Action Programme and set out in Annex 2.

Contribution zone coverage of the Council area is not comprehensive and the Action Programme actions only account for some of the total quantity of development supported by the LDP. Development proposals which are not accounted for by this approach will therefore need to carry out transport assessments as described below.

Developer Contributions for Transport Infrastructure

Development is required to contribute towards the cost of necessary transport infrastructure enhancements.

Edinburgh Tram Contributions

Where the tram network will help to address the transport impacts of a development, a contribution will be sought towards its construction and associated public realm works.

This guidance applies to all new developments requiring planning permission within the defined proximity of the existing and proposed tram lines as shown in Annex 2, and throughout the city with regard to major developments.

In relation to the completed Phase 1A of the project, the Council has constructed the tram line and its associated public realm. As part of the funding strategy money has been borrowed against future contributions from developers. Given the amount of public money that has been spent and the fact that many developers have already contributed towards the project this approach is an appropriate mechanism for 'front funding' essential infrastructure.

The Council in constructing the tram network has provided a necessary piece of transport infrastructure to allow future development to proceed.

- A. All developments should make an appropriate contribution towards the construction costs of the tram system and associated public realm to ensure

the necessary transport infrastructure is in place in time to take account of the impacts of these new developments in the City. Contributions will be sought, where they are required, in an appropriate, transparent and equitable manner.

- B. The level of contribution required depends on the following factors:
- i. type of development,
 - ii. distance from tram route, and
 - iii. size of development.
- C. The level of contribution will be calculated as follows:
- i. Firstly, from Table 1 (Annex 2) establish scale-factor (1-15) by type of and size (GEA) of development proposed.
 - ii. Secondly, choose appropriate zone within which the development lies. Determination of the zone will be based on the shortest walking distance between any part of the site and the nearest edge of the constructed tram corridor. If the development lies within different zones, the zone closest to the tram will be used. Sites within 250 metres are Zone 1 and sites lying between 250 metres and 500 metres are Zone 2.
 - iii. Thirdly, those sites based on the shortest walking distance between any part of the site and the nearest part of a tram stop lying between 500 metres and 750 metres are Zone 3.
 - iv. Fourthly, using the Zone appropriate to the particular development, move along Table 2 to the column numbered as the scale factor obtained from Table 1. The figure shown is the amount in £'000s to be contributed towards the tram project by that particular development.
 - v. Fifthly, the contribution, once agreed, will be index-linked from the date of agreement until date of payment on the basis of the BCIS All-in Tender Price Index.
- D. Proposals for change of use or previously developed land will also require to be calculated with regard to a potential contribution. This will be based on the tram contribution for the proposed planning use(s) for the building(s)/land, minus the tram contribution based on the lawful planning use of the existing

building(s)/land. Where the resultant contribution is positive then that will be the contribution that is required to be paid for that development. Changes of use or subdivision falling below the thresholds shown in Table 1 will not normally be expected to provide a contribution.

- E. Where development proposals are in excess of Tables 1 and 2, these tables will be applied on a pro rata basis to calculate the minimum level of contribution required.
- F. Major developments, as defined within scale factor 15 in Appendix Table 1, on land outwith the defined zone 3 will also be considered in regards to their net impact on transport infrastructure. Where there is a net impact on infrastructure, specifically in relation to trip generation on public transport and this requires mitigation developments may be required to make a contribution to the tram system. In such cases, the Transport Assessment submitted with the application should address fully the potential role which could be played by tram in absorbing the transport impacts of the development.
- G. The construction of the tram system infrastructure (Phase 1A) was completed in 2014. The Council has borrowed £23 million to fund the construction of the tram system and intends to repay this amount through developer contributions. This guideline will continue to apply in relation to development along the tram route until the amount of borrowing, including costs, highlighted above has been repaid. This provision relates to Phase 1A of the construction of the tram route as shown in the appended plan.
- H. Policy Exemptions are as follows:
- i. Small developments falling below the thresholds shown in the Table will not be expected to provide a contribution unless they are clearly part of a phased development of a larger site. In such cases the Council will seek to agree a pro-rata sum with the applicant.
 - ii. In the event of a developer contributing land towards the development of the tram system, the amount of the contribution required under this mechanism may be reduced. Each application will be considered on its individual merits, taking into account factors such as the value of the land, its condition, and the location of existing and proposed services.

The amount of contribution attributable to any development will depend on the exact size of the development (sqm/number of units, etc). Table 2 (Annex 2) provides the range of financial contribution in each scale factor, which relates to the range of development sizes in each scale factor shown in the map. This table is provided to assist in calculating the level of contribution that will be sought. The exact amount will be confirmed during the planning application process.

Other Transport Contributions

LDP Policy Tra 8 sets out requirements for assessing development proposals relating to major housing or other¹ development sites, and which would generate a significant amount of traffic. Contributions will be identified using the following approach:

- A. For sites identified in the LDP or accounted for by the Action Programme and/or Transport Contribution Zones, contributions will be sought as specified in the Action Programme and Annex 2.
- B. For development proposals not addressed by A above, Policy Tra 8 requires that a transport assessment be carried out to demonstrate that certain criteria are met. Such assessment should be carried out cumulatively, taking account of:
 - i. Existing development
 - ii. Development with permission
 - iii. Development in valid applications
 - iv. Development in valid Proposal of Application Notices
 - v. Allocations in the LDP
 - vi. Cross boundary impacts, taking account of relevant developments in surrounding authorities. (except those for housing development in the Green Belt).

¹The scale of 'other development sites' will be considered on a case-by-case basis, having regard to national guidance on transport assessments.

In order to comply with Policies Tra 8, Del 1 and, where applicable, Hou 1, such proposals will need to demonstrate that they can deliver any new transport actions arising from such assessments.

- C. For development proposals required to carry out an assessment and identify actions as described in B above, the developer will be expected to deliver the actions.

For all development:

- I. The Council may require a contribution towards Traffic Regulation Orders/ Stopping up Orders and City Car Club (or equivalent). Where an action can only be delivered by the Council as local authority (e.g.), indicative costs are provided in Annex 2.
- II. Where the formation of an active travel connection would involve use of land outwith the developer's control, and the Council is able and willing to deliver such an action, if necessary using its compulsory purchase powers, the full cost of such an action (including land acquisition costs) will be sought.

Delivery of transport infrastructure

The current timescales and responsibility for the delivery of transport infrastructure actions are set out in the Action Programme.

Where a transport action is required because of development and can be delivered directly by an applicant, this is the Council's preferred option. The Council will normally secure its delivery as part of the planning permission using conditions or non-financial legal agreements (see Section C above).

Where the delivery of a transport action in the Action Programme has a Contribution Zone and/or requires land outwith the control of the applicant(s), the Council will, if necessary, collect contributions towards the action and deliver the action.

The Council will transfer any monies collected towards actions on the trunk road network to Transport Scotland once the relevant project is confirmed.

2c. Greenspace

Policies set out requirements for the provision of open space in new housing development (Policy Hou 3 in the LDP) and other development (Policy Env 20 in LDP), and identify the limited circumstances in which loss of open space will be permitted (LDP Policies Env 18 and 19). Where greenspace actions which are to be delivered by new development are identified within the LDP, these, with costings where appropriate, are set out in the Action Programme.

The Council's Open Space Strategy sets out analysis and actions which helps interpretation of those policies. Contributions towards the actions identified in the Strategy will be sought where the above requirements for new open space are not to be met fully within a development site or where development involves loss of open space and the relevant policies require off-site enhancement or provision of open space.

Open Space – Ongoing Maintenance

Where development will establish new publicly accessible open space, trees and other green infrastructure, there must be adequate arrangements for ongoing management and maintenance. The Council favours factoring on behalf of the private landowner(s), but will consider adoption should sufficient maintenance resources be made available.

The Council will only accept responsibility for open space and public realm maintenance and management if it owns the land in question.

If the developer wishes the Council to undertake long term maintenance of these facilities within the development site, land ownership must be transferred to the Council by legal agreement and adequate revenue resources made available.

Open spaces and public realm areas within the development site that are not transferred to the Council will require to be safeguarded as being publicly accessible, and maintained and managed to a standard acceptable to the Council. This may be undertaken by a property management company or other appropriate body, such as a Trust.

As a condition of the planning consent, the developer will be required to provide details of the proposed management and maintenance arrangements to the Council, and receive approval, before construction starts on site.

Further details on greenspace actions and costs are set out in Annex 3.

2d. Public Realm

Where a strategic public realm action has been identified within the Public Realm Strategy, which will help address a deficiency in the public realm requirements of a development, a contribution will be sought towards its construction.

The Edinburgh Public Realm Strategy was approved by the Planning Committee in December 2009. It set out objectives for the delivery of public realm within Edinburgh and identified a list of public realm project priorities.

A new process is being developed which will help set priorities for public realm investment. Projects will be assessed against a limited number of high level criteria to produce a priority list. By setting out the criteria and a simple scoring system, transparency will be ensured. This process also needs to complement the approach used to determine priorities for the footway and carriageway capital programme. The methodology will be reported to Committee in due course. This Annex will be updated following the approval of the methodology.

Until this methodology is complete and the Public Realm Strategy Updated, strategic public realm contributions will not be pursued. Developments will still be required to provide public realm within their sites and site environs.

2e. Primary healthcare

LDP Policy Hou 10 sets out that planning permission for housing development will only be granted where there are associated proposals to provide any necessary health and other community facilities relative to the impact and scale of development proposed.

Health boards have an obligation from Scottish Government to ensure everybody has the ability to register with a GP, therefore the additional population associated with the LDP development programme directly impacts on the future provision of primary care.

The Public Bodies (Joint Working) Scotland Act 2014 requires health boards and local authorities to integrate health and social care services. In Edinburgh, the integration of the services from City of Edinburgh Council and NHS Lothian is now under the authority of the Edinburgh Integration Joint Board (IJB). The planning, resources and operational oversight for the range of NHS and local authority care services, including primary care, is the responsibility of the Edinburgh Health and Social Care Partnership (EHSCP), which is governed by the Edinburgh IJB.

The majority of the current 72 practices in Edinburgh are independent contractors, with eight directly managed by EHSCP/NHS Lothian. Irrespective of whether they are independent contractors or directly managed, EHSCP work with all GPs to plan future primary care provision and develop healthcare actions in response to the implications of the LDP.

Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.

To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from

the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document.

The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development.

Health care 'actions' have been identified and are set out in the Action Programme and Annex 4 to this guidance. Actions include new primary healthcare practices and extensions to existing practices.

To ensure that the total cost of delivering the new primary healthcare infrastructure is shared proportionally and fairly between developments, Healthcare Contribution Zones have been identified and 'per house' and 'per student bedspace' contribution rates established. These are set out in Annex 4.

The Healthcare Contribution Zones have not been defined on the basis of individual health care General Practice boundaries. This is because practice boundaries have no statutory status, are inconsistent, overlap and their extent are subject to change at any time. As a result it was not considered appropriate or pragmatic to use practice boundaries to define contribution zones.

The Healthcare Contribution Zones which have been identified include relevant new housing developments anticipated to impact on existing practices with underlying capacity constraints. The zones are based on the areas of the city where there is a significant concentration of new development or where there is currently no existing General Practice provision because the development is on former green belt land.

Existing local practice catchment areas and capacity were first reviewed to assess what available infrastructure capacity exists overall within each zone and then to identify what additional infrastructure provision will be required to provide health care for the resultant population increase from the developments. (new para)

Contribution zones and the formula for calculating developer contributions are set out in Annex 4.

3. Viability and Funding Mechanisms

Viability

Where it can be demonstrated that there are such abnormally high site preparation costs that addressing the provisions of this guideline threatens the financial viability of developing the site, the requirement to make a contribution towards physical and social infrastructure may be varied or even waived.

Such costs could include remediation of contamination or unusual infrastructure requirements, but not normally the cost of land purchase. It is accepted that for a development to be viable an appropriate site value needs to be achieved by the landowner and an appropriate return for the developer, taking account of market conditions and risk, needs to be achieved.

However, developers should take account of the Council's policies in bidding for land. The Council will not accept over-inflated land values as a reason for reducing contribution requirements.

Financial viability will be assessed in accordance with the Royal Institution of Chartered Surveyors Guidance Note, Financial Viability in Planning (1st Edition, 2012).

There is an expectation that the applicant will enter into an open book exercise in order to prove viability concerns. This open book exercise should include a financial appraisal supported by an evidence base including forecasting development values, development costs, any abnormally high site preparation costs, and an assessment of land value.

Financial viability is one of many material considerations in the determination of a planning application.

Funding Mechanisms

Should the required contributions raise demonstrable commercial viability constraints, gap and/or forward funding may be required.

Should gap and/or forward funding be required to deliver an infrastructure action in the Action Programme, this will be reported to the appropriate committee(s). This includes Planning Committee with the relevant application.

The financial impact of the Local Development Plan on capital and revenue budgets is reported annually to the Council's Finance & Resources Committee.

4. Legal Agreements and use of monies

Once Developer Contributions are agreed, a Section 75 agreement will normally be required, although other arrangements such as Section 69 agreements may be made where smaller contributions are to be delivered by the developer or paid up front.

The Council needs to ensure that contributions are received in good time to allow the necessary infrastructure to be delivered in step with new development. It is anticipated that planning applications will be submitted and construction started at varying timescales.

The timescales for delivery will be agreed between the Council and the applicant. Developers will be required to demonstrate that a site can proceed in the short term prior to the delivery of other infrastructure projects that the site would be expected to contribute to. However, the Council appreciates that the timings of payments may have implications in terms of project cash flow and will take this into account in agreeing terms.

Where a development site includes the land safeguarded for a new school, the site will be secured as part of a legal agreement. The value of the land, as well as the cost of servicing and remediating the site (if appropriate), will be credited against that site's overall contribution requirement once the Council has confirmed that the new school will be delivered. It is likely that this will be following a statutory consultation process to establish the school location and catchment boundaries. All contributions from other development sites which are attributable to the cost of securing land for a new school will then be used towards the general cost of delivering the new education infrastructure that is required within the relevant Zone.

If CEC confirm that they require a school site then following transfer the land value of this can be credited against the overall value of the required contribution. Future financial contributions can then be adjusted accordingly. If the developer has serviced and remediated the site then the costs of this can also be credited against the overall contribution requirement on an open book basis. If the developer wants these costs fixed within the legal agreement then they must confirm what work will be carried out and provide evidence to be agreed with the Council that demonstrates what these costs are likely to be.

Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme.

The Council will continue to collect contributions towards actions in the Action Programme that have been delivered by the Council to facilitate development. This includes the Edinburgh Tram Project and other large cumulative infrastructure.

Any monies collected towards healthcare projects or actions on the trunk road network will be forwarded to NHS Lothian or Transport Scotland once the relevant project is confirmed. The Action Programme will provide details of the phasing and delivery of the infrastructure needed to support strategic growth.

Indexing and Repayment

Infrastructure contributions will be index linked. This is based on the increase in the BCIS Forecast All-in Tender Price Index from the current cost date shown in the relevant infrastructure Annex to the date of payment. No indexing will be applied to payments towards land.

The Council will hold contributions towards education infrastructure for 30 years from the date of construction of new school infrastructure. This is in order for payments to be used for unitary charges associated with infrastructure projects which have been delivered through revenue based funding mechanisms. For all other contributions, payments will be held for 10 years.

If the actual costs of delivering the new infrastructure are lower, S75 legal agreements can make provision for the repayment of unused contributions. In addition, applicants have the opportunity to ask the Council to consider modifying existing S75s to reflect contribution rates that have been updated to take account of up-to-date costs.

Model agreement

A Model Legal Agreement is available.

5. Audit and Review

This guidance will be reviewed as part of the development plan process and will be revised in the light of any changes to the development plan or the review of the Action Programme, The Council's Education Infrastructure Appraisal, The Housing Land and Delivery Audit, site-specific transport requirements, the Public Realm Strategy or Open Space Strategy.

In addition, on-going assessment will be carried out to ensure that policies are only applied where it is necessary to do so and revisions to this guidance will be made accordingly. Applicants also have the statutory right to apply to the Council for the modification or discharge of a Section 75 agreement.

Annex 1 Education Infrastructure

Education Action	Capital Cost (Q4 2017)	Delivery date	Contribution Zone
3 Primary School classes (Currie PS)	£946,876	Aug-18	South West
2 RC Primary School classes (St Margaret's RC PS)	£784,388	Aug-18	Queensferry
Additional secondary school capacity – 66 pupils (to mitigate the impact of development within the catchment areas of Boroughmuir HS and James Gillespie's HS)	£2,156,730	Aug-19	Boroughmuir/ James Gillespie's
4 RC Primary School classes (St John Vianney RC PS or St Catherine's RC PS)	£1,193,665	Aug-19	Liberton/Gracemount
1 Primary School class (Kirkliston PS)	£392,194	Aug-19	Queensferry
3 Primary School classes (Gylemuir PS)	£946,876	Aug-19	West
Additional secondary school capacity – 275 pupils (to mitigate the impact of development within the catchment area of Queensferry Community HS)	£8,986,375	Mar-20	Queensferry
New 14 class Primary School and 80 nursery (Broomhills)	£13,538,437 Abs £5,121,593 Land £2,950,000	Aug-20	Liberton/Gracemount
New 14 class Primary School and 80 nursery (New Victoria Primary School Phase 1)	Phase 1: £13,538,437 Abs 3,485,846 Land £1,450,000	Phase 1 : Aug-20	Leith Trinity
4 Primary School classes (to be delivered by the new South Edinburgh PS)	£8,202,109	Aug-20	Boroughmuir/ James Gillespie's
Additional secondary school capacity – 251 pupils (to mitigate the impact of development within the catchment areas of Leith Academy and Trinity Academy)	£8,202,109	Aug-21	Leith Trinity
Additional secondary school capacity – 7 pupils (to mitigate the impact of development within the catchment area of Firhill HS)	£228,744	Aug-21	Firhill
3 Primary School classes (Castleview PS)	£946,876	Aug-21	Castlebrae
Extension to Castleview PS dining hall	£392,194	Aug-21	Castlebrae
2 RC Primary School classes (St David's RC PS)	£784,388	Aug-21	Craigroyston/Broughton
Additional secondary school capacity – 261 pupils (to mitigate the impact of development within the catchment area of Castlebrae Community HS)	£8,528,886	Aug-21	Castlebrae
Additional secondary school capacity – 522 pupils (to mitigate the impact of development within the catchment areas of Liberton HS and Gracemount HS)	£17,057,773	Aug-21	Liberton/Gracemount

Additional secondary school capacity - 420 pupils (to mitigate the impact of development within the catchment areas of non-denominational secondary schools within West Edinburgh)	£13,737,847	Aug-22	West
New 21 class primary school and 120 nursery (Maybury)	£18,134,905 Abs £3,241,760 Land £4.750,000	Aug-22	West
New 7 class Primary School and 60 nursery (Gilmerton Station Road)	£8,893,839 Abs £5,121,593 Land £3,000,000	Aug-22	Liberton/Gracemount
New 11 class Primary School and 80 nursery (Brunstane)	£12,218,285 Abs £5,121,593 Land £2,950,000	Aug-22	Castlebrae
2 Primary School classes (Dean Park PS)	£784,388	Aug-22	South West
Additional secondary school capacity (St Augustine's RC HS)	£2,548,863	Aug-22	West/Tynecastle
Additional secondary school capacity – 273 pupils (to mitigate the impact of development within the catchment areas of Craigroyston Community HS and Broughton HS)	£8,921,019	Aug-23	Craigroyston/Broughton
New 14 class Primary School and 80 nursery (South Queensferry)	£13,538,437 Abs £2,322,342 Land £3,050,000	Aug-23	Queensferry
2 Primary School classes (to mitigate the impact of development within the catchment areas of Broughton PS, Abbeyhill PS and Leith Walk PS)	£784,388	Aug-23	Drummond
2 Primary School class (Balgreen PS)	£784,388	Aug-23	Tynecastle
4 RC Primary School classes (Fox Covert RC PS or St Joseph's RC PS)	£1,193,665	Aug-23	West
New 14 class Primary School and 80 nursery (Granton Waterfront)	£13,538,437 Abs 3,485,846 Land £525,000	Aug-24	Craigroyston/Broughton
2 Primary School classes (to mitigate the impact of development within the catchment area of The Royal High Primary School)	£784,388	Aug-24	Portobello
2 Primary School classes (Craigour Park PS)	£784,388	Aug-24	Liberton/Gracemount
2 RC Primary School classes (Holycross RC PS)	£784,388	Aug-24	Leith Trinity

Land Values

Proposed School Site Area	Ha	Acre	Q4 2017 Remediation & other abnormal costs	Land Value
Western Harbour	1.20	2.97	£3,485,846	£1,450,000
South Queensferry	2.00	4.942	£2,322,342	£3,050,000
Granton Waterfront	1.20	2.97	£3,485,846	£525,000
Brunstane	2.00	4.94	£5,121,593	£2,950,000
Maybury	2.00	4.94	£3,241,760	£4,750,000
Broomhills	2.00	4.94	£5,121,593	£2,950,000
Gilmerton Station Road	2.00	4.94	£5,121,593	£3,000,000

The costs above have been established through a high level exercise, values are still indicative, and would require additional exploratory works to provide a degree of assurance.

The capital and land costs in the Statutory Guidance for school projects are currently estimates based on established rates for extensions and new builds. As each specific project is taken forward through the design and delivery phases and transfer of land it is recognised that the actual costs of each project could vary from the estimates currently provided. The cost of extending a secondary school equates to a pro-rata contribution of £6536 per house and £980 per flat (as at Q4 2017). In Zones where contributions are only required towards extending a Roman Catholic secondary school the pro-rate contribution is £980 per house and £131 per flat (as at Q4 2017)

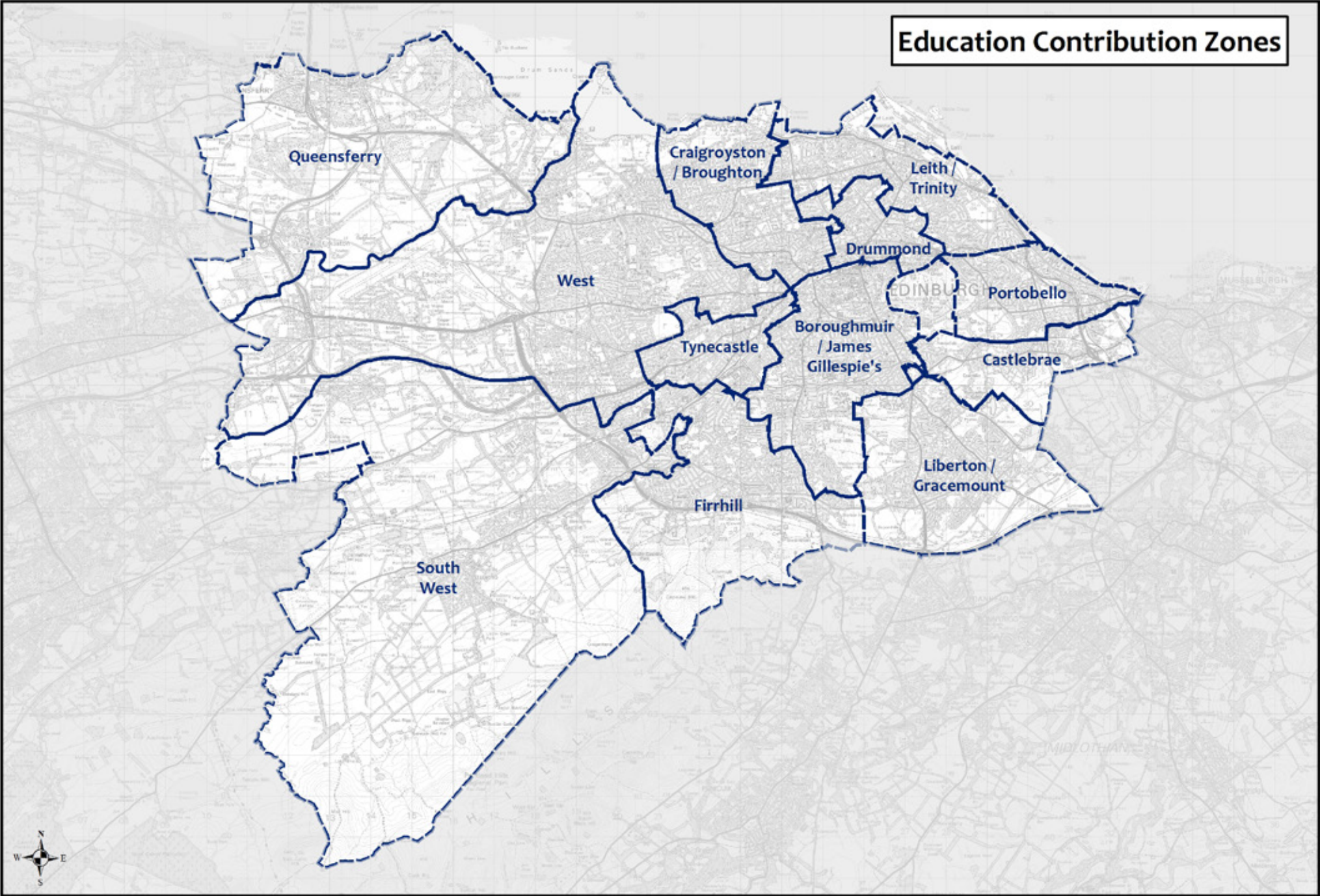
Education Infrastructure - Pupil Generation Rates (per dwelling type):

	Primary School			Secondary School		
	Total ¹	ND ²	RC ³	Total	ND	RC
Per Flat	0.07	0.06	0.01	0.03	0.026	0.004
Per House	0.3	0.26	0.04	0.2	0.17	0.03

¹ The number of additional pupils expected to be generated by a development;

² The proportion of additional pupils that will attend a non-denominational school, based on Council area information for 2012/13;

³ The proportion of additional pupils that will attend a Roman Catholic school, based on Council area information for 2012/13.



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Boroughmuir/James Gillespie's Education Contribution Zone






Total costs for Boroughmuir CZ - £3,345,167

Actions	Delivery date	Sub-area
Additional secondary school capacity (Boroughmuir HS, James Gillespie's HS)	2019	BJ-1, BJ-2
4 Primary School classes (to be delivered by the new South Edinburgh PS)	2020	BJ-2

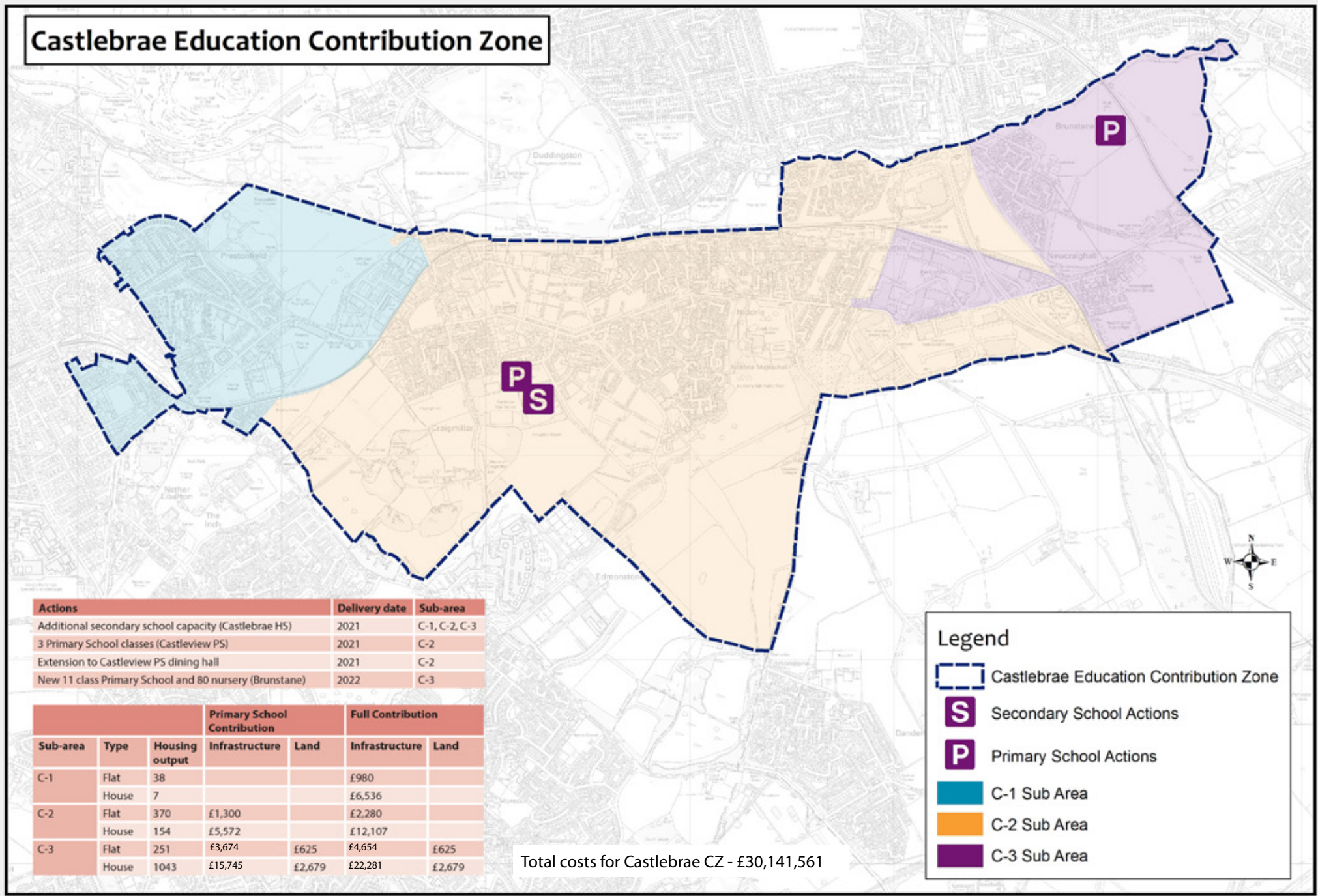
Sub-area	Type	Housing Output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
BJ-1	Flat	171			£980	
	House	3			£6,536	
BJ-2	Flat	1017	£723		£1,703	
	House	148	£3,098		£9,634	

Infrastructure contributions - to be index linked based on the increase in the BCIS Forecast All-in Tender Price Index from Q4 2017 to the date of payment
 Land contributions - no indexing to be applied to payments

Legend

-  Boroughmuir/James Gillespie's Education Contribution Zone
-  Secondary School Actions
-  Primary School Actions
-  BJ-1 Sub Area
-  BJ-2 Sub Area

Castlebrae Education Contribution Zone



Actions	Delivery date	Sub-area
Additional secondary school capacity (Castlebrae HS)	2021	C-1, C-2, C-3
3 Primary School classes (Castleview PS)	2021	C-2
Extension to Castleview PS dining hall	2021	C-2
New 11 class Primary School and 80 nursery (Brunstane)	2022	C-3

Sub-area	Type	Housing output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
C-1	Flat	38			£980	
	House	7			£6,536	
C-2	Flat	370	£1,300		£2,280	
	House	154	£5,572		£12,107	
C-3	Flat	251	£3,674	£625	£4,654	£625
	House	1043	£15,745	£2,679	£22,281	£2,679

Total costs for Castlebrae CZ - £30,141,561

Legend

- Castlebrae Education Contribution Zone
- Secondary School Actions
- Primary School Actions
- C-1 Sub Area
- C-2 Sub Area
- C-3 Sub Area

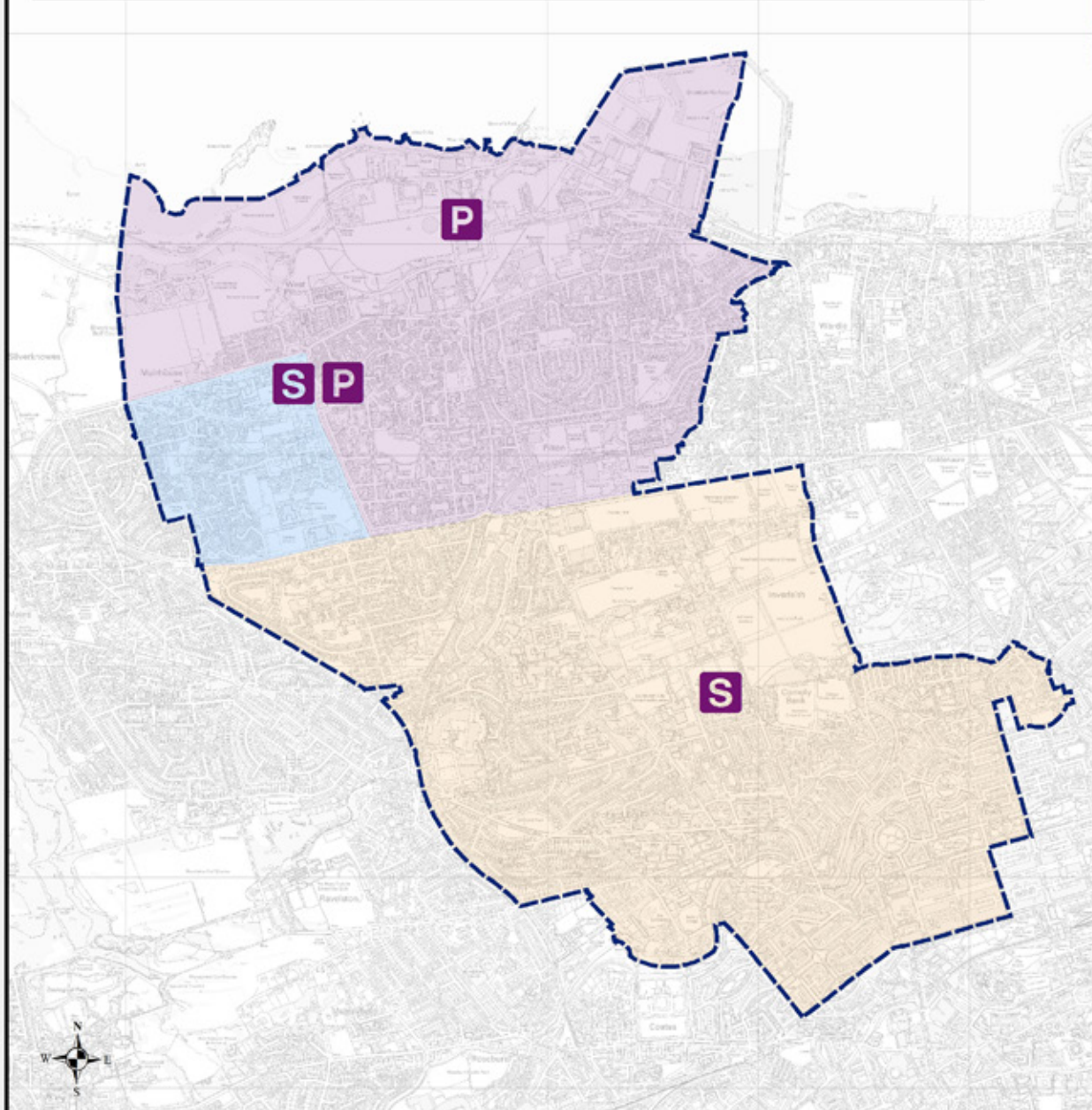
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Craigroyston/Broughton Education Contribution Zone

Actions	Delivery date	Sub-area
Additional secondary school capacity (Broughton HS, Craigroyston HS St Augustine's RC HS)	2023	CB-1, CB-2, CB-3
2 RC Primary School classes (St David's RC PS)	2021	CB-1, CB-2
New 14 class Primary School and 80 nursery (Granton Waterfront)	2024	CB-1

Sub-area	Type	Housing output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
CB-1	Flat	3832	£2,555	£19	£3,536	£19
	House	732	£10,952	£81	£17,487	£81
CB-2	Flat	0				
	House	0				
CB-3	Flat	387			£980	
	House	1			£6,536	

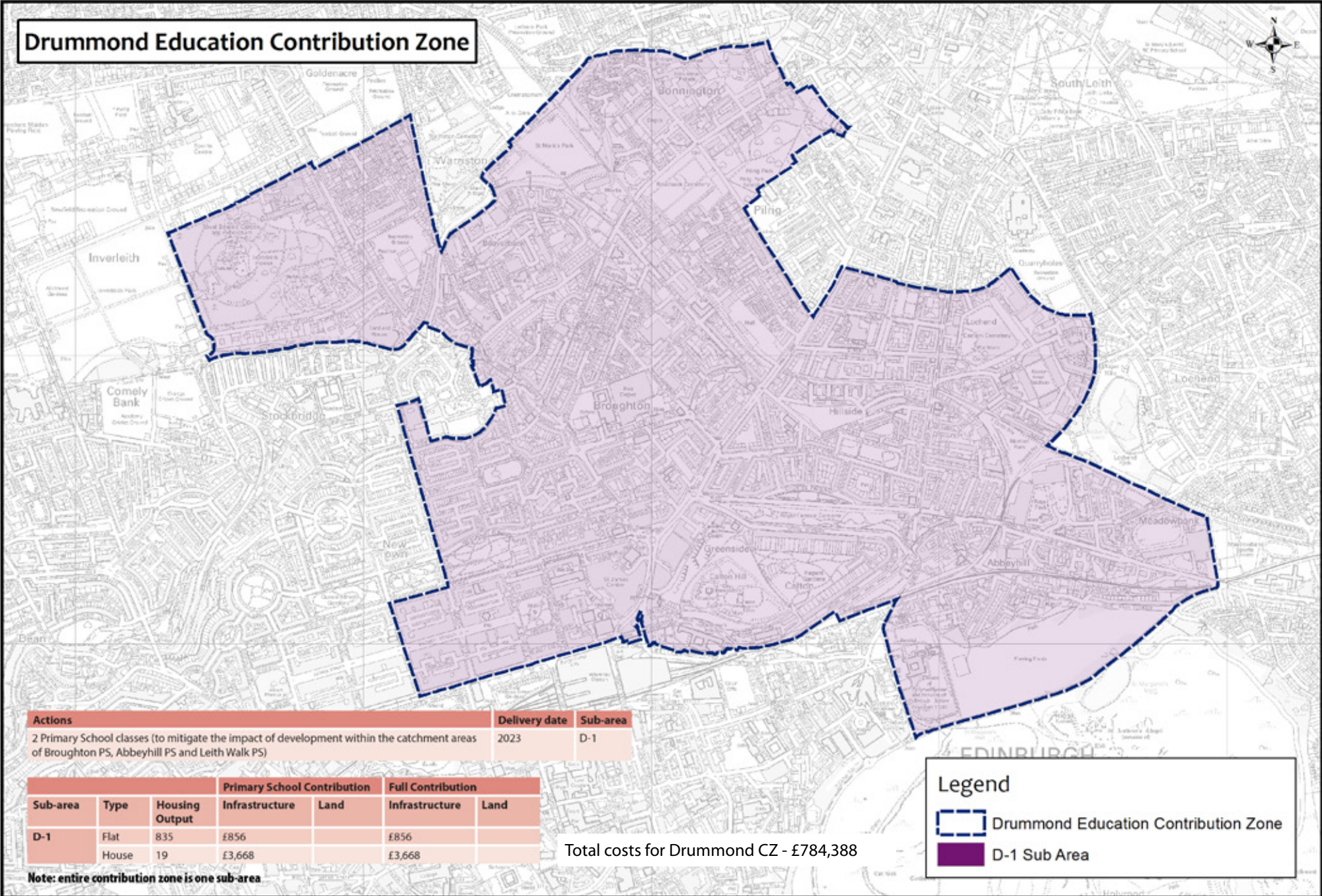
Total costs for Craigroyston CZ - £26,866,408



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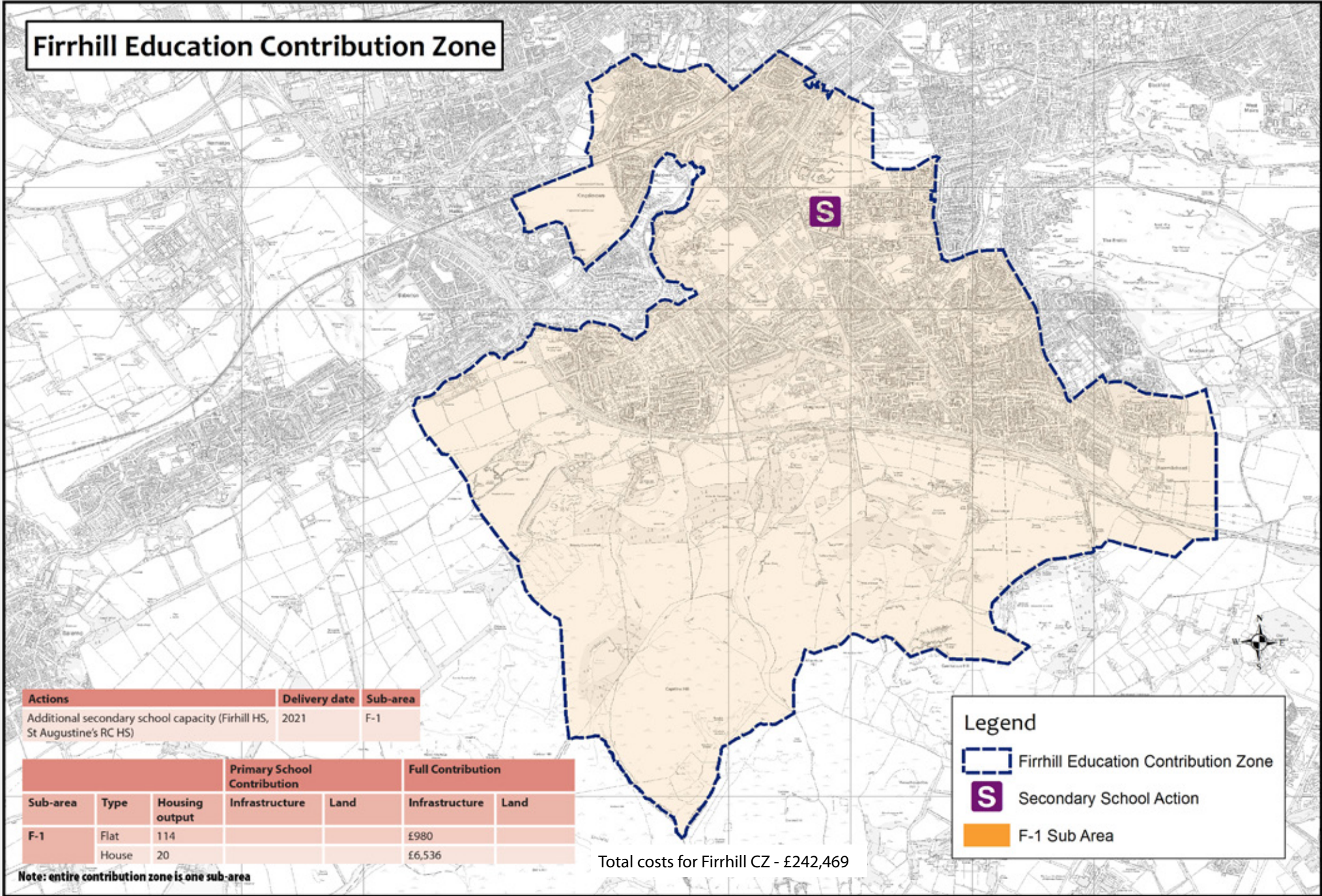
- Craigroyston/Broughton Education Contribution Zone
- Secondary School Actions
- Primary School Actions
- CB-1 Sub Area
- CB-2 Sub Area
- CB-3 Sub Area

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Firrhill Education Contribution Zone



Actions	Delivery date	Sub-area
Additional secondary school capacity (Firrhill HS, St Augustine's RC HS)	2021	F-1

Sub-area	Type	Housing output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
F-1	Flat	114			£980	
	House	20			£6,536	

Legend






- Firrhill Education Contribution Zone
- Secondary School Action
- F-1 Sub Area

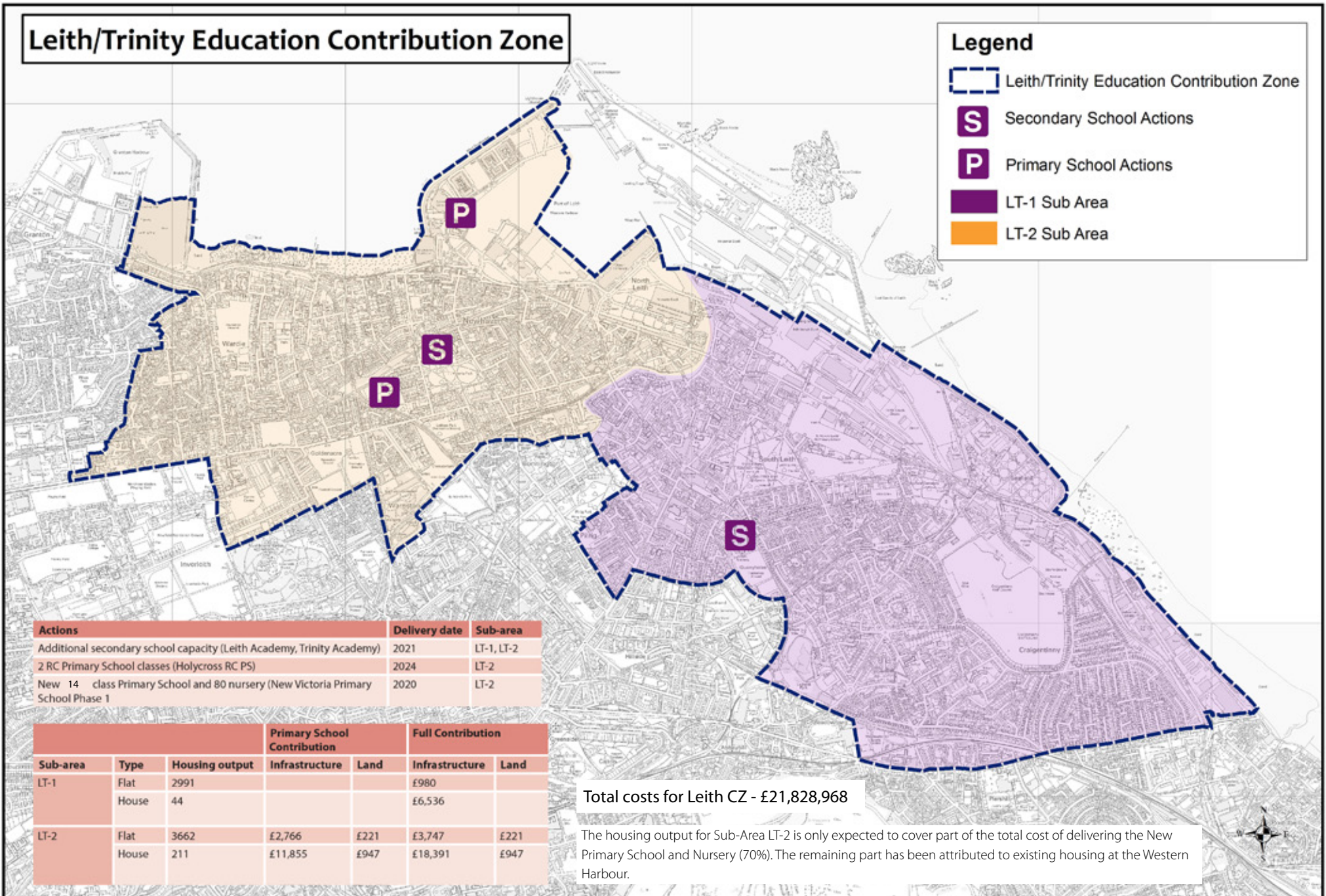
Total costs for Firrhill CZ - £242,469

Note: entire contribution zone is one sub-area

Leith/Trinity Education Contribution Zone

Legend

-  Leith/Trinity Education Contribution Zone
-  Secondary School Actions
-  Primary School Actions
-  LT-1 Sub Area
-  LT-2 Sub Area



Actions	Delivery date	Sub-area
Additional secondary school capacity (Leith Academy, Trinity Academy)	2021	LT-1, LT-2
2 RC Primary School classes (Holycross RC PS)	2024	LT-2
New 14 class Primary School and 80 nursery (New Victoria Primary School Phase 1)	2020	LT-2

Sub-area	Type	Housing output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
LT-1	Flat	2991			£980	
	House	44			£6,536	
LT-2	Flat	3662	£2,766	£221	£3,747	£221
	House	211	£11,855	£947	£18,391	£947

Total costs for Leith CZ - £21,828,968

The housing output for Sub-Area LT-2 is only expected to cover part of the total cost of delivering the New Primary School and Nursery (70%). The remaining part has been attributed to existing housing at the Western Harbour.

Liberton/Gracemount Education Contribution Zone

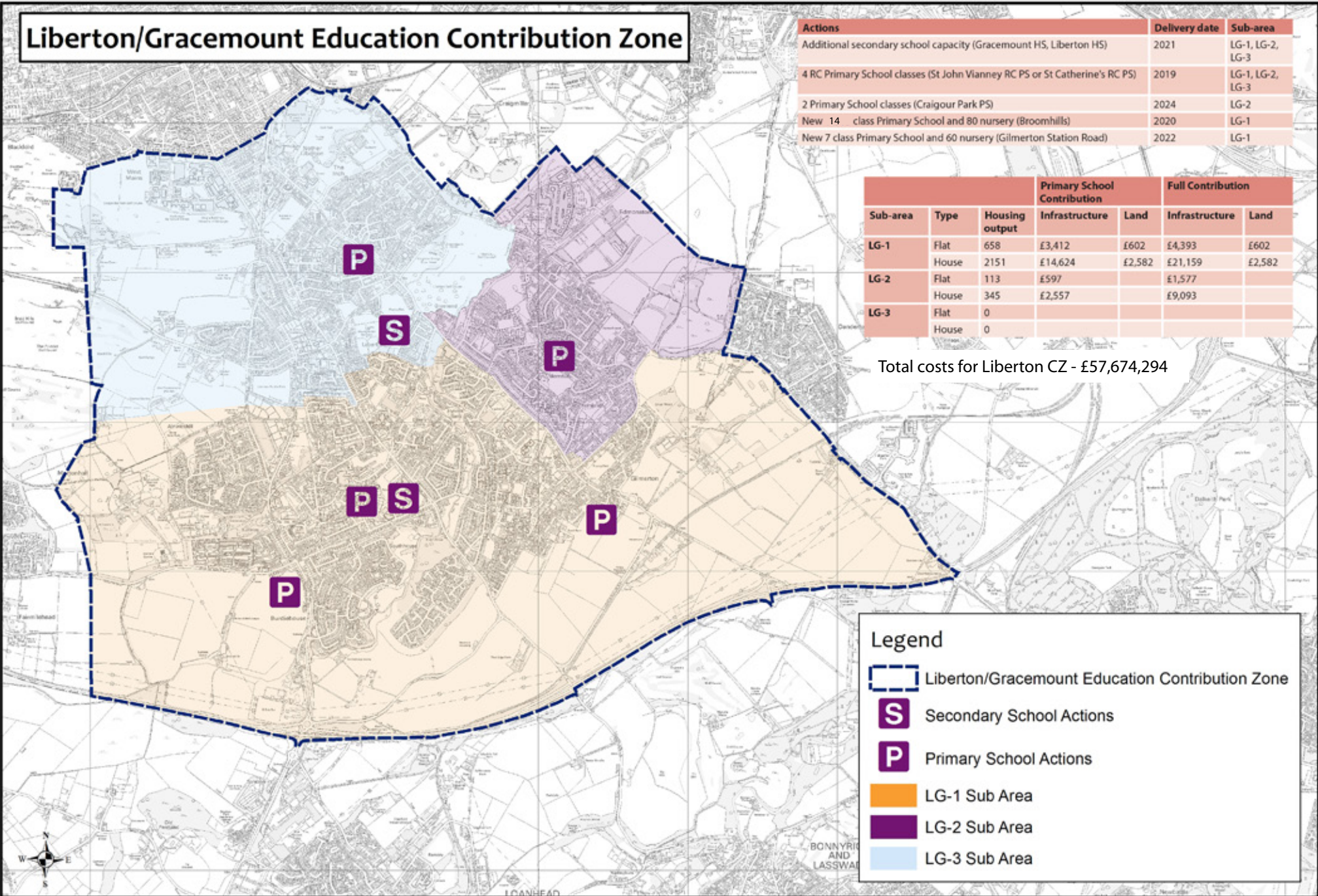
Actions	Delivery date	Sub-area
Additional secondary school capacity (Gracemount HS, Liberton HS)	2021	LG-1, LG-2, LG-3
4 RC Primary School classes (St John Vianney RC PS or St Catherine's RC PS)	2019	LG-1, LG-2, LG-3
2 Primary School classes (Craigour Park PS)	2024	LG-2
New 14 class Primary School and 80 nursery (Broomhills)	2020	LG-1
New 7 class Primary School and 60 nursery (Gilmerton Station Road)	2022	LG-1

Sub-area	Type	Housing output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
LG-1	Flat	658	£3,412	£602	£4,393	£602
	House	2151	£14,624	£2,582	£21,159	£2,582
LG-2	Flat	113	£597		£1,577	
	House	345	£2,557		£9,093	
LG-3	Flat	0				
	House	0				

Total costs for Liberton CZ - £57,674,294

Legend

- Liberton/Gracemount Education Contribution Zone
- Secondary School Actions
- Primary School Actions
- LG-1 Sub Area
- LG-2 Sub Area
- LG-3 Sub Area



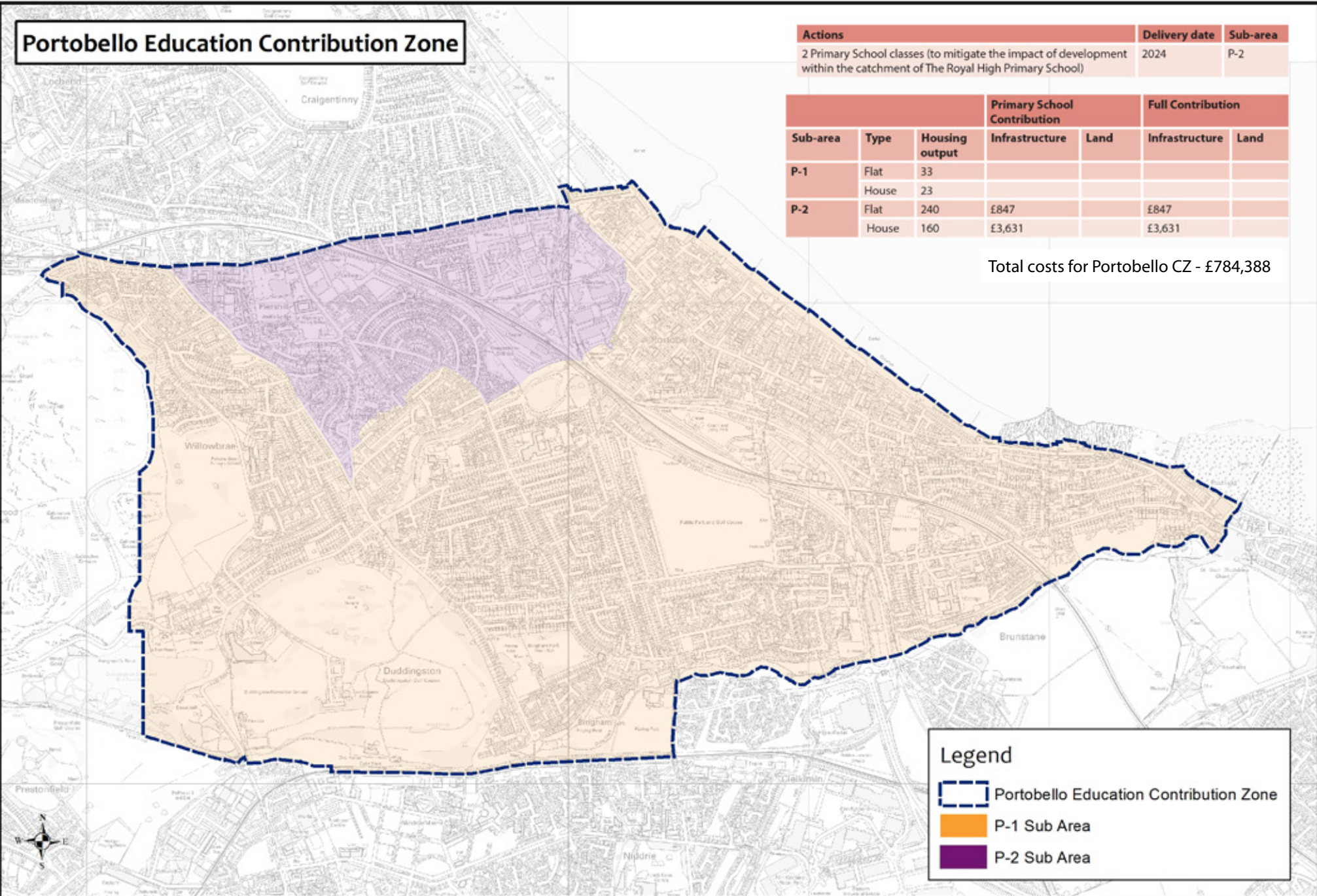
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Portobello Education Contribution Zone

Actions	Delivery date	Sub-area
2 Primary School classes (to mitigate the impact of development within the catchment of The Royal High Primary School)	2024	P-2

Sub-area	Type	Housing output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
P-1	Flat	33				
	House	23				
P-2	Flat	240	£847		£847	
	House	160	£3,631		£3,631	

Total costs for Portobello CZ - £784,388








Legend

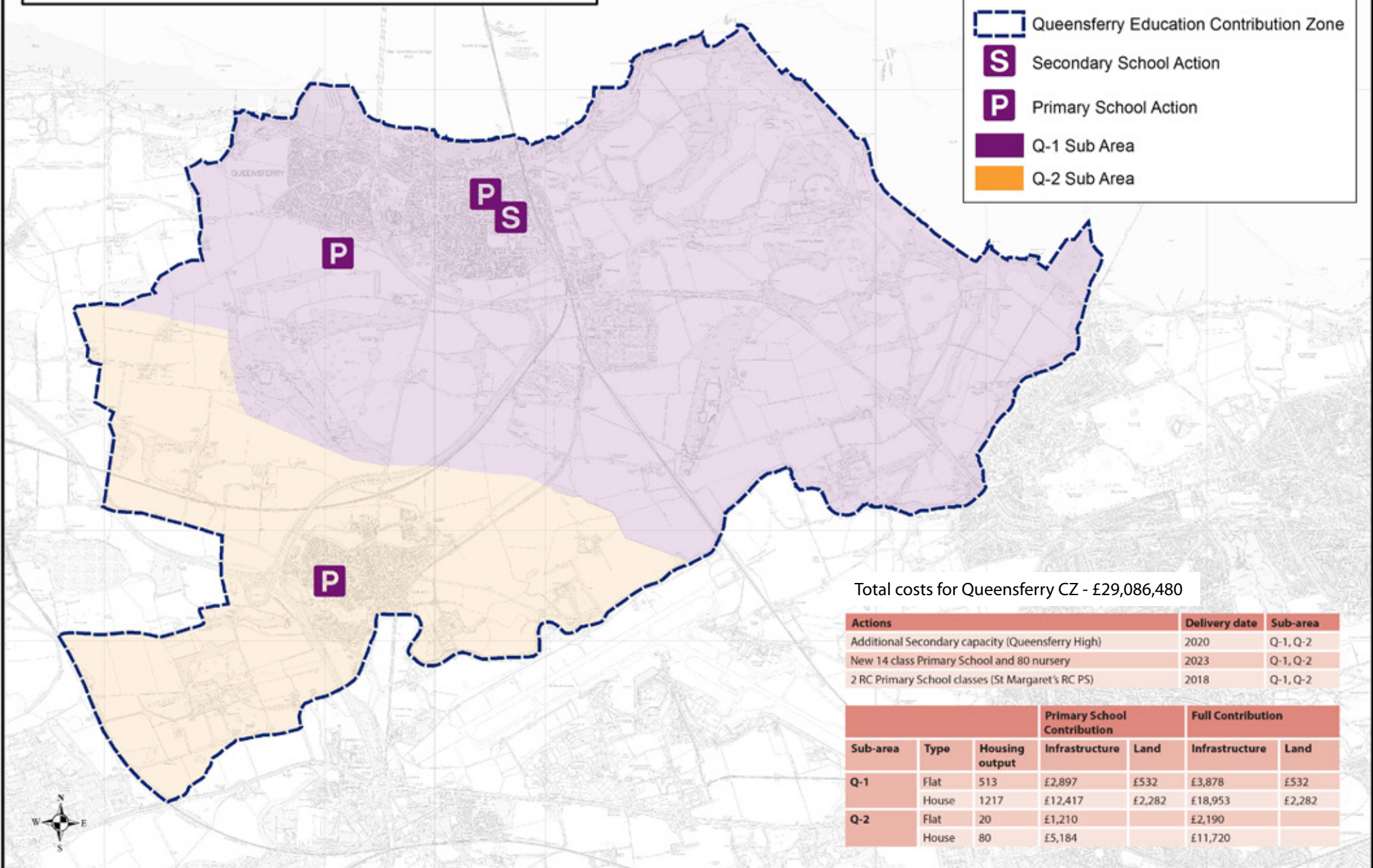
- Portobello Education Contribution Zone
- P-1 Sub Area
- P-2 Sub Area

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Queensferry Education Contribution Zone

Legend

-  Queensferry Education Contribution Zone
-  Secondary School Action
-  Primary School Action
-  Q-1 Sub Area
-  Q-2 Sub Area



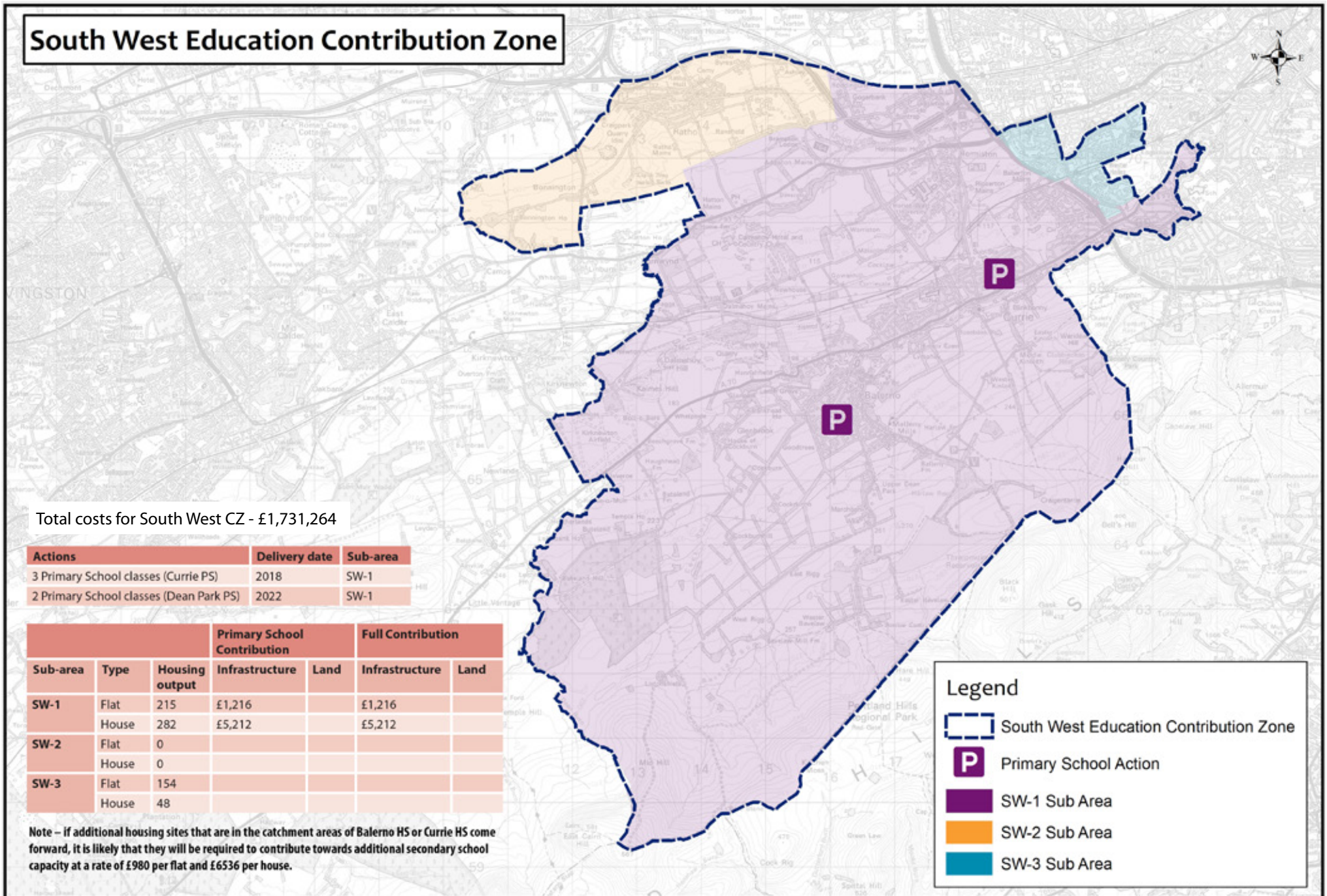
Total costs for Queensferry CZ - £29,086,480

Actions	Delivery date	Sub-area
Additional Secondary capacity (Queensferry High)	2020	Q-1, Q-2
New 14 class Primary School and 80 nursery	2023	Q-1, Q-2
2 RC Primary School classes (St Margaret's RC PS)	2018	Q-1, Q-2

Sub-area	Type	Housing output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
Q-1	Flat	513	£2,897	£532	£3,878	£532
	House	1217	£12,417	£2,282	£18,953	£2,282
Q-2	Flat	20	£1,210		£2,190	
	House	80	£5,184		£11,720	

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South West Education Contribution Zone








Total costs for South West CZ - £1,731,264

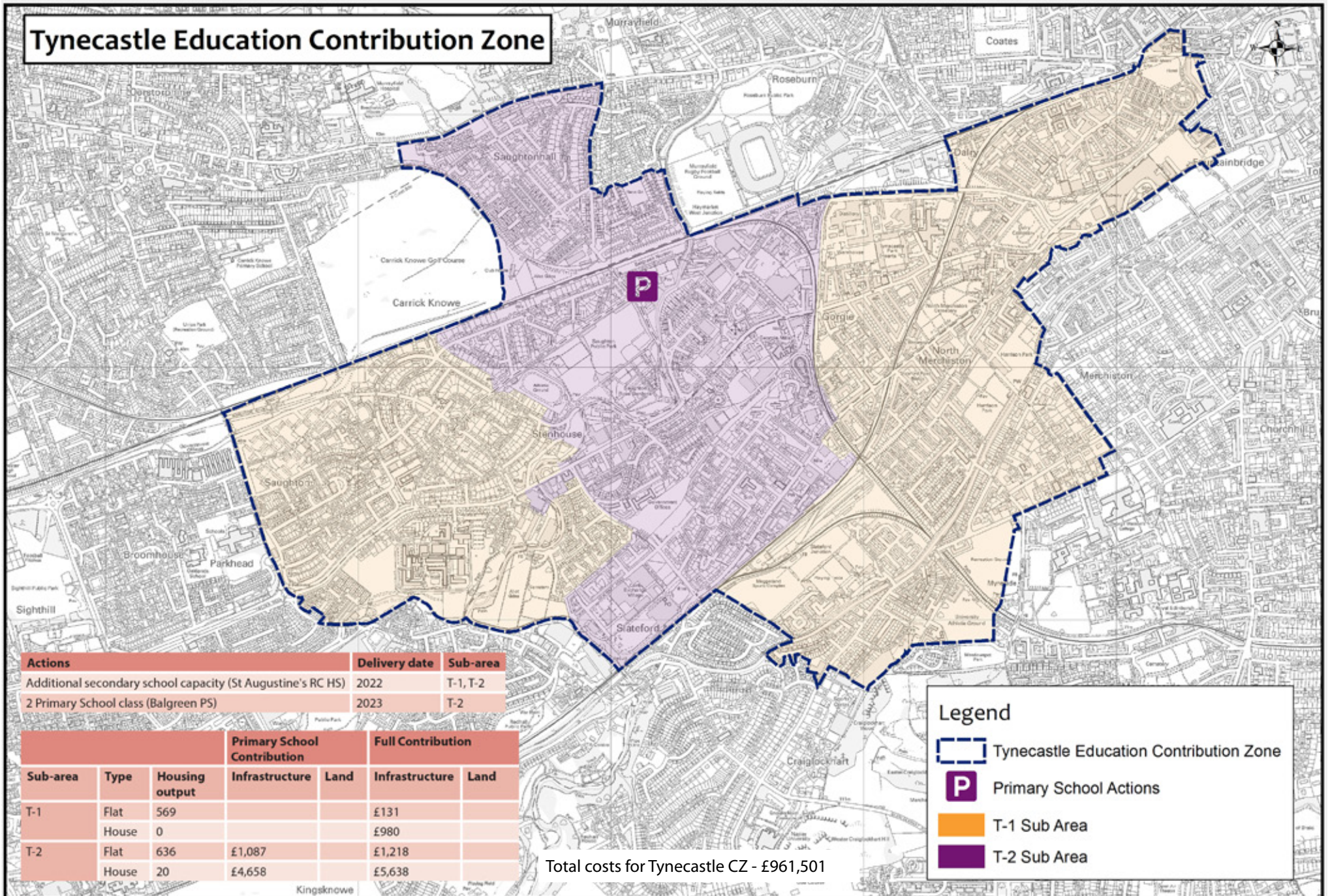
Actions	Delivery date	Sub-area
3 Primary School classes (Currie PS)	2018	SW-1
2 Primary School classes (Dean Park PS)	2022	SW-1

Sub-area	Type	Housing output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
SW-1	Flat	215	£1,216		£1,216	
	House	282	£5,212		£5,212	
SW-2	Flat	0				
	House	0				
SW-3	Flat	154				
	House	48				

Note – If additional housing sites that are in the catchment areas of Balerno HS or Currie HS come forward, it is likely that they will be required to contribute towards additional secondary school capacity at a rate of £980 per flat and £6536 per house.

Legend

-  South West Education Contribution Zone
-  Primary School Action
-  SW-1 Sub Area
-  SW-2 Sub Area
-  SW-3 Sub Area










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West Education Contribution Zone

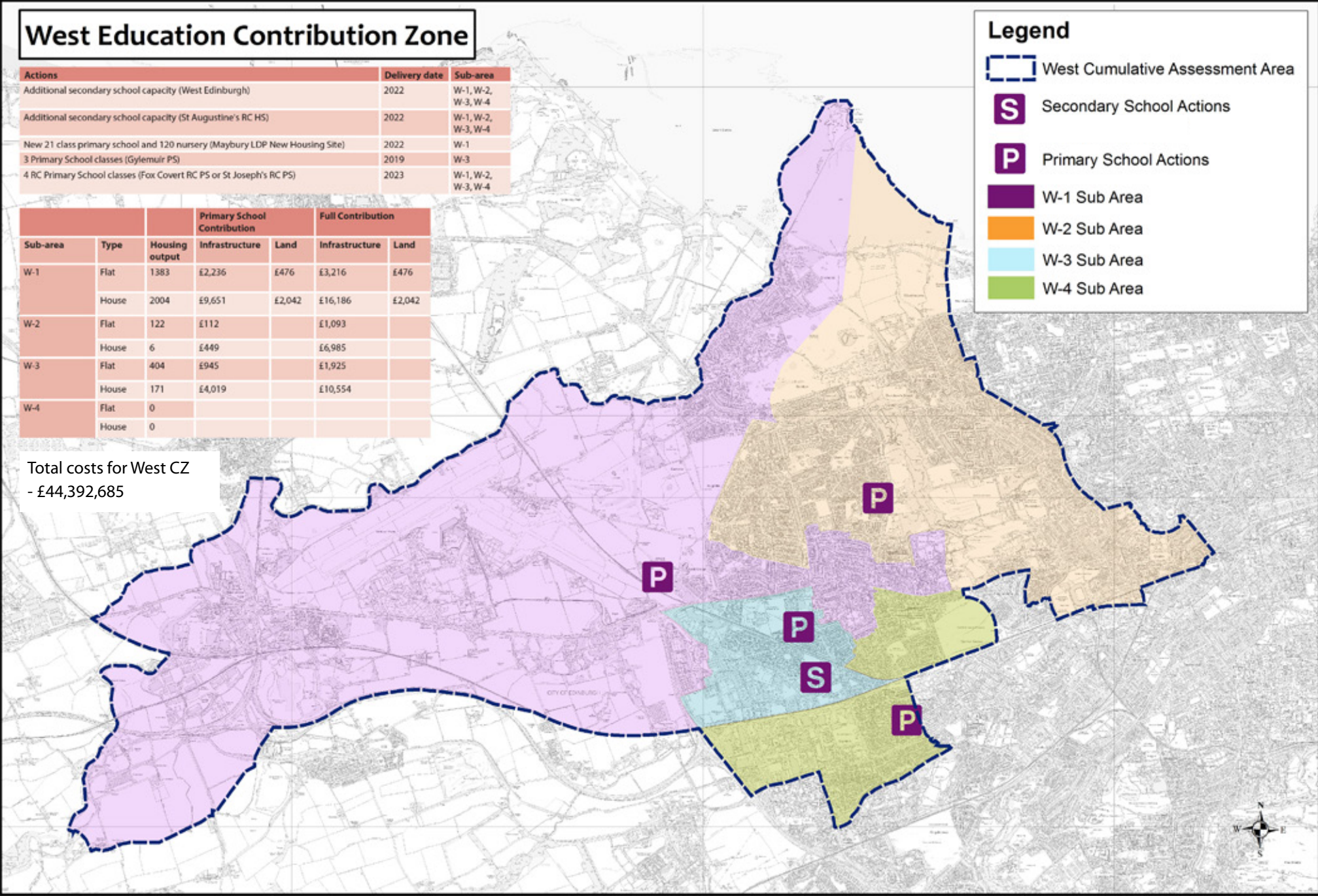
Actions	Delivery date	Sub-area
Additional secondary school capacity (West Edinburgh)	2022	W-1, W-2, W-3, W-4
Additional secondary school capacity (St Augustine's RC HS)	2022	W-1, W-2, W-3, W-4
New 21 class primary school and 120 nursery (Maybury LDP New Housing Site)	2022	W-1
3 Primary School classes (Gylemuir PS)	2019	W-3
4 RC Primary School classes (Fox Covert RC PS or St Joseph's RC PS)	2023	W-1, W-2, W-3, W-4

Sub-area	Type	Housing output	Primary School Contribution		Full Contribution	
			Infrastructure	Land	Infrastructure	Land
W-1	Flat	1383	£2,236	£476	£3,216	£476
	House	2004	£9,651	£2,042	£16,186	£2,042
W-2	Flat	122	£112		£1,093	
	House	6	£449		£6,985	
W-3	Flat	404	£945		£1,925	
	House	171	£4,019		£10,554	
W-4	Flat	0				
	House	0				

Legend

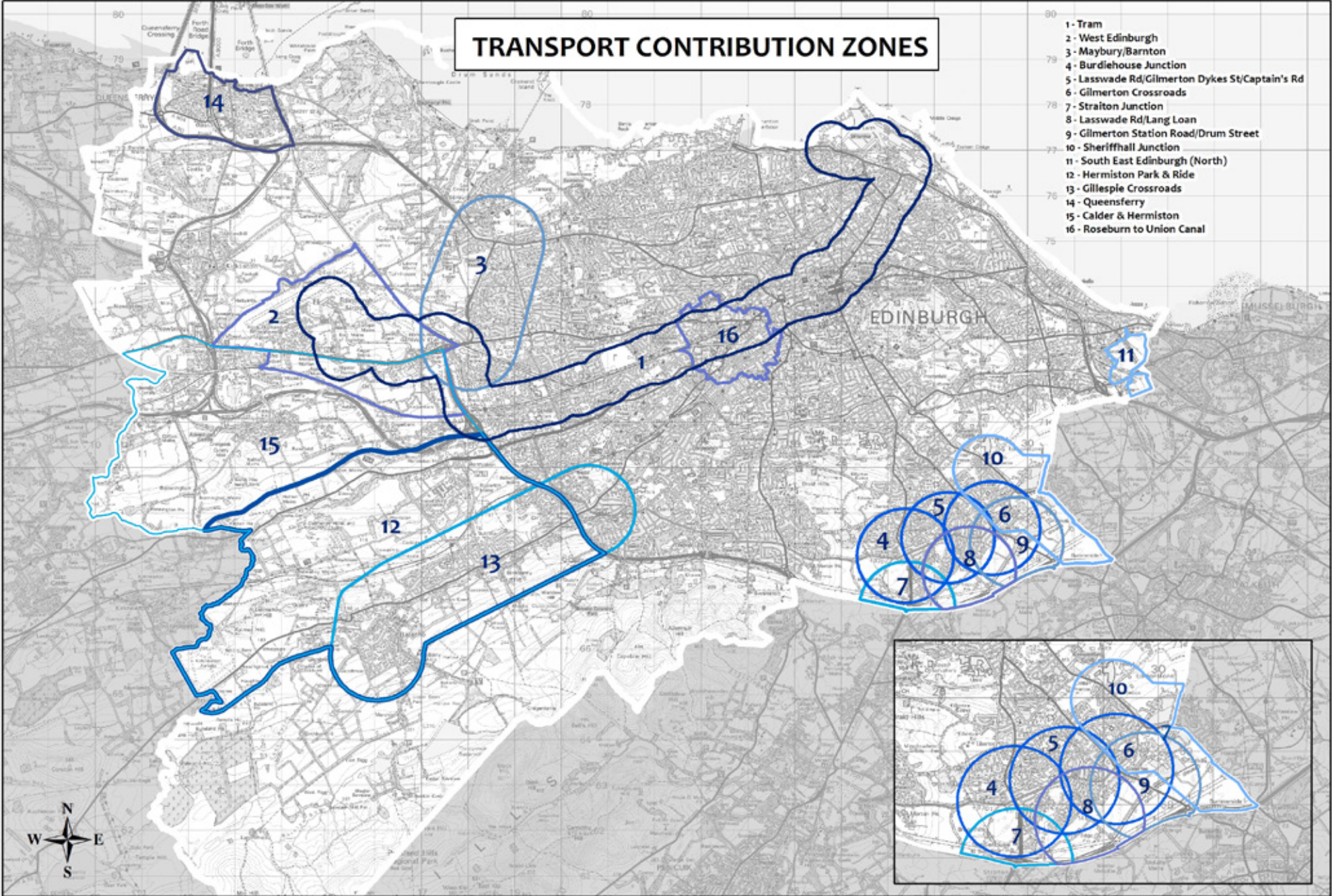
-  West Cumulative Assessment Area
-  Secondary School Actions
-  Primary School Actions
-  W-1 Sub Area
-  W-2 Sub Area
-  W-3 Sub Area
-  W-4 Sub Area

Total costs for West CZ
- £44,392,685

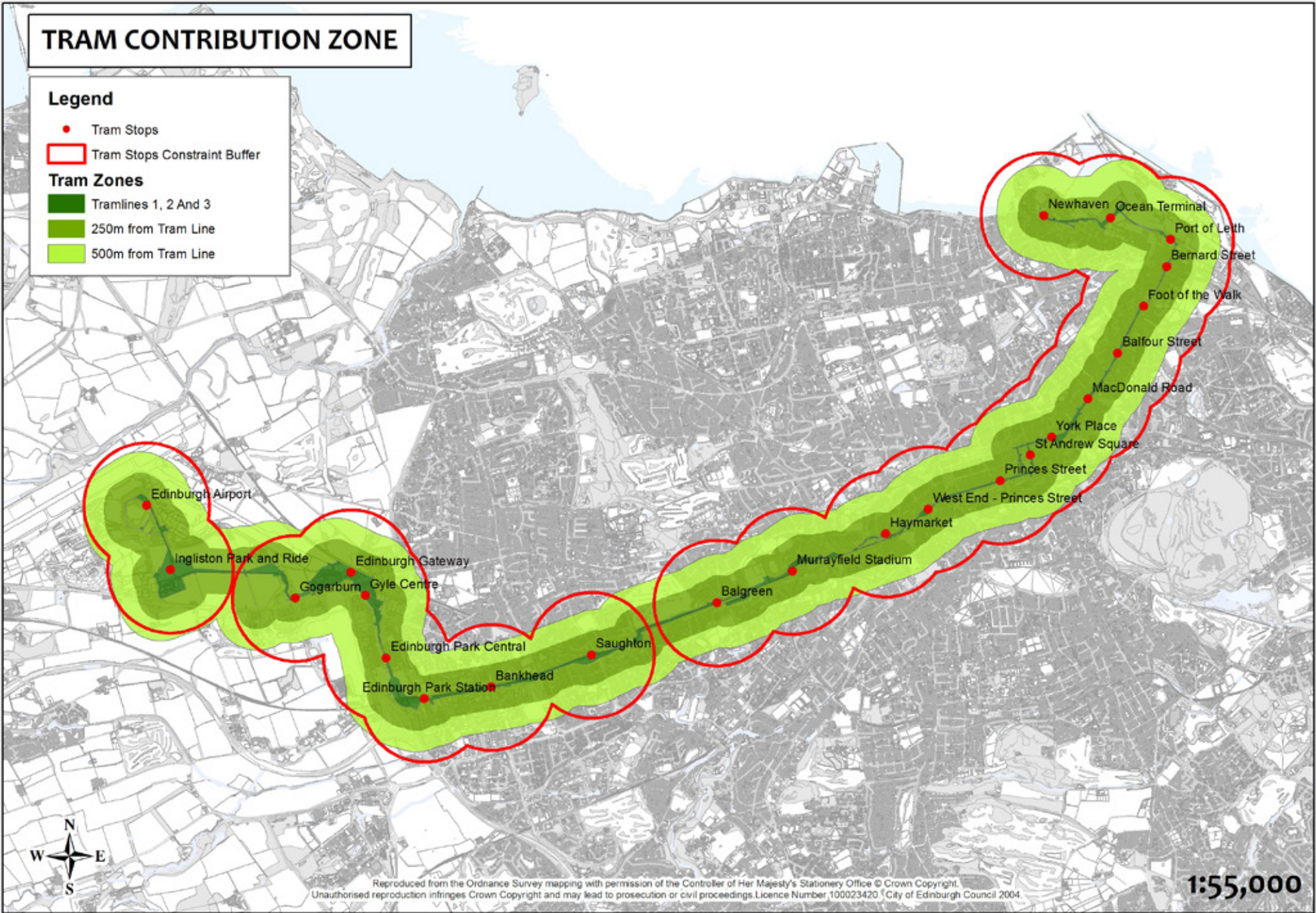


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Annex 2 Transport Infrastructure



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TABLE 1 - IDENTIFICATION OF SCALE FACTOR

PROPOSALS BY LAND USE (Gross External Floor Area)

scale factor	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Retail (sq m)	250-499	500-999	1,000-1,499	1,500-1,999	2,000-2,499	2,500-2,999	3,000-3,499	3,500-3,999	4,000-4,499	4,500-4,999	5,000-5,999	6,000-6,999	7,000-7,999	8,000-8,999	9,000+
Offices (sq m)	250-499	500-999	1,000-1,499	1,500-1,999	2,000-2,499	2,500-2,999	3,000-3,499	3,500-3,999	4,000-4,499	4,500-4,999	5,000-5,999	6,000-6,999	7,000-7,999	8,000-8,999	9,000+
Residential (units)	5-19	20-34	35-69	70-104	105-139	140-174	175-209	210-244	245-279	280-314	315-349	350-384	385-419	420-459	460+
Pubs and Restaurants (sq m)	100-199	200-499	500-799	800-1,099	1,100-1,399	1,400-1,699	1,700-1,999	2,000-2,299	2,300-2,599	2,600-2,899	2,900-3,199	3,200-3,499	3,500-3,799	3,800-4,099	4,100+
Business Park (sq m)	250-499	500-999	1,000-1,499	1,500-1,999	2,000-2,499	2,500-2,999	3,000-3,499	3,500-3,999	4,000-4,499	4,500-4,999	5,000-5,999	6,000-6,999	7,000-7,999	8,000-8,999	9,000+
Industry (sq m)	500-999	1,000-1,999	2,000-2,999	3,000-3,999	4,000-4,999	5,000-5,999	6,000-6,999	7,000-7,999	8,000-8,999	9,000-9,999	10,000-10,999	11,000-11,999	12,000-12,999	13,000-13,999	14,000+
Warehousing (sq m)	1500-2,999	3,000-5,999	6,000-8,999	9,000-11,999	12,000-14,999	15,000-17,999	18,000-20,999	21,000-23,999	24,000-26,999	27,000-29,999	30,000-32,999	33,000-35,999	36,000-38,999	39,000-41,999	42,000+
Hotels (bedrooms)	5-9	10-24	25-40	41-60	61-75	76-90	91-105	106-120	121-135	136-150	151-165	166-180	181-195	196-210	211+
Hospitals/Residential Institutions (sq m)	1000-1,499	1,500-2,999	3,000-4,499	4,500-5,999	6,000-7,499	7,500-8,999	9,000-10,499	10,500-11,999	12,000-13,499	13,500-14,999	15,000-16,499	16,500-17,999	18,000-19,499	19,500-20,999	21,000+
Non-residential institutions (sq m)	1000-1,999	2000-2,999	3,000-4,499	4,500-5,999	6,000-7,499	7,500-8,999	9,000-10,499	10,500-11,999	12,000-13,499	13,500-14,999	15,000-16,499	16,500-17,999	18,000-19,499	19,500-20,999	21,000+
Medical/Health Services (sq m)	200-299	300-599	600-899	900-1,199	1,200-1,499	1,500-1,799	1,800-2,099	2,100-2,399	2,400-2,699	2,700-2,999	3,000-3,299	3,300-3,599	3,600-3,899	3,900-4,199	4,200+
Multiplexes (sq m)	250-499	500-999	1,000-1,499	1,500-1,999	2,000-2,499	2,500-2,999	3,000-3,499	3,500-3,999	4,000-4,499	4,500-4,999	5,000-5,499	5,500-5,999	6,000-6,499	6,500-6,999	7,000+
Other Leisure Uses (sq m)	1000-1,499	1,500-2,999	3,000-4,499	4,500-5,999	6,000-7,499	7,500-8,999	9,000-10,499	10,500-11,999	12,000-13,499	13,500-14,999	15,000-16,499	16,500-17,999	18,000-19,499	19,500-20,999	21,000+

Larger Developments will be negotiated separately (The application of these tables on a pro rata basis, will be used as a starting point.)

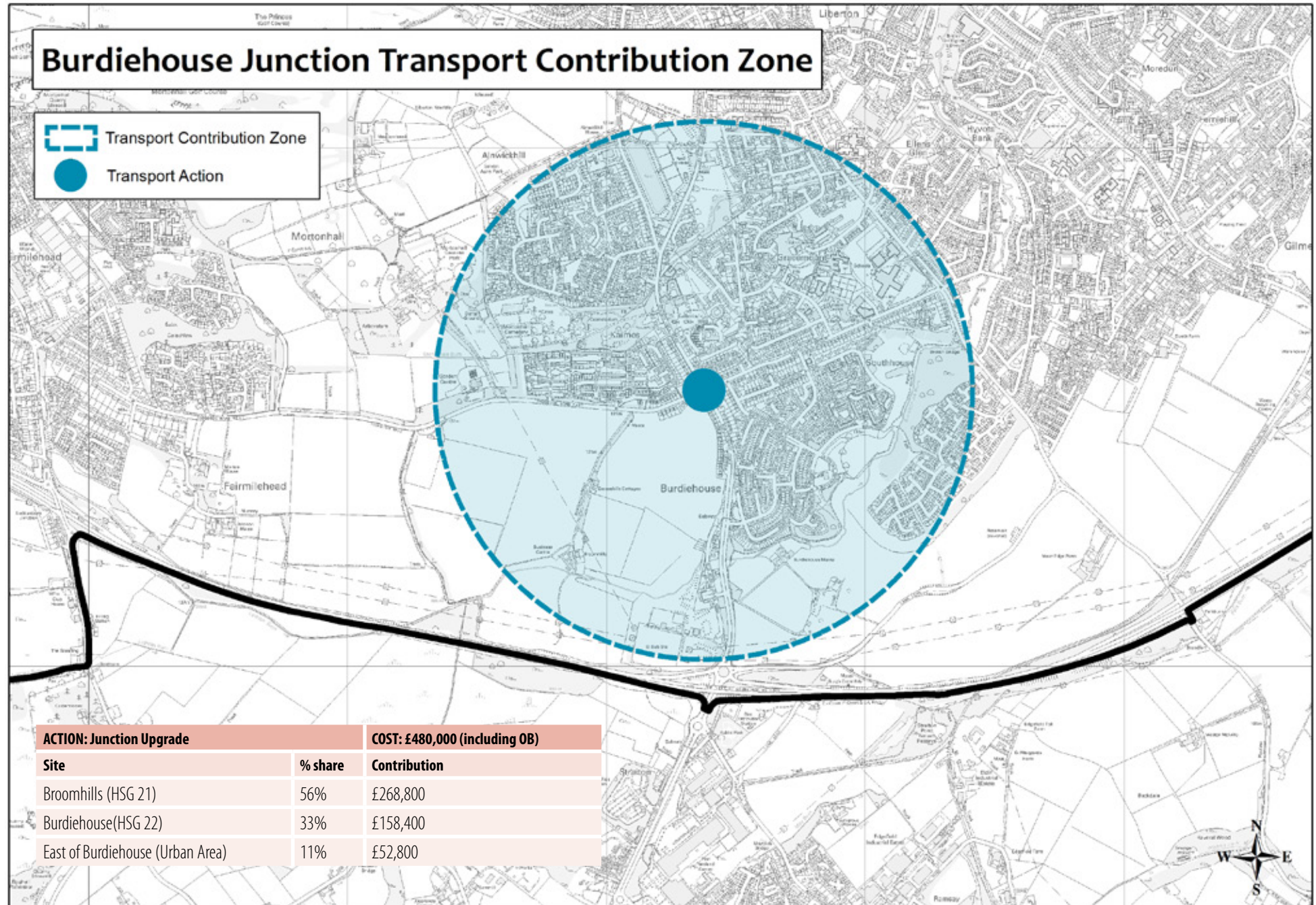
TABLE 2 - AMOUNT OF CONTRIBUTION IN £000s

scale factors	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Zone 1 (up to 250m)	17-45	46-91	92-137	138-183	184-230	231-274	275-322	323-368	369-414	415-461	462-507	508-553	554-599	600-645	646+
Zone 2 (up to 500m)	12-33	34-68	69-102	103-137	138-172	173-206	207-231	232-276	277-310	311-345	346-380	381-414	415-449	450-484	485+
Zone 3 (up to 750m)	7-22	20-34	46-68	69-91	92-114	115-137	138-160	161-183	184-206	207-230	231-253	254-276	277-299	300-322	323+

*Zones refer to those on annex 1 plan

Notes: The amount of contribution attributable to any development will depend on the exact size of the development (sqm/number of units, etc). This table provides the range of financial contribution in each scale factor, which relates to the range of development sizes in each scale factor shown in the map in Annex 1. This table is provided to assist in calculating the level of contribution that will be sought. The exact amount will be confirmed during the planning application process.

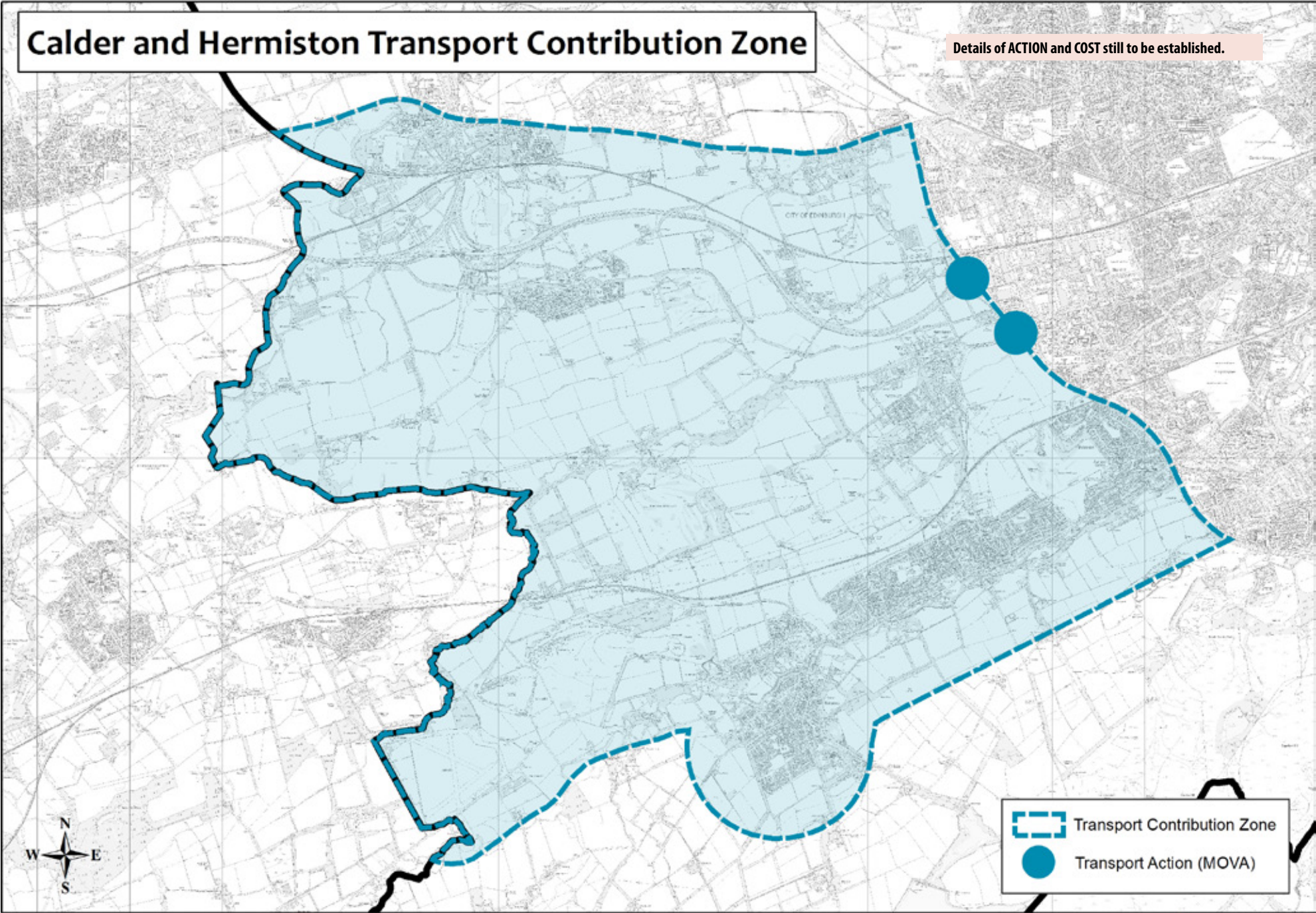
Transport actions are currently being costed. The most recent update to costs was in Q3 2016 (October 2016). Indexation will be applied from the point that an action was costed, as set out in the Action Programme.



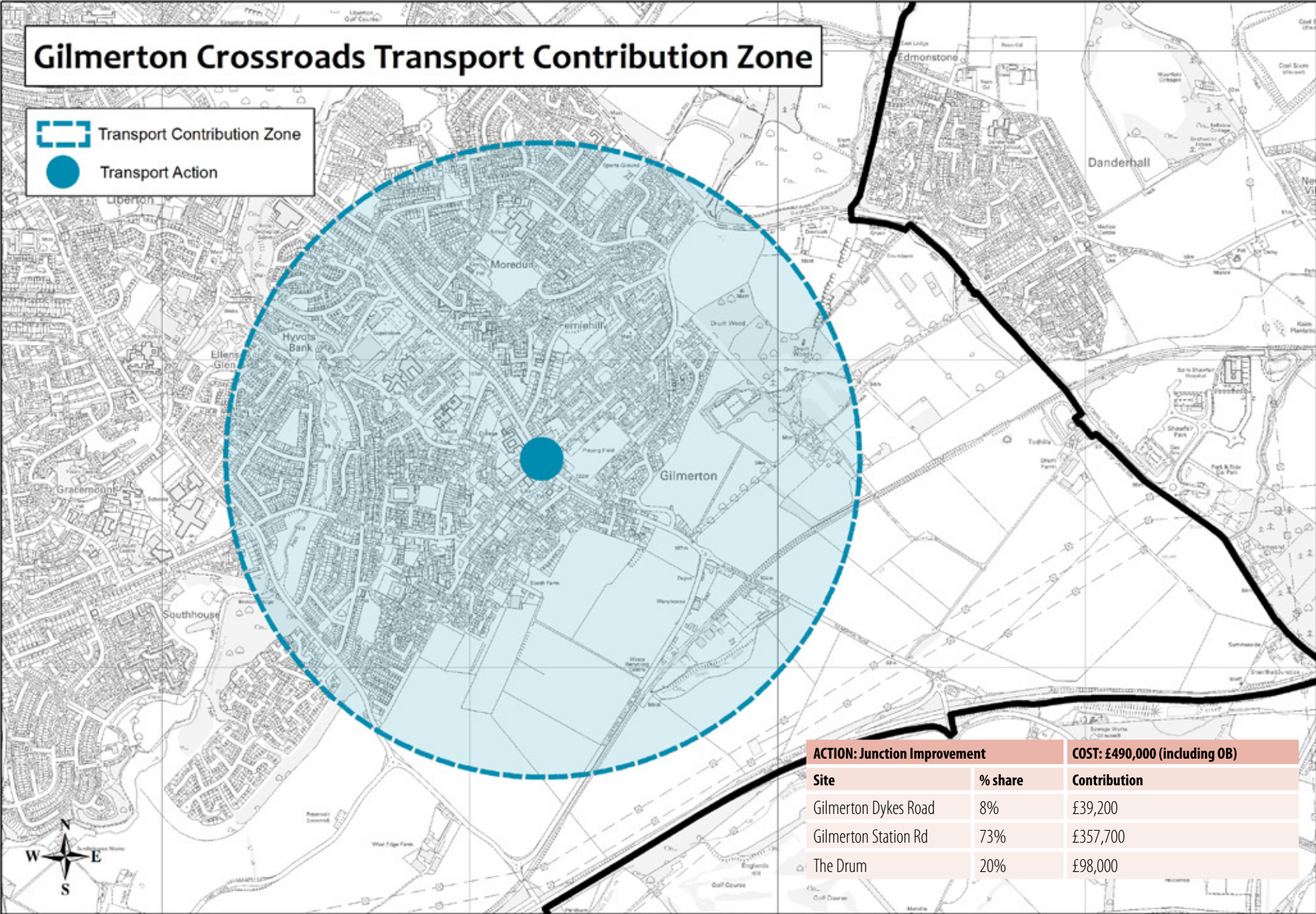
ACTION: Junction Upgrade		COST: £480,000 (including OB)
Site	% share	Contribution
Broomhills (HSG 21)	56%	£268,800
Burdiehouse(HSG 22)	33%	£158,400
East of Burdiehouse (Urban Area)	11%	£52,800

Calder and Hermiston Transport Contribution Zone

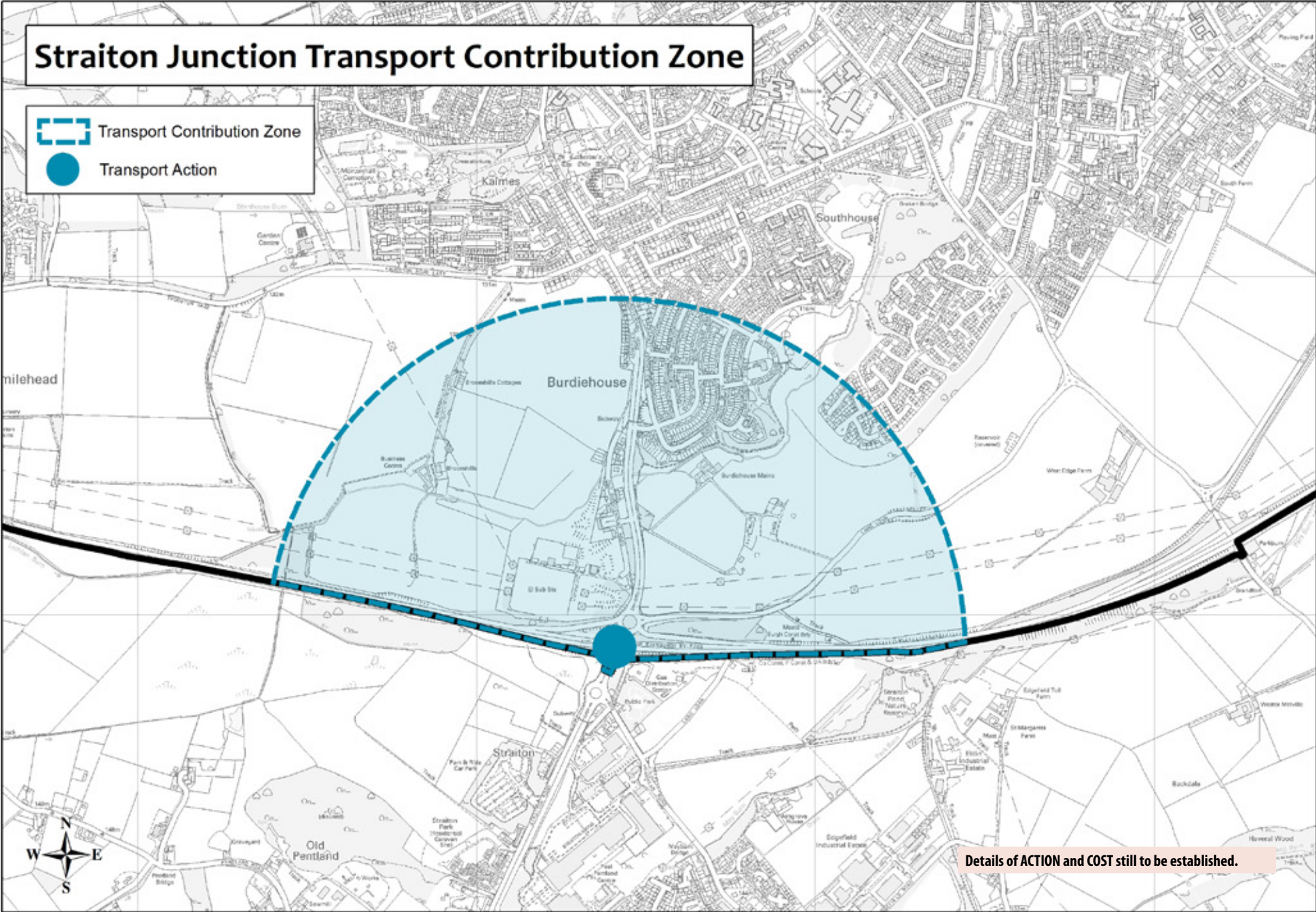
Details of ACTION and COST still to be established.



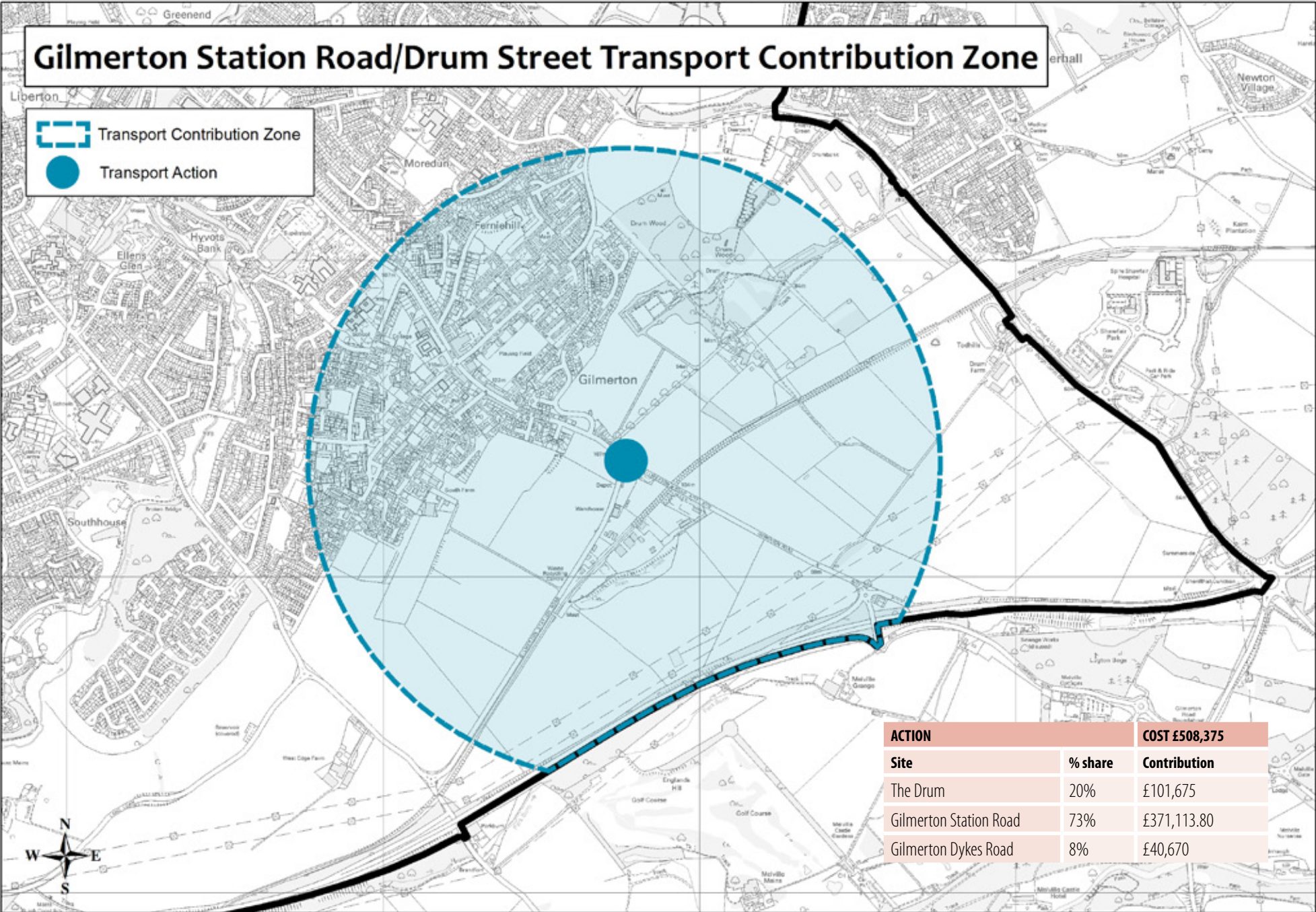
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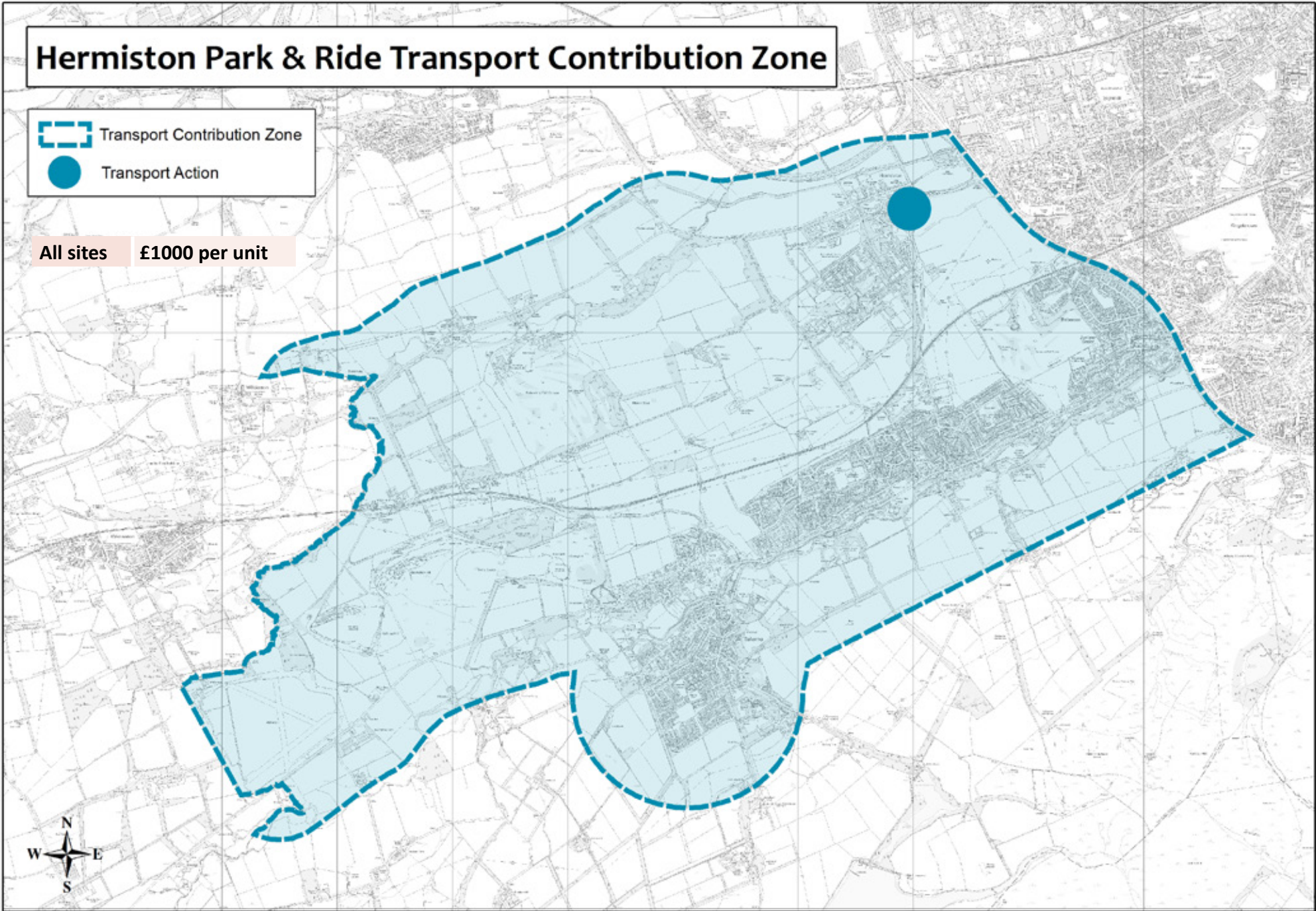


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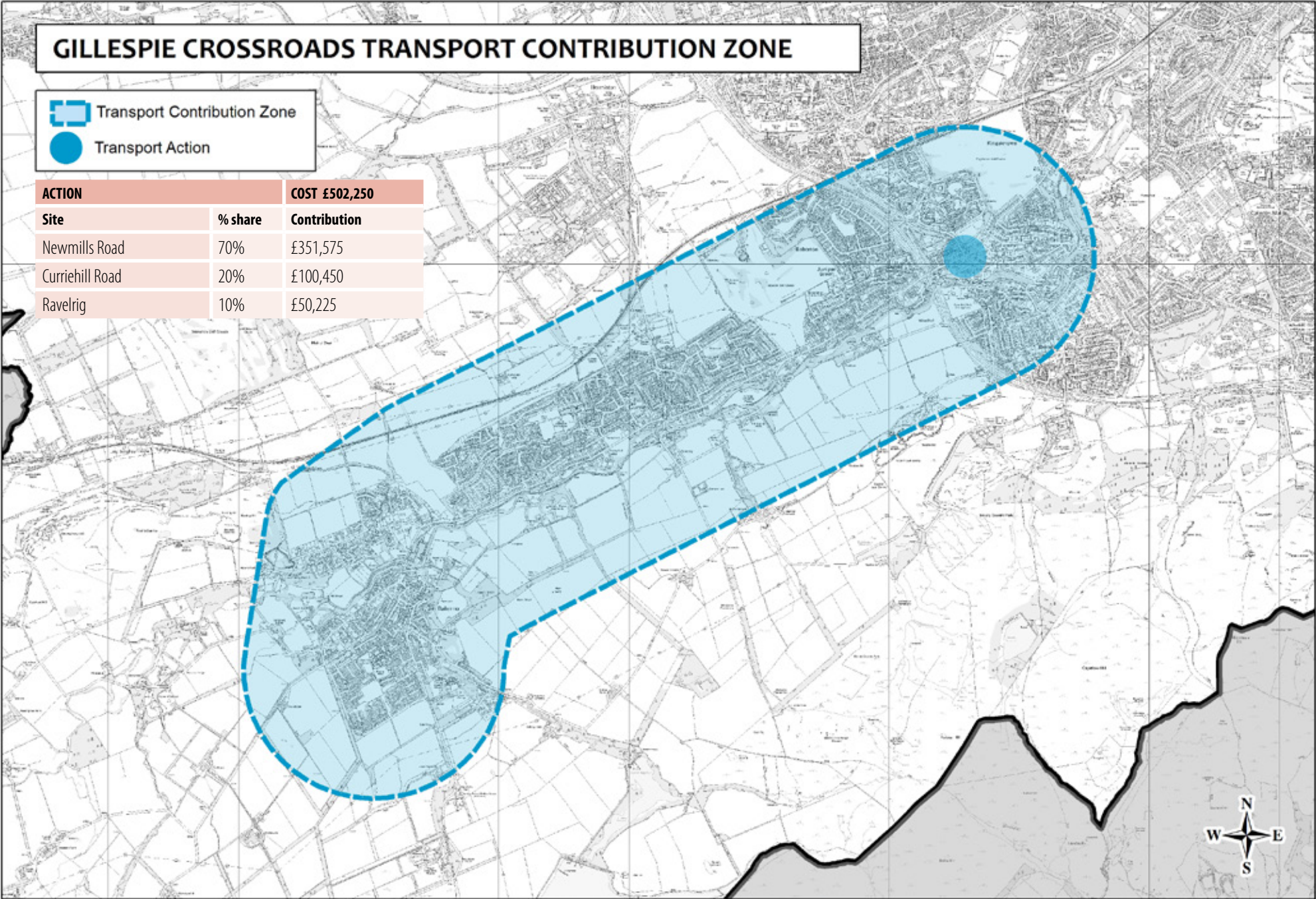


ACTION		COST £508,375
Site	% share	Contribution
The Drum	20%	£101,675
Gilmerton Station Road	73%	£371,113.80
Gilmerton Dykes Road	8%	£40,670

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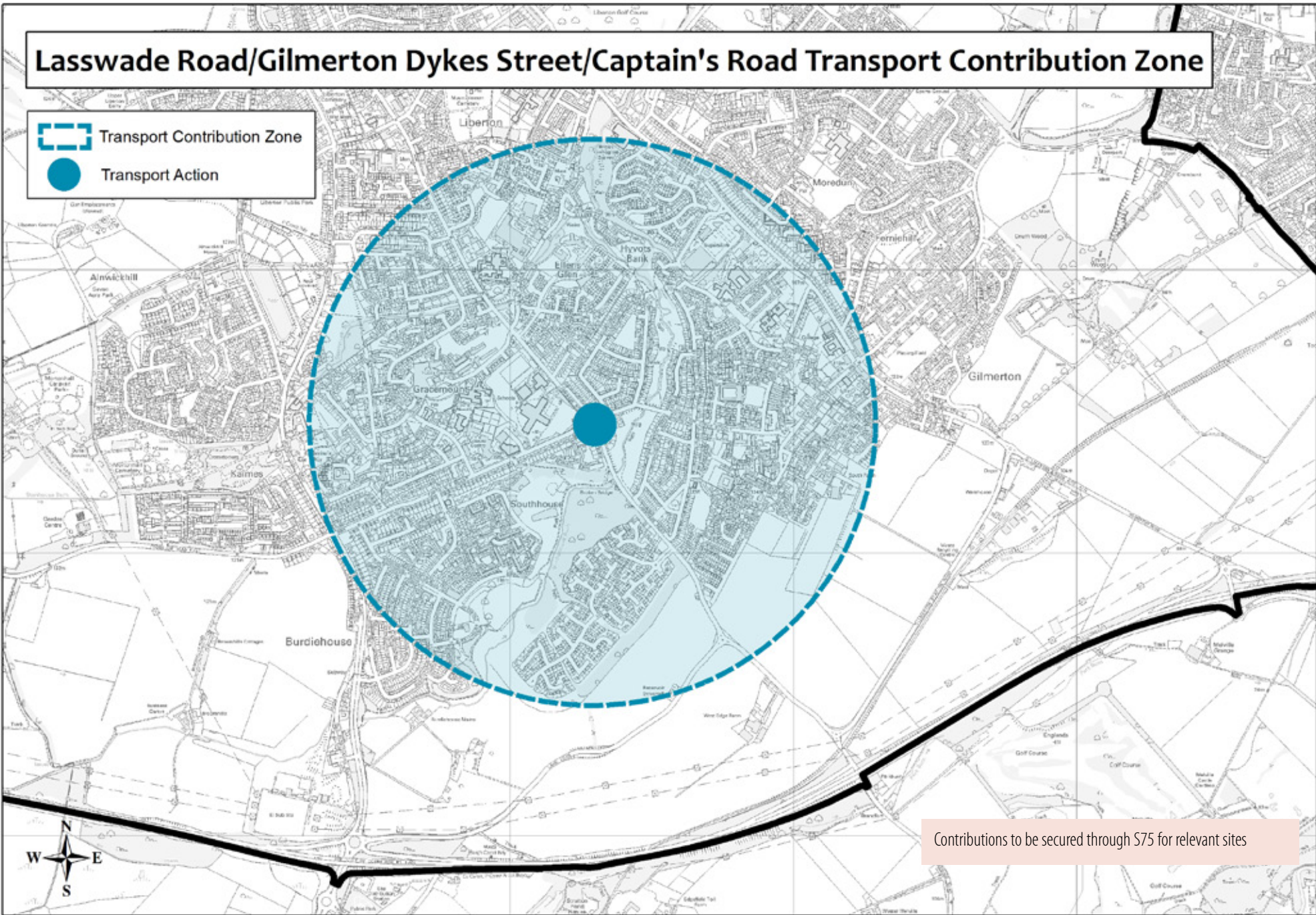
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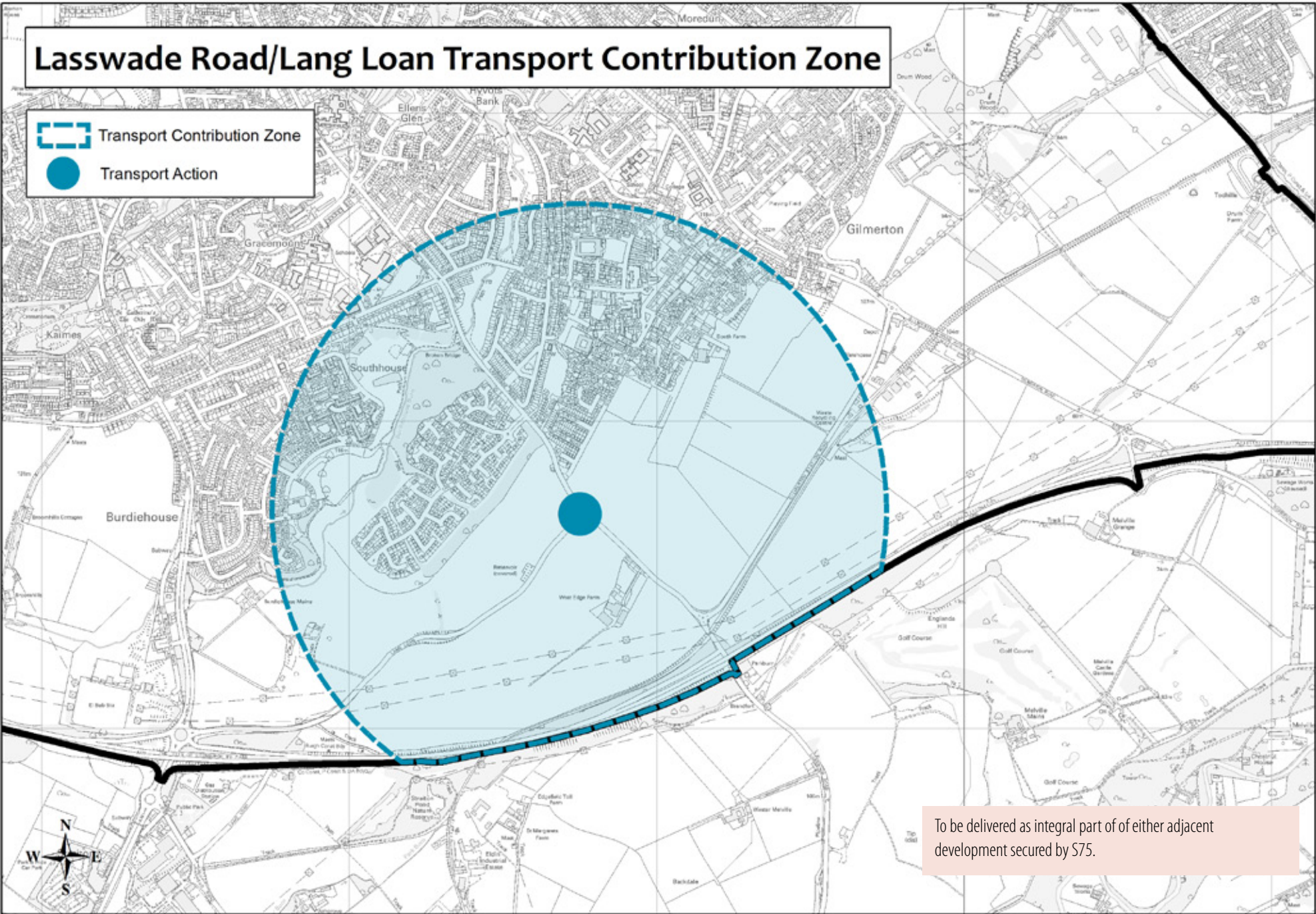
Lasswade Road/Gilmerton Dykes Street/Captain's Road Transport Contribution Zone

 Transport Contribution Zone
 Transport Action

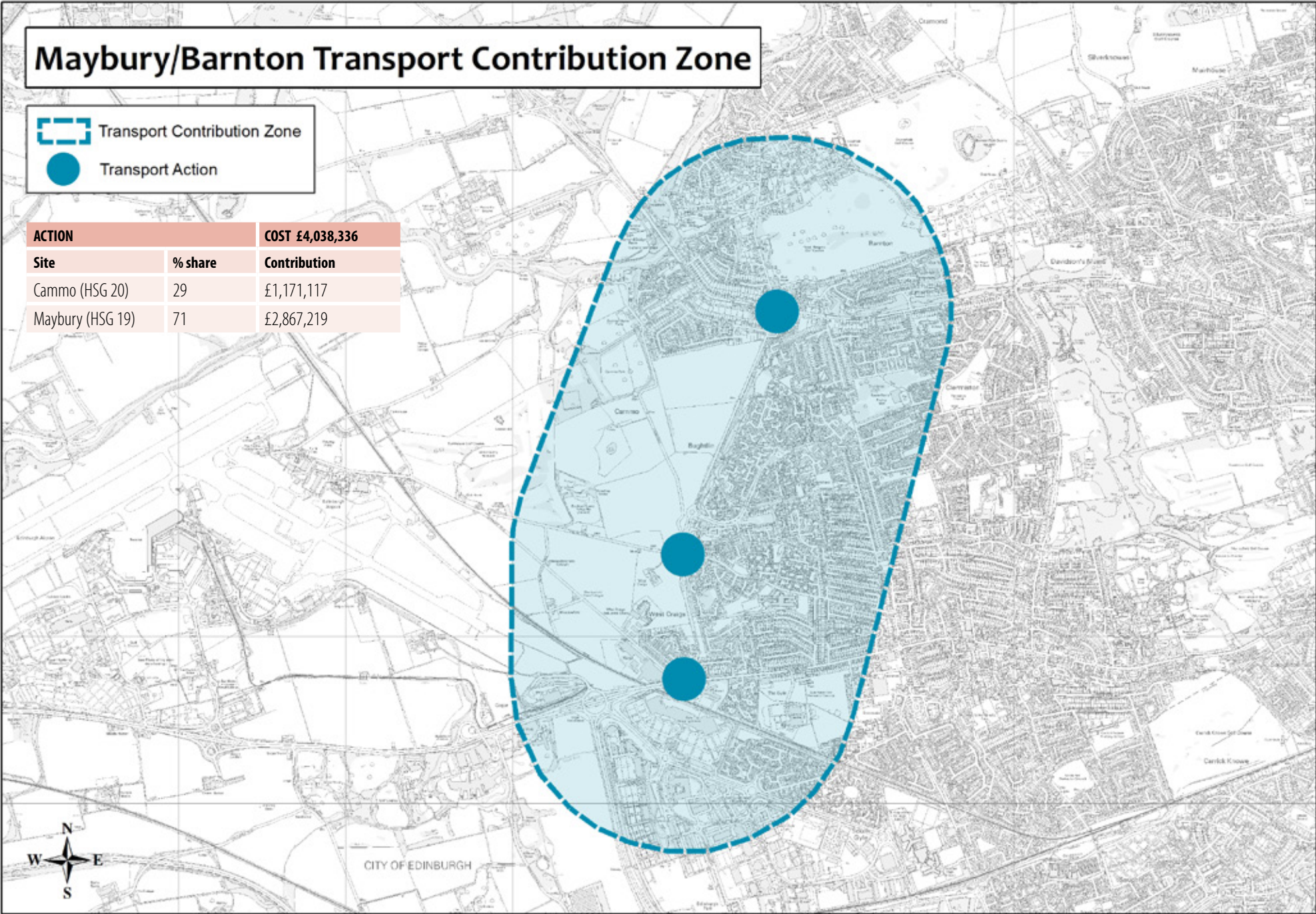


Contributions to be secured through S75 for relevant sites

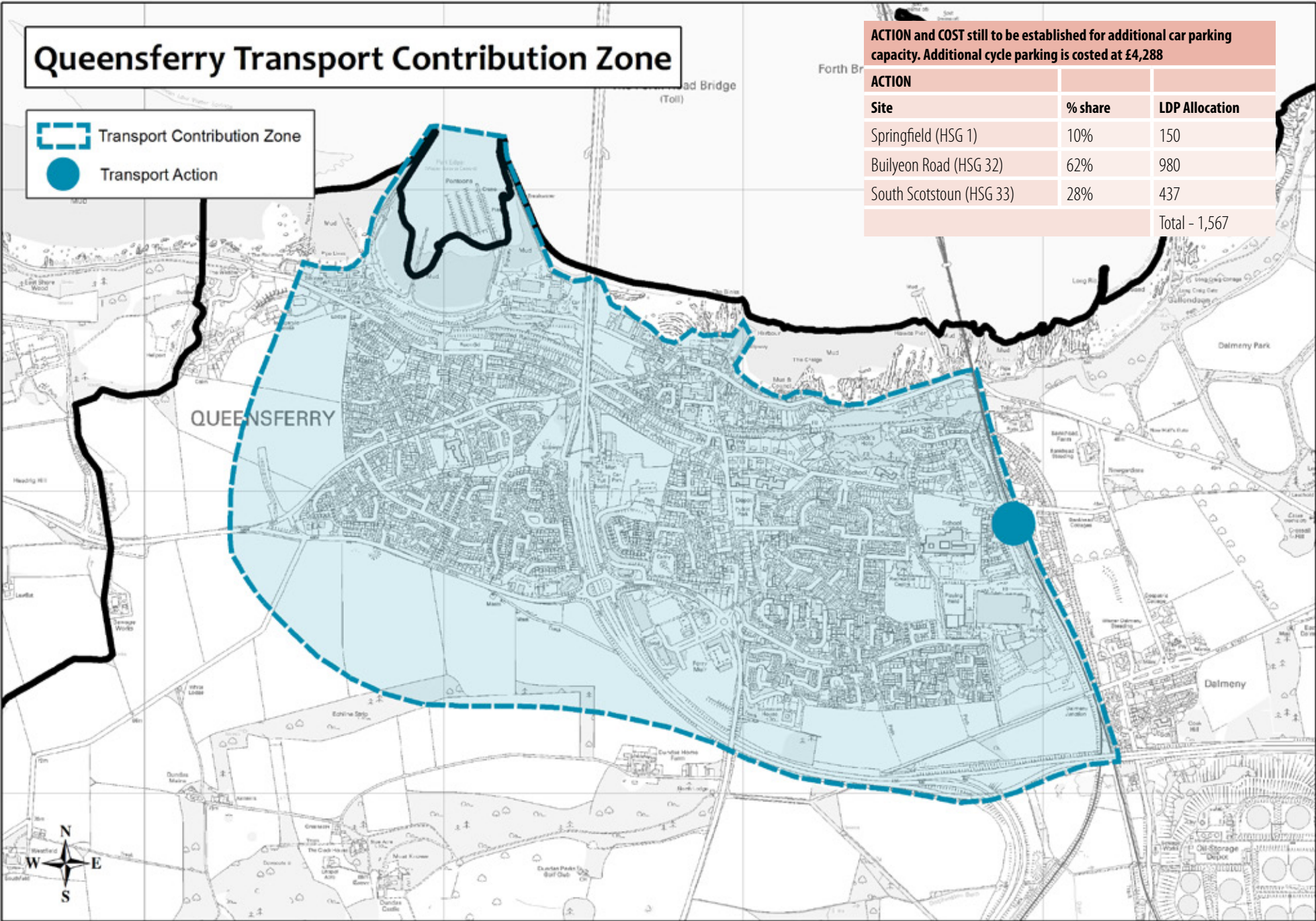
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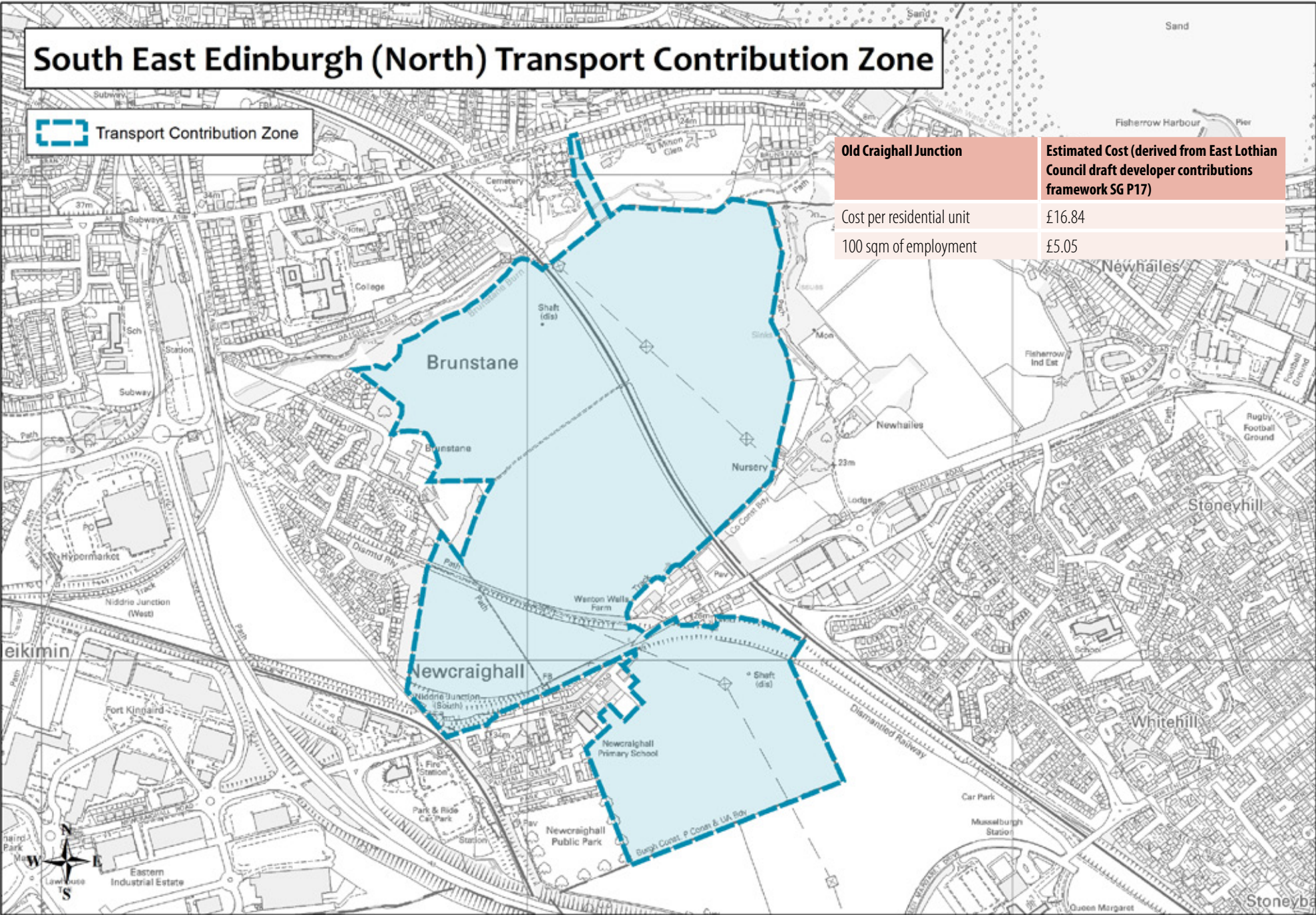
South East Edinburgh (North) Transport Contribution Zone

 Transport Contribution Zone

Old Craighall Junction **Estimated Cost (derived from East Lothian Council draft developer contributions framework SG P17)**

Cost per residential unit £16.84

100 sqm of employment £5.05



West Edinburgh Transport Contribution Zone

 Transport Contribution Zone

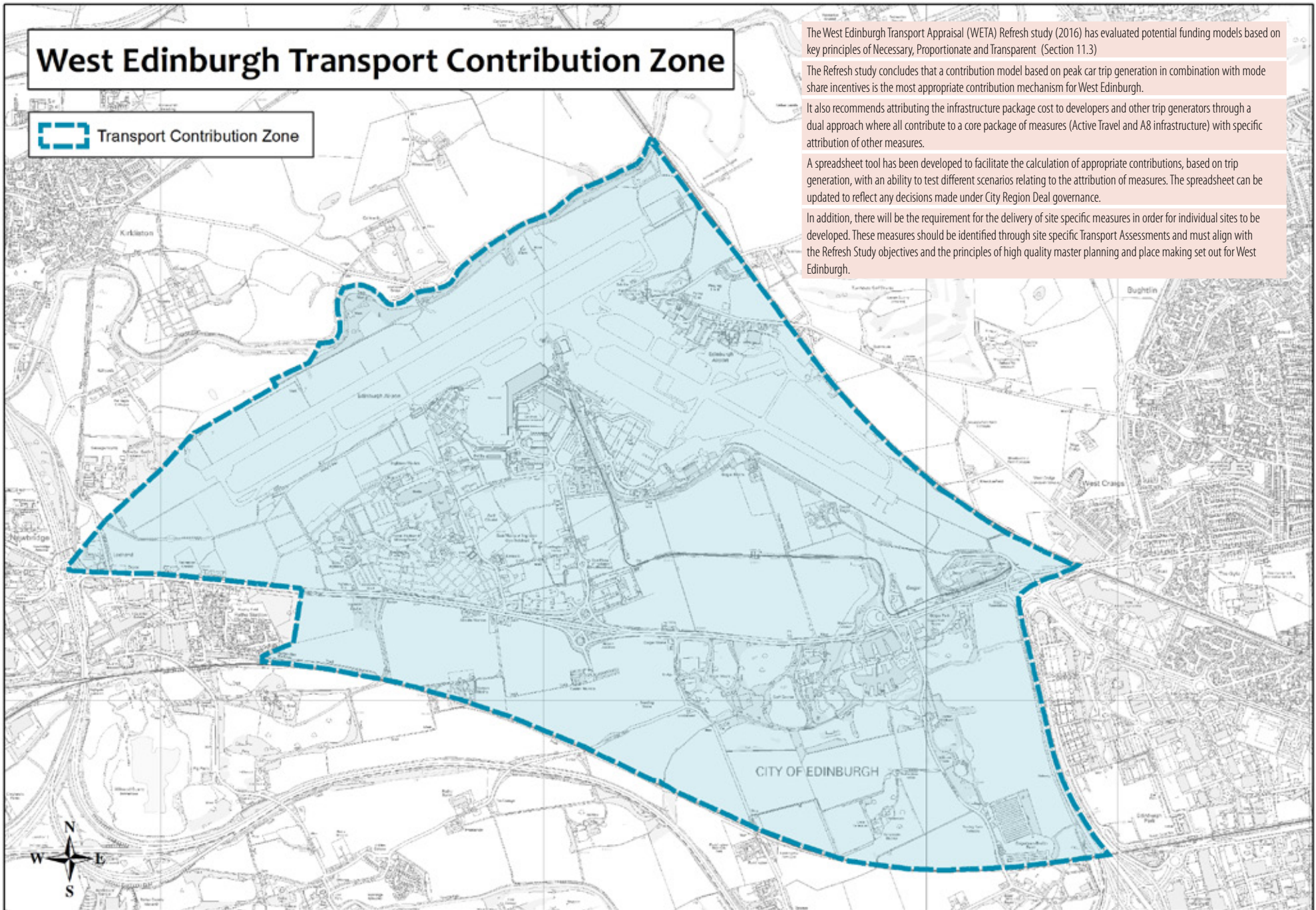
The West Edinburgh Transport Appraisal (WETA) Refresh study (2016) has evaluated potential funding models based on key principles of Necessary, Proportionate and Transparent (Section 11.3)

The Refresh study concludes that a contribution model based on peak car trip generation in combination with mode share incentives is the most appropriate contribution mechanism for West Edinburgh.

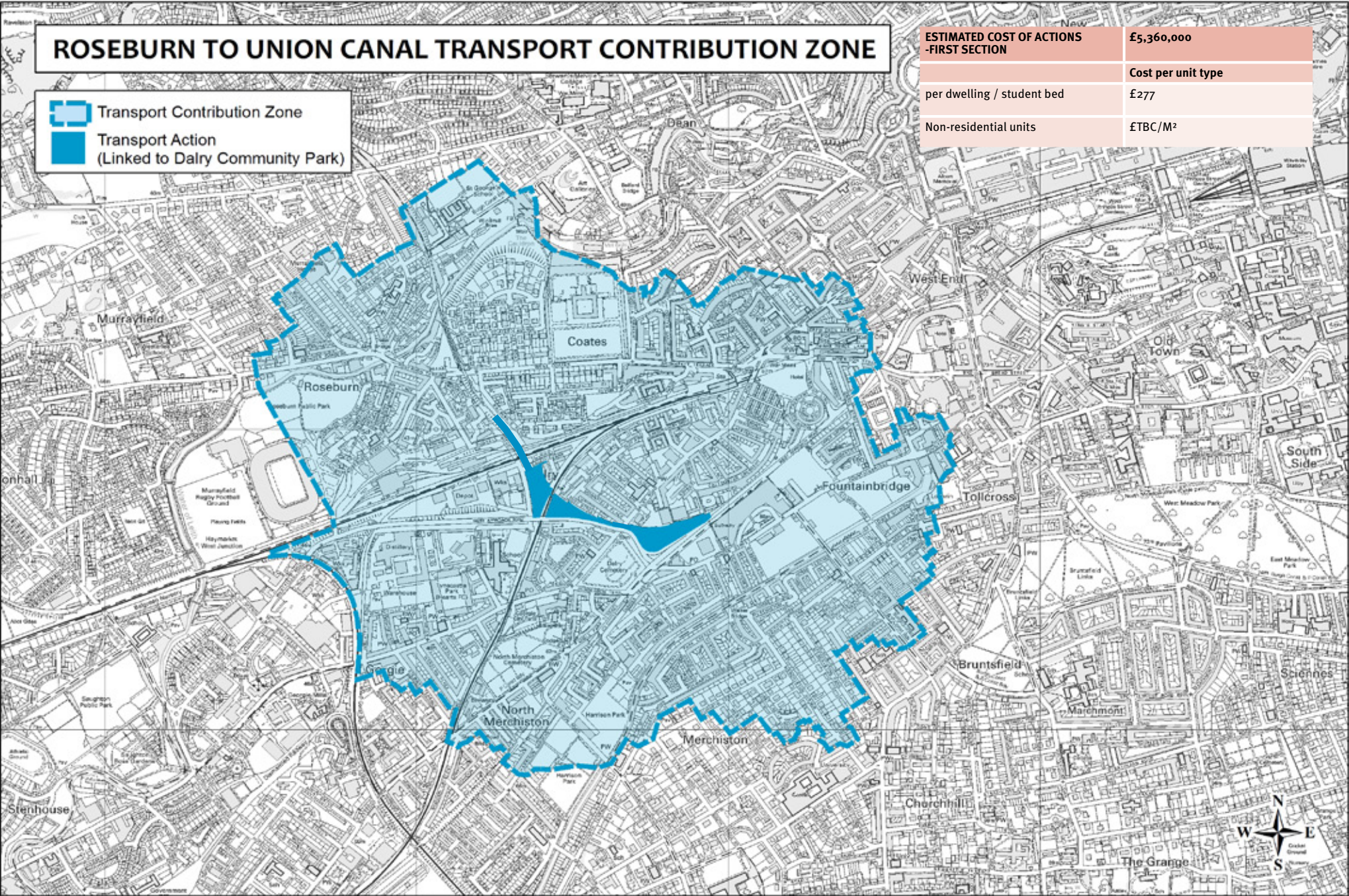
It also recommends attributing the infrastructure package cost to developers and other trip generators through a dual approach where all contribute to a core package of measures (Active Travel and A8 infrastructure) with specific attribution of other measures.

A spreadsheet tool has been developed to facilitate the calculation of appropriate contributions, based on trip generation, with an ability to test different scenarios relating to the attribution of measures. The spreadsheet can be updated to reflect any decisions made under City Region Deal governance.

In addition, there will be the requirement for the delivery of site specific measures in order for individual sites to be developed. These measures should be identified through site specific Transport Assessments and must align with the Refresh Study objectives and the principles of high quality master planning and place making set out for West Edinburgh.



WEST EDINBURGH TRANSPORT ACTIONS		Cost
CYCLE	A8 North side missing link	£773,900
	Improvements to Gravel path (old railway line) from A8/M9 interchange north to Kirkliston	£457,300
	Cycle Connection from A8 along Eastfield Road into Airport Option A	£693,300
	Improved access between Ratho Station and A8 along station road	£659,800
	Improved Station Road/A8 bridge access for cyclists.	£634,800
PUBLIC TRANSPORT	Broxburn to Newbridge Roundabout	£2,249,800
	Station Road to Newbridge Interchange	£1,602,300
	A8 eastbound bus lane from Dumbbells to Maybury Junction	£3,697,400
	Bus Lane Under Gogar Roundabout	£92,300
	Improved bus priority linking SW Edinburgh with Gyle/IBG/Airport (inc ped/cycle facilities where appropriate)	£3,225,750
	Upgraded Bus interchange facility at Ingliston P+R	£4,320,000
	Kilpunt Park and Ride	£792,000
	New Tram Stop	£1,440,000
ROAD	Link Road Part 1 Dual Carriageway	£9,073,400
	Link Road Part 2 Single Carriageway	£4,052,000
	Segregated Link Road cycle route	£1,605,600
	Development Link Road main street carriageway	£8,114,300
	Dumbbells to IBG - Phase 1	£2,596,100
	IBG new access into Airport to include priority bus - Phase 2	£1,645,900
	Dumbbells Roundabout improvement	£1,732,400
	Dumbbells westbound offslip signals	£1,245,900
	MOVA improvements at Newbridge/Dumbbells Gogar/Maybury	£2,174,400
	Newbridge additional lane from M9 onto A8	£837,100
	A) A8 Gogar Roundabout – 4 Lane Northern Circulatory Improvements	£2,446,800
	B) Gogar to Maybury additional eastbound traffic lane	£30,000,000
Sum (Development Contribution)		£86,162,550



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OTHER TRANSPORT REQUIREMENTS	
Infrastructure Requirement	Cost
Car Sharing Scheme	For 3-7 Units £7000 and one parking space on road (prospectively adopted). For 8-15 Units £12,500 and two parking spaces on road (prospectively adopted). For 16-50 Units £18,000 and three parking spaces on road (prospectively adopted). Over 50 units will be individually assessed. City Car Club contributions will entitle the first purchaser of every residential unit to one year's free membership. Office and other commercial development will be individually assessed.
Traffic Regulation Orders/Stopping-up Orders	Approximately £2,000 per Order required.

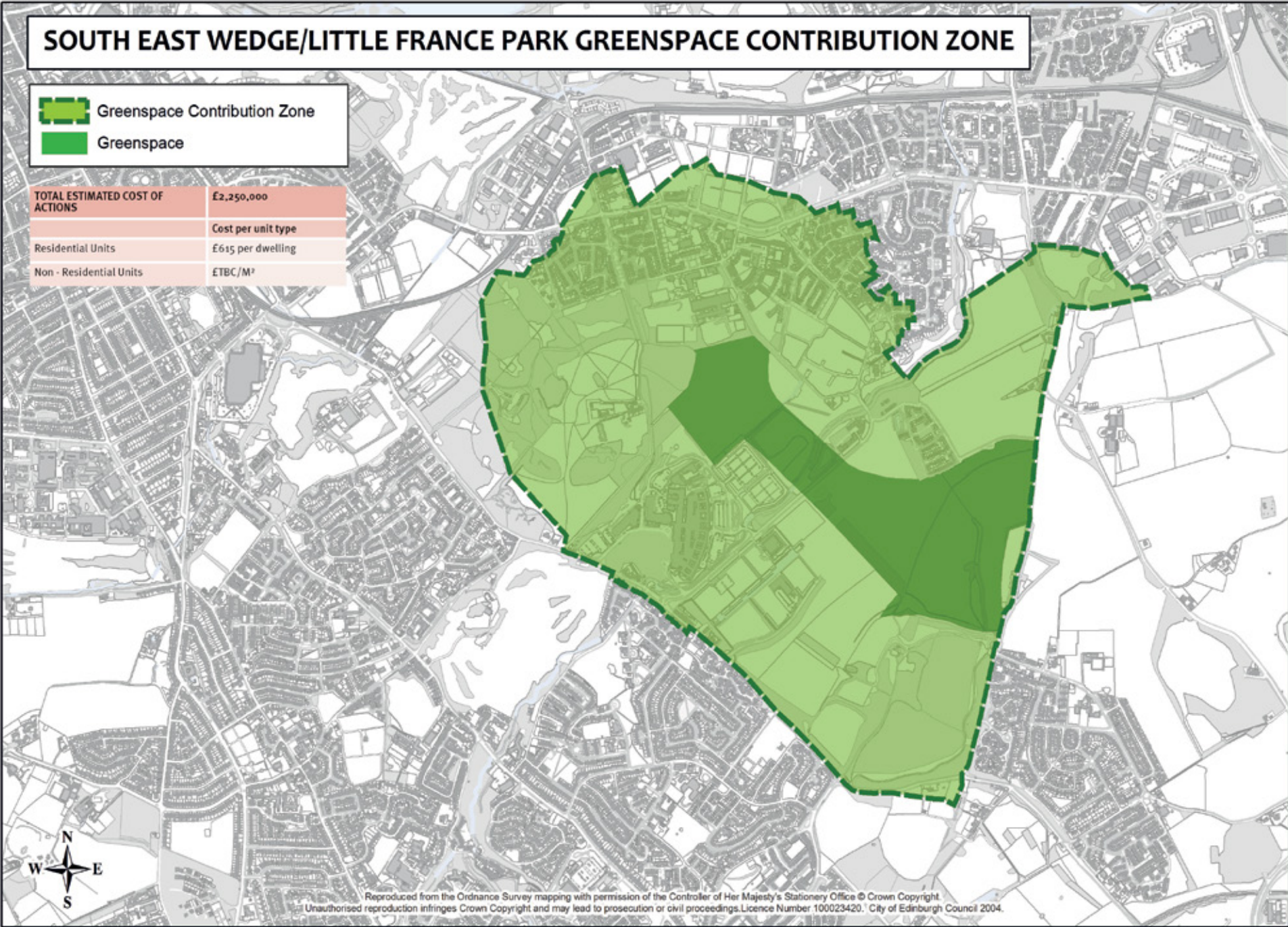
Annex 3 Greenspace Infrastructure Actions

ACTION	COST
Dalry Community Park (GS1)	£726,000 (see also Roseburn to Union Canal Transport Contribution Zone)
Leith Western Harbour Central Park (GS2)	n/a - to be secured through planning applications and conditions
Leith Links Seaward Extension (GS3)	n/a - to be secured through planning applications and conditions
South East Wedge Parkland (GS4)	£2.25m (see also Greenspace Contribution Zone)
Niddrie Burn Parkland (GS5)	£1m
IBG Open Space (GS6)	n/a - to be secured through planning applications and conditions
Gogar Burn (GS7)	n/a - to be secured through planning applications and conditions
Inverleith Depot (GS8)	n/a - to be secured through planning applications and conditions
Broomhills Park (GS9)	n/a - to be secured through planning applications and conditions
Clovenstone Drive (GS10)	£400k
Newmills Park (GS11)	n/a - to be secured through planning applications and conditions

Maintenance Costs

Based on the maintenance costs of a 2ha publicly-accessible park which meets the Council's Large Greenspace Standard, a one-off contribution to meet the transitional costs of the Council adopting such a space can be calculated. This exact figure will depend on the specific nature of the greenspace in question, but will be calculated with reference to the following range (based on recent examples from English boroughs):

- £151,600 at £7.58/sq.m. (Scarborough)
- £195,800 at £9.79/ sq.m. (Wigan)
- £267,000 at £13.35/ sq.m. (Winchester)



Annex 4 Healthcare Actions

ACTION	REQUIREMENT / DETAILS	TIMESCALE	ESTIMATED COST	FUNDING	STATUS
New medical practices					
Granton Waterfront	<ul style="list-style-type: none"> New Practice to mitigate impact of new residential development in Granton Waterfront. Co-located with new waterfront primary school. 	TBC	£4.5M	EHSCP / Developer	Exploring Options
Leith Waterfront	<ul style="list-style-type: none"> New Practice to mitigate impact of new residential development in Leith Waterfront. 	TBC	£4.5m	Developers	Exploring Options
West Edinburgh	<ul style="list-style-type: none"> New Practice to mitigate impact of new residential development in West Edinburgh (Maybury, South Gyle, Edinburgh Park, IBG) Co-located with new Maybury Primary School 	TBC	£4M	Developers	Exploring Options
Gilmerton	<ul style="list-style-type: none"> New Practice to mitigate impact of new residential development in South East Edinburgh (HSG 21-40). Location to be confirmed. 	TBC	£3m (£8m for combined development; £3m for LDP/HLA sites)	Developers	Strategic Assessment completed
NWEPC	<ul style="list-style-type: none"> New Practice to mitigate impact of development at Pennywell, Muirhouse, City Park, Telford Nth + Granton waterfront (early) 	Complete	£12.1m for Partnership Centre Sunk cost	NHSL	Services move December 2017

ACTION	REQUIREMENT / DETAILS	TIMESCALE	ESTIMATED COST	FUNDING	STATUS
Expansions					
Brunstane	<ul style="list-style-type: none"> Agreement with four local practices to accommodate additional growth – 2 practices will require small schemes to increase capacity 	2018	£0.1m	Developers	Small schemes in progress
Parkgrove	<ul style="list-style-type: none"> Expansion to medical practice to mitigate impact of HSG 20 Cammo. 	TBC	£0.1m	Developers	Exploring Options
Pentlands	<ul style="list-style-type: none"> Expansion to medical practice to mitigate impact of development in South West Edinburgh 	TBC	£0.5m	Developers	Exploring Options
Ratho	<ul style="list-style-type: none"> Re-provision to medical practice to mitigate impact of development in Ratho 	Complete	£1.2m Sunk Cost	EHSCP / Developer	Move date tbc
Niddrie	<ul style="list-style-type: none"> Expansion to medical practice to mitigate the impact of new residential development in Craigmillar. 	TBC	£4.5M	EHSCP / Developer	Exploring Options
Leith Links	<ul style="list-style-type: none"> Re-provision of medical services to mitigate impact of HSG 12 Lochend Butterfly 	TBC	£4.5m (£0.9m – 20% for LDP/HLA sites)	EHSCP / Developer	Exploring Options
Polwarth	<ul style="list-style-type: none"> Expansion to medical practice to mitigate impact of CC3 Fountainbridge 	2018	£0.170m	EHSCP / Developer	Refurbishment at Tollcross Health Centre
Meadows	<ul style="list-style-type: none"> Expansion to medical practice to mitigate impact of CC3 Quartermile 	TBC	£3m (£0.51m – 17% for LDP/HLA sites)	EHSCP / Developer	Exploring Options
Brunton	<ul style="list-style-type: none"> Re-provision of medical services to mitigate impact of Meadowbank 	TBC	£4.5m (£0.9m – 20% for LDP/HLA sites)	EHSCP / Developer	Exploring Options
Allermuir	<ul style="list-style-type: none"> Expansion to medical practice to mitigate Craighouse. 	Complete	£7.3m (Sunk Cost)	NHSL Bundle	Opened October 2017
South Queensferry	<ul style="list-style-type: none"> Expansion to medical practice to mitigate impact of development in Queensferry 	2014 – 24	£0.3m (Sunk Cost)	Developers	Underway

Developer Contribution Rates

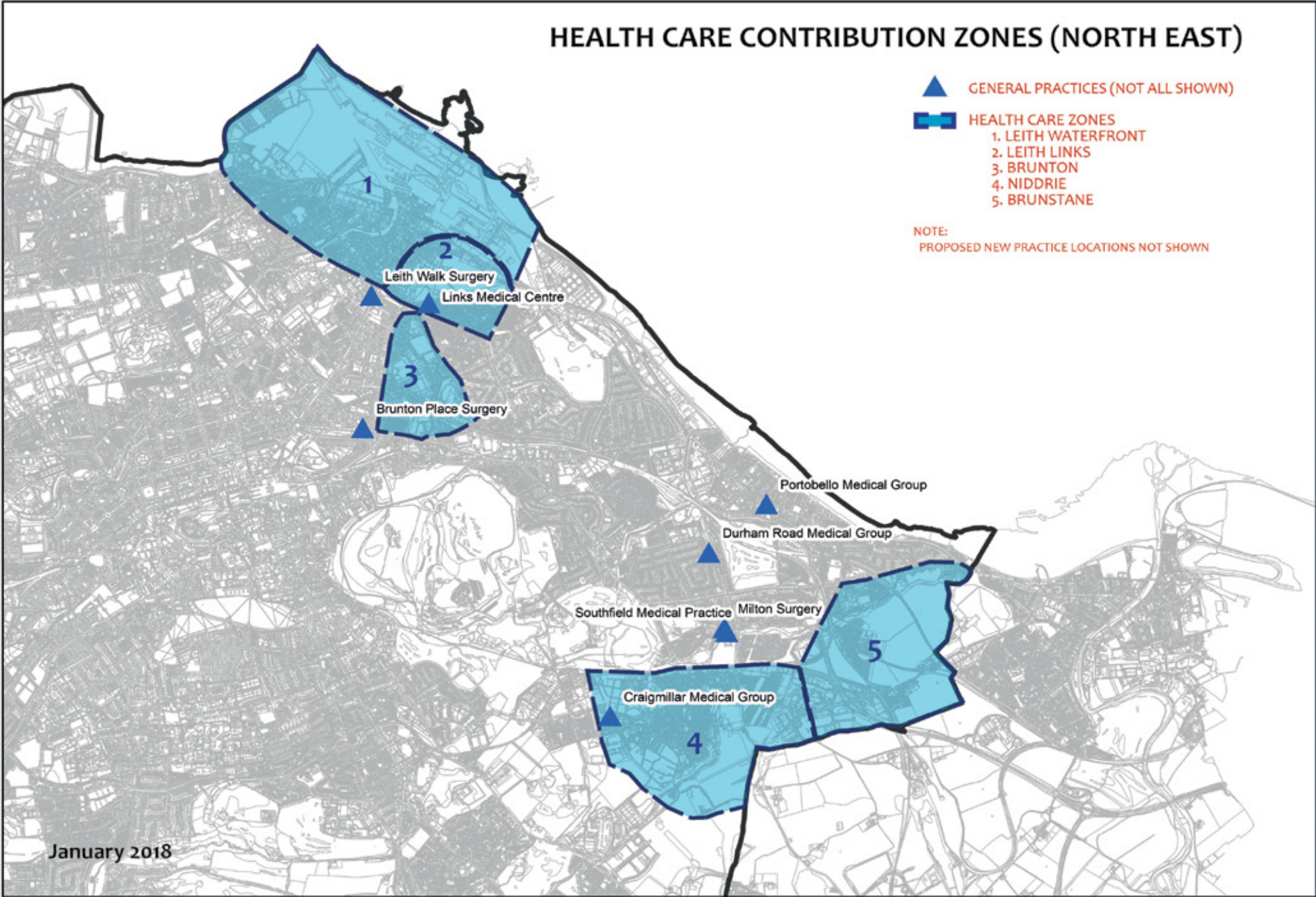
Contribution Zone/Name	Solution Required	Total No. of patients	No. of patients from LDP development	Cost of action £m	% of total cost for LDP development	Contribution		Calculation
						per dwelling ¹	per student ²	
1: Leith Waterfront	New practice	10,000	10,000	£4.5m	100%	£945	£150	$£4.5m/10,000 = £450$ per patient = £945 per dwelling
2: Leith Links	New practice	10,000	2,000	£4.5m	20%	£945	£150	$20\% \times £4.5m = £0.9m$. $£0.9/2,000 = £450$ per patient = £945 per dwelling
3: Brunton	New practice	10,000	2,000	£4.5m	20%	£945	£150	$20\% \times £4.5m = £0.9m$. $£0.9m/2,000 = £450$ per patient = £945 per dwelling
4: Niddrie	New practice	10,000	2,000	£4.5m	20%	£945	£150	$20\% \times £4.5m = £0.9m$. $£0.9m/2,000 = £450$ per patient = £945 per dwelling
5: Brunstane	Small scheme at two existing practices	3,500	3,500	£0.1	100%	£60	£10	$£0.1m/3,500 = £29$ per patient = £60 per dwelling
6: Meadows	Re-provision of existing premises	6,000	1,000	£3m	17%	£1,071	£170	$17\% \times £3m = £0.51m$. $£0.51/1,000 = £510$ per patient = £1071 per dwelling
7: Gilmerton	New practice	6,000	6,000	£3m	100%	£1,050	£167	$£3m/6,000 = £500$ per patient = £1050 per dwelling
8: Polwarth	Relocation and expansion	5,000	1,000	£0.17m	20%	£71.40	£11.34	$20\% \times £0.17m = £0.034m$. $£0.034m/1,000 = £34$ per patient = £71.40 per dwelling

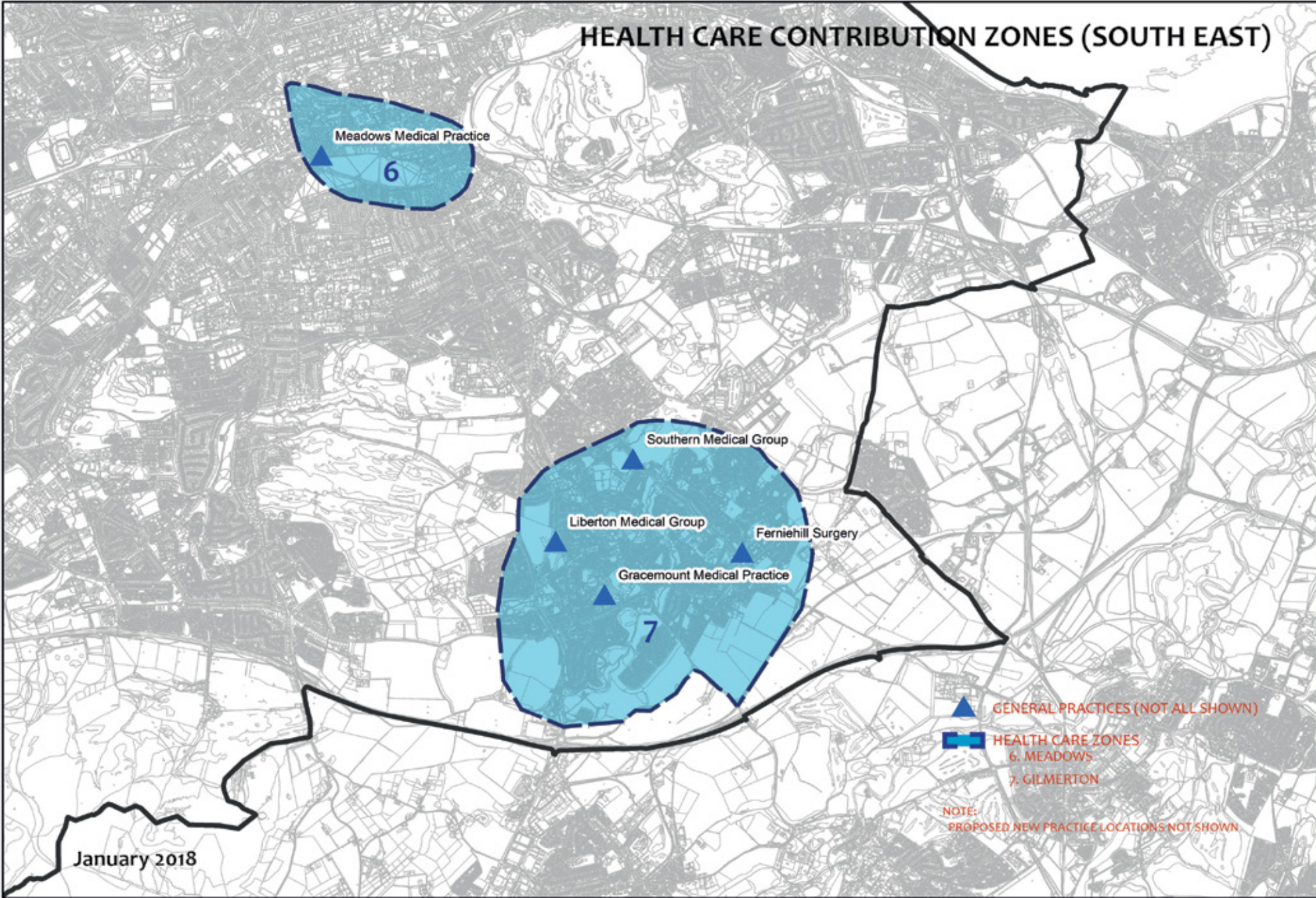
Contribution Zone/Name	Solution Required	Total No. of patients	No. of patients from LDP development	Cost of action £m	% of total cost for LDP development	Contribution		Calculation
						per dwelling ¹	per student ²	
9: Pentlands	Expansion of existing premises	1,500	1,500	£0.5m	100%	£702	£111	$£0.5m/1,500 = £334$ per patient = £702 per dwelling
10: Allermuir	New practice accommodation as part of health centre	14,500	2,000	£7.3m for centre/ £3.58m for practice	14% of practice cost	£526.26	£83.54	$14\% \times £3.58m = £0.5014m$. $£0.5014/2,000 = £250.60$ per patient = £526.26 per dwelling
11: South Queensferry	Internal refurbishment of existing building	3,000	3,000	£0.3m	100%	£210	£34	$£0.3m/3,000 = £100$ per patient = £210 per dwelling
12: West Edinburgh	New practice accommodation as part of health centre	8,000	8,000	£4.0m	100%	£1,050	£167	$£4m/8,000 = £500$ per patient = £1,050 per dwelling
13: Parkgrove	Expansion of existing premises	2,000	2,000	£0.1m	100%	£105	£17	$£0.1m/2,000 = £50$ per patient = £105 per dwelling
14: NWEPC	New practice accommodation as part of health centre	5,000	5,000	£12.1m for centre/ £1.33m for practice	100% of practice cost	£559	£89	$£1.33m/5,000 = £226$ per patient = £559 per dwelling
15: Granton Waterfront	New practice	10,000	10,000	£4.5m	100%	£945	£150	$£4.5m/10,000 = £450$ per patient = £945 per dwelling

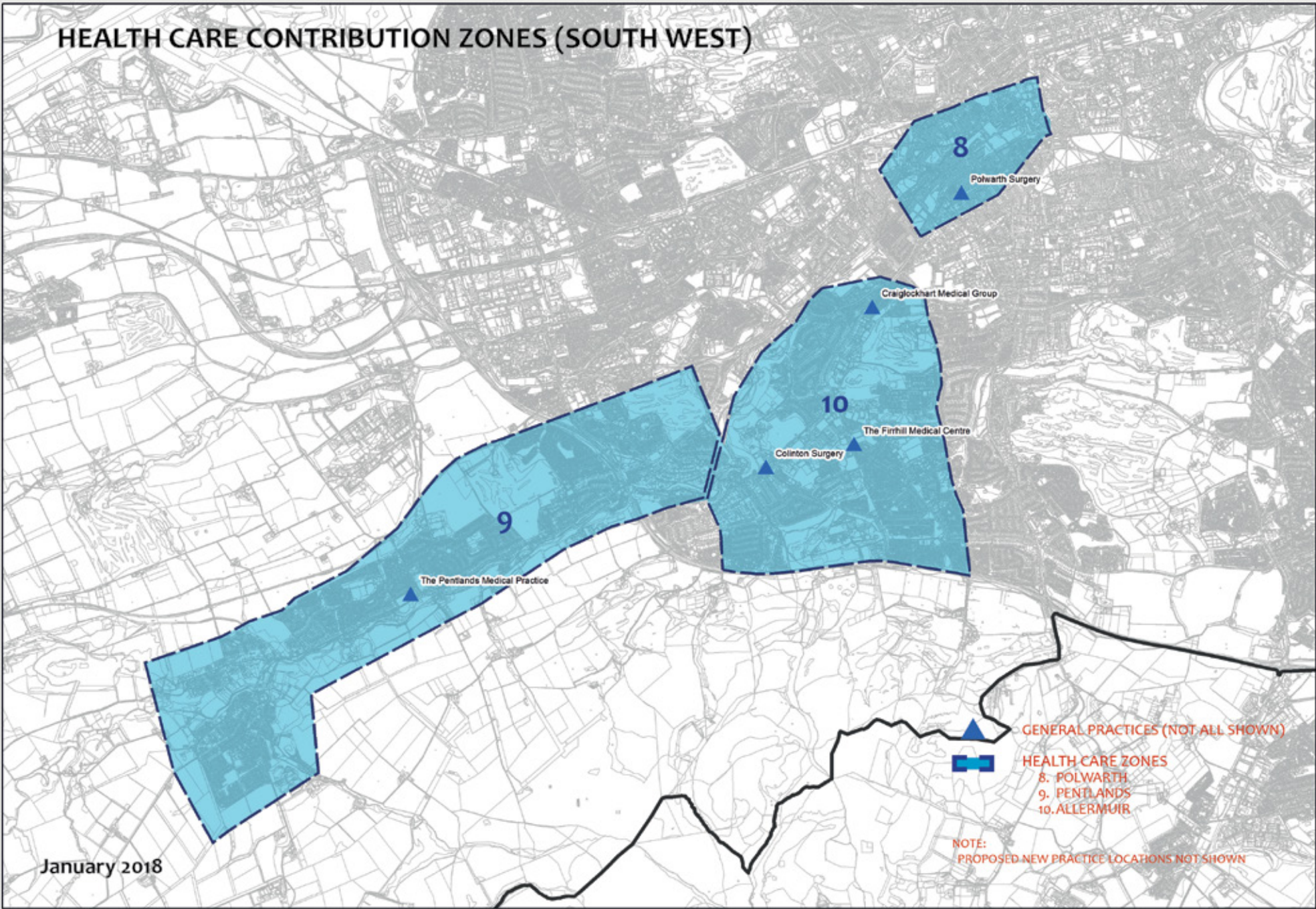
¹ Dwelling figure based on average 2.1 persons per household (Source: NRS Population estimates and projections)

² Student contribution circa one third of cost per patient

Note, the "No. of patients from LDP developments column" can represent a cumulative figure from multiple developments. A detailed list of the various developments can be found in the Local Development Plan Primary Care Appraisal.



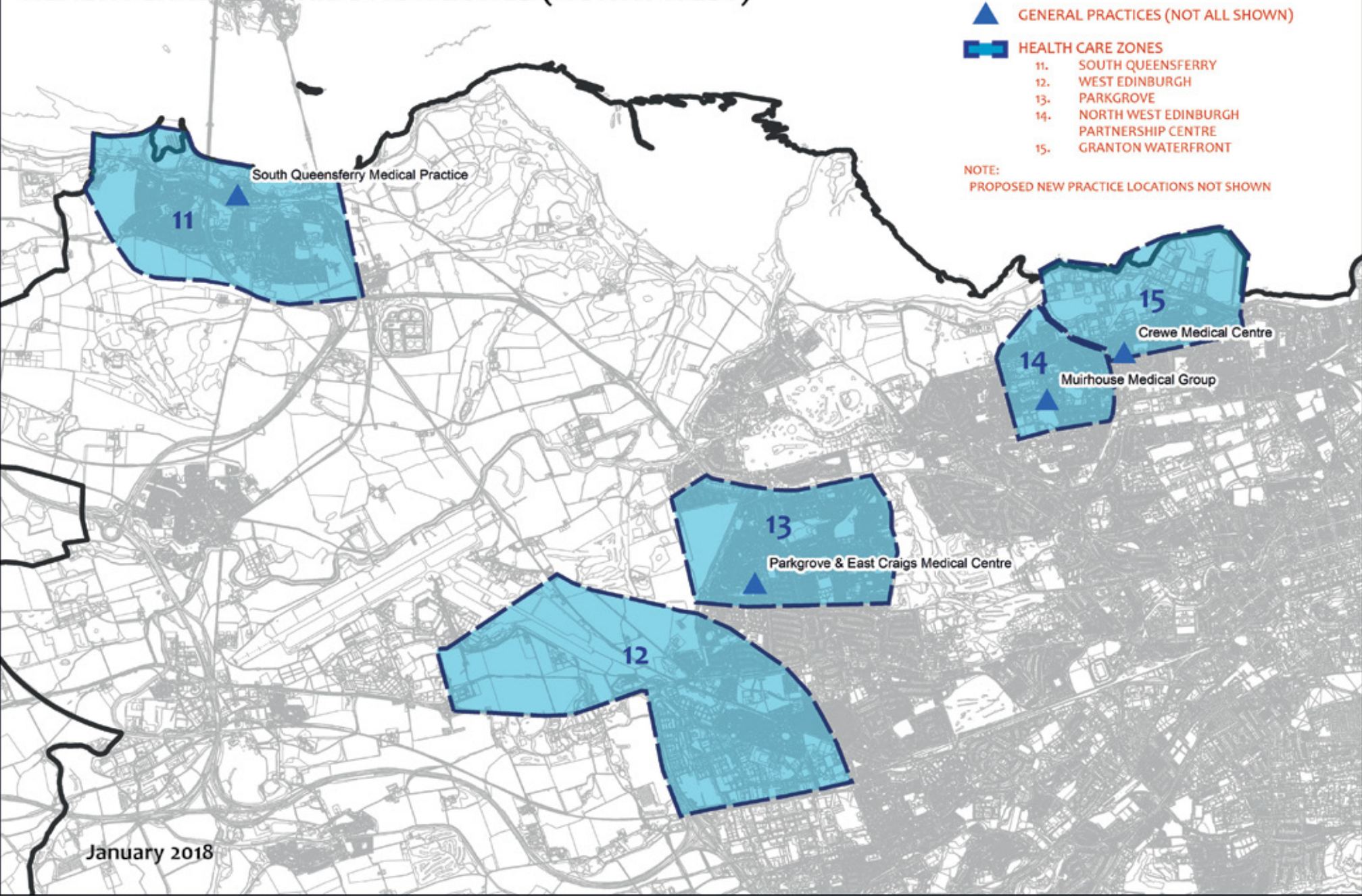




HEALTH CARE CONTRIBUTION ZONES (NORTH WEST)

-  GENERAL PRACTICES (NOT ALL SHOWN)
-  HEALTH CARE ZONES
- 11. SOUTH QUEENSFERRY
- 12. WEST EDINBURGH
- 13. PARKGROVE
- 14. NORTH WEST EDINBURGH PARTNERSHIP CENTRE
- 15. GRANTON WATERFRONT

NOTE:
PROPOSED NEW PRACTICE LOCATIONS NOT SHOWN



January 2018



HAPPY TO TRANSLATE

আনন্দের সঙ্গে অনুবাদ করব ترجمہ کے لئے حاضر

بِسْمِ اللَّهِ تَوَفِيرَ التَّرْجُمَةِ MOŻEMY PRZETŁUMACZYĆ 很樂意翻譯

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localdevelopmentplan@edinburgh.gov.uk

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
Scottish Government - Planning & Architecture Division	Your authority will wish to satisfy itself that statutory requirements have been met, particularly those relating to providing an adequate opportunity for those who may be expected to wish to make representations. Please note, PAD were not notified of the consultation on the supplementary guidance.	Noted - the CEC contact details for Scottish Government directorates will be checked and if necessary updated. The Scottish Government as a whole was notified of the consultation - several directorates were sent notification emails.	No	
	We would find it helpful to receive confirmation if the consultation on this supplementary guidance relates to amendments to the previous guidance which we notified should not be adopted or issued, or if it is a new piece of supplementary guidance that is following statutory procedures afresh.	The Council confirms this is a new piece of supplementary guidance. No change is proposed to the finalised SG.	No	
	We would also encourage your authority to ensure that it is satisfied that the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements are met.	The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular.	No	
	Scottish Planning Policy (SPP, June 2014) outlines the core values of the planning service in Scotland. It refers that the service should make decisions in a timely, transparent and fair way to provide a supportive business environment and engender public confidence in the system. It would therefore be appropriate to ensure that the information that supports the supplementary guidance, such as appraisals and assessments, are available to stakeholders during the consultation so that responses to it are able to be fully informed.	The Education and Transport background appraisals were available during the consultation process on the Council's website. The Healthcare Appraisal was available on request. No change is proposed to the finalised SG.	No	
	We note that the Education Appraisal was updated in January 2018 and that housing numbers for the International Business Gateway (IBG) have been removed along with a reference that part of the site is available for a new secondary school. However, the updated appraisal now states that 'the potential opportunity to deliver a new secondary school within the IBG will be explored as part of the masterplan process for the area'. We would wish to reinforce previous correspondence from Scottish Ministers to your authority regarding the masterplan and a new school within the IBG. Our letter regarding adoption of the Local Development Plan of November 2016 referred that as the masterplan is prepared it should be consistent with the National Planning Framework. Our response to the initial consultation on developer contributions supplementary guidance of February 2017 highlighted our concern about a new secondary school at the IBG given the potential for it to compromise the site for its intended purpose by creating ambiguity around the business-led role of the IBG and thereby potentially diminishing the business opportunities available at this prime location.	New secondary school capacity is required in West Edinburgh to accommodate the growth in pupils from new housing development. Although the Council's preferred solution is to deliver one or more new secondary school, there are currently no sites identified within the Action Programme. Therefore, contributions towards new secondary capacity will be based on the estimated cost of providing additional secondary school capacity on a per pupil basis. This is the same approach that is applied across other parts of the city where additional secondary school capacity is required which may be delivered by a replacement building or extension. The finalised SG does not therefore require contributions to be taken in West Edinburgh towards the acquisition, servicing and remediation of land for a new secondary school. The location/s for new secondary school infrastructure in West Edinburgh will be progressed through development of a West Edinburgh spatial strategy to be prepared as part of the new Local Development Plan process. No change is proposed to the finalised SG.	Yes	Page 16 Annex 1, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity - 420 pupils (to mitigate the impact of development within the catchment areas of non-denominational secondary schools within West Edinburgh). Page 17 Remove land cost information for west secondary school. Page 32, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity (West Edinburgh)'. Page 32, update contribution rates.
	In relation to other appraisals and assessments, we are unable to establish if there has been a further update to the West Edinburgh Transport Appraisal since December 2016 and were unable to confirm the content of the Primary Health Care Appraisal. As such we are unable to establish the assumptions in the appraisals and potential influence on National Development 10, Strategic Airport Enhancement.	There has been no additional update of the WETA Dec 2016. The SG only requires transport contributions from commercial development within the WETA area. A spreadsheet tool has been developed to allow this to be calculated meeting the tests of the Circular. No change is proposed to the finalised SG.	No	

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	Transport Scotland cannot support the wording in relation to the delivery of infrastructure on page 8 and 13; "The Council will transfer any monies collected towards actions on the trunk road network to Transport Scotland once the relevant project is confirmed". This statement was included in response to previous comments which noted that it was inaccurate to state that funding for some schemes would 'come from the Cross Boundary Study'. The detailed design for grade separation of Sherriffhall is on-going, meaning a cost profile is not currently available. It is therefore not possible to determine a delivery and funding mechanism, or timetable, for this project, meaning the above statement is premature and should be removed.	Sherriffhall: TS are not willing to present a figure for the cost, as it could only be an estimate and is subject to fluctuation. There is no start date for the project. While it is therefore not possible to attribute a proportionate cost to relevant developments, that should not preclude the action or contribution zone in the SG. Developments in the contribution zone (or a TA that shows an impact on the junction) could still contribute in the future when the cost is known. Retain the action and TCZ. No change is proposed to the finalised SG.	No	
Scottish Natural Heritage	We welcome the greenspace and active travel infrastructure actions set out in this draft Supplementary Guidance. The approach set out here and in other related plans and strategies sets a scale and ambition for greenspace and green infrastructure that is necessary to support city growth in the long-term.	Noted. No change is proposed to the finalised SG.	No	
	'Delivery of transport infrastructure' on page 8 includes the measure that "Where the delivery of a transport action in the Action Programme is attributable to a number of development sites and/or requires land outwith the control of the applicant(s), the Council will collect contributions cumulative towards the action and deliver the action." This approach appears likely to deliver infrastructure that is of consistent quality and that is networked rather than piecemeal. However, it would be useful to clarify at what point infrastructure would be delivered when the delivery is attributable to a number of development sites. It appears likely that these situations can be predicted and we therefore suggest that there should be a means to secure early, upfront delivery throughout construction phases rather than at the end as this could entail lengthy delays to delivery of a coherent network. The potential for this situation to occur has been recognised in Section 4 (Legal Agreements and use of monies) "The Council needs to ensure that contributions are received in good time to allow the necessary infrastructure to be delivered in step with new development. It is anticipated that planning applications will be submitted and construction started at varying timescales." While similar situations are not explicitly set out in relation to greenspace, similar issues with connectivity and delay in delivering high-quality places could arise if an early, coordinated approach to delivery is not established. We recommend that this is clearly set out in the appropriate sections of the Supplementary Guidance.	Coordinated approach to delivery is/is to be established through delivery plans (related to Action Programme) in instances where greenspace is to be delivered by or in partnership with the Council. The delivery of greenspace, where funded by more than one development, would be expected to be delivered at an appropriate time as set out in the LDP Action Programme. It should be noted that in instances such as Little France Park, greenspace may be developed over a long period of time with monies spent on key phases or projects as set out in the park's Delivery Plan. No change is proposed to the finalised SG.	No	
	We welcome the requirements set out under 'Open Space – Ongoing Maintenance' on page 9. If the full benefits of accessible open space are to be realised, long-term maintenance and management are essential.	Noted. No change is proposed to the finalised SG.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	We recognise the difficulties inherent in collecting contributions for public realm actions in the absence of a finalised Public Realm Strategy, as set out on page 10. Given the importance of the public realm as place in its own right and as a network between destinations, we hope that the Strategy will be finalised as soon as possible to allow clear requirements for developer contributions to be established.	The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes. No change is proposed to the finalised SG.	No	
Scottish Water	Scottish Water welcomes the Councils' approach to Developer Contributions and Infrastructure Delivery in the emerging Supplementary Guidance. We would like to point out that Scottish Water operate within a funding framework in accordance with the Water Industry (Scotland) Act 2002. Any water and wastewater infrastructure requirements to support development will be determined through direct contact with Scottish Water. Further details can be obtained from our Customer Connections Team. We will continue to support the Council to deliver sustainable economic growth and we have no further comment to make on this consultation.	Noted. No change is proposed to the finalised SG.	No	
Network Rail	Network Rail supports the overall approach taken by the draft SG, which is in line with policy Del 1 of the LDP. It is right that where the cumulative impact of new developments will exacerbate a current, or generate a future, need for additional infrastructure that appropriate contribution are made by developers. We understand the need for local planning authorities and infrastructure providers to work closely together to understand development impacts and appropriate mitigations and to ensure effective delivery. This should be informed by Transport Assessments which fully assess the impacts of development on all modes of transport, including by rail.	Noted. No change is proposed to the finalised SG.	No	
	The White Paper 'People, Places and Planning' focussed on the importance of infrastructure to the delivery of the Scottish Government's development priorities. Many of the changes proposed in the White Paper have the potential to impact significantly on how Network Rail delivers new, and maintains the existing, railway infrastructure in Scotland. In addition, the recently published draft Planning (Scotland) Bill provides the primary legislation for the introduction of infrastructure levies; and it will be for secondary legislation to set out the mechanisms by which infrastructure providers, such as Network Rail, will be involved in working with local authorities to secure developer contributions.	Noted. No change is proposed to the finalised SG. .	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Network Rail is embarking on a drive to attract third party funding to deliver enhancement projects. This is based on the principle that third parties deriving benefits from enhancements should make a financial contribution that is proportionate to the benefits that they can reasonably be expected to derive. The Network Rail-commissioned, independent report by Professor Peter Hansford, 'Unlocking rail investment: building confidence, reducing costs' considers contestability and third party investment in rail infrastructure delivery and was published in August 2017. This is currently directed towards England and Wales but similar principles can be applied in Scotland.	Noted. No change is proposed to the finalised SG. .	No	
	Network Rail supports the approach suggested in the draft SG to agreeing Developer Contributions via S75 agreements, although it is stated that "other arrangements may be made where smaller contributions are to be delivered by the developer or paid up front". Where applicable, the mechanics of any 'other' process should be discussed and agreed with Network Rail at a pre-application stage to ensure that the contributions are held in an appropriate fund, transferred at a suitable time to facilitate delivery and returned after a reasonable time if unused.	Noted. Change justified.	Yes	Add reference to Section 69 agreements and option for developer to deliver. Replace paragraph seven on page 8 with: Where a transport action is required because of development and can be delivered directly by an applicant, this is the Council's preferred option. The Council will normally secure its delivery as part of the planning permission using conditions or non-financial legal agreements (see Section C above).
	Network Rail requires the continued support of the local authority in safeguarding and improving the railway network, and to meet demands, from new development. It is important that Transport Assessments should be required to take into account the impacts of proposed development on the demand for rail services. This increased demand may result in the requirement for upgraded rail infrastructure or of facilities at stations and is particularly important for areas of significant new development.	Noted. No change is proposed to the finalised SG. .	No	
	The Draft SG continues to identify Dalmeny Station as a 'Transport Action' within the Queensferry Transportation Zone, with the extent of action and cost still to be established. However, it states that a total of 1567 dwellings are proposed across 3 housing allocations is likely to give rise to additional pressure on vehicular and cycle parking at the station. The Action Programme (January 2018) however puts a cost of £4288 for the improvements to these facilities, in addition to further cycle parking to be provided by ScotRail. The basis for this amount is not clear, and it is stated that a feasibility study would be required. Whether this is a sufficient sum to cater for demand arising from this level of development should be further justified, potentially by way of a Transport Assessment.	The Queensferry Transport Contribution Zone has been amended to provide overall cost for additional cycle parking action at Dalmeny Train Station. A comparative cost estimate for the cycle parking was used based on similar schemes. It should be noted the potential for additional car parking at this station is under consideration as part of a Public Transport Priority Action Plan reported in August 2018.	Yes	P46 ACTION and COST still to be established for additional car parking capacity. Additional cycle parking is costed at £4,288
	Network Rail would wish to be involved at an early stage regarding any specific sites or works which would affect the railway. This is especially relevant in terms of the Roseburn to Union Canal Transport Contribution Zone where proposals are for new bridges over the existing railway lines.	Noted. No change is proposed to the finalised SG. .	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	In relation to the Maybury housing site (HSG 19), we note that the proposed bridge over the railway as shown on the Maybury and Cammo site brief in the LDP has not been identified as a 'Transport Action' as we had previously suggested. Network Rail has been advising the developer as to feasible bridge proposals, but this is seen as a missed opportunity to ensure its delivery through the draft SG. It is noted that this is covered by the Action Programme.	This is to be delivered as a site specific action rather than via cumulative contributions. Non-financial S.75. No change is proposed to the finalised SG.	No	
	Finally, we would emphasise that Network Rail should be excluded from having to make developer contributions as a publicly owned company arm's length body of the Department for Transport (DfT). Our profits, including those from commercial developments are directly re-invested in the railway. Our projects and station developments and improvements support regeneration, increase the attractiveness of settlements and benefit communities.	In planning terms, development on land owned by Network Rail will have an impact on services and infrastructure, and therefore is not exempt for contributions. No change is proposed to the finalised SG.	No	
Cllr Amy McNeese-Mechan	An arts & culture fund could also be looked at by Edinburgh City Council.	An arts and culture fund would not meet the legal and circular tests for developer contributions. No change is proposed to the finalised SG.	No	
Cllr S Webber	We hear often of S75 payments but we never see them in the locality. There is doubt and questions as to the Council's openness in using them for what they have been assigned AND frankly the communities should be asked what they WANT.	It is agreed that community engagement regarding perceived infrastructure shortcomings is an important consideration. However the SG assesses and set out what infrastructure is required as a result of new development and that therefore justifies S75 developer contributions. No change is proposed to the finalised SG.	No	
Brian Wallace	Contribution levels seem low. Given the focus on new housing there appears to be a lack of new or upgrading infrastructure (roads, cycle ways and bus services) to cope with the increase in the population. This is especially the case in development areas outside the city bypass i.e. Ratho, Balerno, Currie.	Contribution Zones reflect where development set out in the LDP impacts on infrastructure and mitigation is required. The SG cannot seek to remedy existing issues. No change is proposed to the finalised SG.	No	
Linda Hutton	No consideration has been given to improve the infrastructure in Ratho and no bus service runs into Edinburgh. There is no access to the trams as they are too far away from the village. Need to look at public transport for outlying areas as well, as the car is the only way for many people to get to town. With the village only having one small shop to serve all the population a good transport network is needed. If further development is to be forthcoming more thought needs to go into providing proper infrastructure for all.	Contribution Zones reflect where development set out in the LDP impacts on infrastructure and mitigation is required. The SG cannot seek to remedy existing issues. No change is proposed to the finalised SG.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
Douglas Read	It is essential that developers contribute to the necessary infrastructure which their development entails. This should mean that they pay entirely for any services connections - water, sewage, electricity and gas - and make a significant contribution towards school and healthcare facilities. This could include not just money but also land and/or space within the development for such facilities. The maintenance of social infrastructure must be seen as a necessary corollary to any development. This should also include a proportion of social housing in any housing proposal over a given size and the Planning Department should check for any attempts to subvert this by artificially separating say one scheme into two or three.	Noted. SG seeks to ensure this. No change is proposed to the finalised SG.	No	
Nick Bates	Generally very good but I feel that sometimes "other" interests make influence how certain decisions are made	Noted. No change is proposed to the finalised SG. .	No	
Oliver Craig	Main roads are already overloaded so cannot see how these roads are going to take extra traffic.	The SG aims to address the impact of the growth set out in the LDP. Developer contributions cannot be used to address existing issues. No change is proposed to the finalised SG.	No	
Pam Mackay	No development planning permission should be awarded without a requirement on the developer to fund the necessary provision of infrastructure, either wholly or in agreed partnership with the local authority	Noted. No change is proposed to the finalised SG. .	No	
Steph Buckley	The council is creating too much housing in an area that can't support it. What happened to the green belt?	The SG aims to address the impact of the growth set out in the LDP. No change is proposed to the finalised SG.	No	
Leith Central Community Council	Over the last decade we have seen a major population expansion in the Leith Central Area with many of the industrial sites being turned over to residential use and brownfield sites being developed for housing. This will no doubt be reflected in the 2021 census. This has had a consequential effect of creating severe pressure on health care facilities with reported difficulty of new residents getting into medical practices. The report on the other hand emphasizes the requirements for Leith Waterfront and Granton areas where new practices are envisaged - Leith Waterfront (£4.5m) and Granton (£4.5m). We think this is an imbalance in the immediate future due to the current large residential developments that have already taken place in Leith Central (eg Shrubhill, John Lewis site and other Bonnington sites). A similar argument concerns school place provision where there is already overcrowding at primary schools in the Leith Central area. The report suggest only a minimal expansion of two primary classrooms for the Broughton, Abbeyhill and Leith Walk Primary School catchment area. We feel that this is totally insufficient.	The Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal as part of the process of planning future health care services in light of changing demands as a result of both greenfield and brownfield development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.	Yes	Text of section 2e of the SG altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments." Response required on Education.

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	The report identifies developers of even smaller properties to make substantial contributions to the cost of the tramline in Leith Walk. We feel that this will be a discouragement to small developments which are part of the rich cultural mix in this area. We therefore feel that small developments up to say 500sq m in Zone 1, and corresponding slightly larger developments in Zone 2 should be exempt from this charge. We also feel that Zone 3 at 750 meters from the tramline is too far for the effects to be felt by the trams as there will only be three stops in Leith Walk (Macdonald road, Balfour Street and the Foot of the Walk). We also feel that contributions envisaged for major developments are too low. For example student residences in Leith Walk are highly profitable enterprises and this should be reflected in tram contributions.	It is important to the principle that contributions be fair and proportionate that the cumulative impact of many small developments is not overlooked by the policy approach. Accordingly, it is reasonable that the contributions framework makes provision for small developments to contribution proportionately. No change is proposed to the finalised SG.	No	
Cammo Residents Association	The planning department are accepting transport reports paid for by developers from supposed transport experts. Reports are not questioned and thrown back as being incorrect.	Noted. No change is proposed to the finalised SG. .	No	
Cramond & Barnton Community Council	All developer contributions should be ring-fenced for expenditures within the relevant contribution zones and, if not spent within the allocated timescales, should be held within a dedicated fund for future improvements within the immediate area of the initial intended works. Contributions should not be 'lost' to general purposes expenditures by the Council.	SG seeks to allow Council maximum flexibility for proper utilisation of developer contributions for necessary infrastructure, while remaining both lawful and compliant with the Circular tests. No change is proposed to the finalised SG.	No	
	The amount of developers contributions allocated towards actions within the Maybury/Cammo Transport Contributions Zone should be reviewed and increased to allow for additional proposed improvements in the Barnton Junction and Cammo Gardens/Maybury Road areas as outlined in the Community Council's Barnton Junction discussion paper. The proposed focus of expenditures solely on improved traffic signals and changes to pedestrian/cyclist provision as derisory. However, in addition to that transport contribution, the council is seeking a further contribution in respect of the redesign of Maybury Junction for cycling and walking which is a separate item in the action programme. We note that under the actions for the Maybury/Barnton contribution zone, the further details for Maybury junction state "increase junction capacity... better provision for pedestrians and cyclists...". Under delivery it states "Initial design work completed." Taking all this together it is not clear why this additional contribution towards the redesign is required. Therefore, we are not persuaded that it is necessary or justified.	The reporter's' decision on the West Craigs appeal PPA-230-2207 noting that under the Maybury/Barnton contribution zone initial design work completed and were not persuaded that an additional contribution towards the redesign was necessary or justified.	No	
The Edinburgh Association of Community Councils (EACC)	Whilst the document refers to developer contributions it is likely that the contributions will not come from developer generosity or profit margins but will be merely passed on to purchasers of new housing and other new development as an on cost. We think the name should be changed; a suggestion might be "development contributions".	Response noted, however, they are widely known in Scotland as "Developer Contributions". No change is proposed to the finalised SG.	No	
	Regarding SDP Policies, this Draft was prepared before the introduction of the Planning (Scotland) Bill to the Scottish Parliament with its provision to abolish SDPs as at present carried out. We think this Draft should consider the implications of this.	Draft Planning Bill not relevant to this SG, Council has responded separately to it. SG requires to be prepared in accordance with the current law. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	The concept of drawing income for the provision of new infrastructure arising from new development is supported. The concept of contribution zones is well understood, but firm boundaries should be set to encompass only the areas currently identified for development in the LDP. Those parts of the contributing zones not currently allocated could be perhaps be indicated in light outline only as otherwise this Guidance could be used to support applications for development in the future by dint of their inclusion in contribution zones. The inclusion of areas for development should be considered as part of the LDP process only and not justified by way of supplementary guidance.	Noted. No change is proposed to the finalised SG.	No	
	This Draft was prepared before the Planning (Scotland) Bill was introduced, which includes provisions for an Infrastructure Levy. This Levy could have profound implications for this Supplementary Guidance and how the two may interact. We think this Draft should at least discuss this and how the Levy might affect this Guidance and delivery of the LDP.	Draft Planning Bill not relevant to this SG, Council has responded separately to it. SG requires to be prepared in accordance with the current law. No change is proposed to the finalised SG.	No	
	The education tariff areas should be restricted to only the areas of any school catchment where development has been identified in the LDP plus any redevelopment and windfall sites within the particular catchment. Tariffs should be set to reflect currently planned numbers rather than a pro rata of what the catchment area might yield if fully developed for housing resulting from land releases from subsequent future LDP releases.	The Contribution Zones need to take into account the full cumulative impact of development which may happen to ensure that the full impact of development is mitigated. No change is proposed to the finalised SG.	No	
	The benefits arising from many of the road infrastructure investments will accrue to many more road / transport users than those within the areas depicted in the contribution areas in this document. Many will extend well into surrounding local authority areas and the implications of this need to be taken into account.	Noted. This is considered to be helpful to demonstrate that developments within zones have more than a trivial connection to the infrastructure interventions. No change is proposed to the finalised SG.	No	
	On road junction improvements generally in prioritising main road traffic flows, the need to aid more local lateral traffic movements should not be overlooked, thereby benefiting also local communities.	Developer contributions are towards capital costs of new infrastructure only required as a result of new development and cannot be used to mitigate existing issues. No change is proposed to the finalised SG.	No	
	The proposed Infrastructure Levy has been referred to in 2.2 above and its introduction could particularly affect how in the future transport infrastructure is paid for and provided.	SG addresses Infrastructure requirements until a potential Levy system is in place. No change is proposed to the finalised SG.	No	

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	The need to ensure that greenspace in new developments is not allowed to turn to wilderness is reasonable. However, the section on management appears at paragraph four to exclude residents' associations as a mechanism for undertaking the maintenance of lands in their area. It is suggested that this paragraph is revised to make specific reference to residents' associations. (This could be extended to other organisations such as CCs where there is an expressed willingness to take this on.) It also suggested that paragraph five is amended to allow some scope for negotiating with agencies other than the developer to secure an appropriate level of maintenance with agencies other than property management companies appointed by the developer.	Noted. The SG sets out that factoring on behalf of landowner(s) is the preferred means to ensure maintenance of green infrastructure but may consider adoption. It further states that where land is not adopted there needs to be public access and suitable maintenance and management in place. This maintenance and management is stated as being 'undertaken by a property management company or other appropriate body, such as a Trust'. It is considered that residents' associations or community councils would be covered by the term 'other appropriate body'. In paragraph 5 the onus on the developer to provide details of management and maintenance agreements is appropriate as it relates to a planning condition associated with the planning application. This would not preclude these details being that of a body as referred to above. No change is proposed to the finalised SG.	No	
	Public Realm section is somewhat vague and needs to be much clearer about the purposes for which monies will be sought and what the charges might be. We note that a new methodology is being developed. We remain to be convinced that there is justification for developments to be required pay for public realm out with their sites unless adjacent to them and perceived as coherent with them.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes. No change is proposed to the finalised SG.	No	
	Primary Healthcare - This section deals with an aspect of new development which can raise many objections. It is a complex matter and the integration of health and social care services is ongoing. Mechanisms for financing the supply of primary health care provision through development contributions are welcomed subject to the reservations set out in 2.1 above.	Noted. Change justified.	Yes	Text of section 2e of the SG will be altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. "
	Legal Agreements and use of monies - This section appears to be acceptable in principle but it is suggested that open space provision for public parks should be treated in a similar manner to schools and no ongoing upkeep costs passed to residents in the development site area as though it was part of the greenspace in an area. The proposed Infrastructure Levy referred to in 2.2 above will affect significantly the number and content of legal agreements and may in time largely supersede these mechanisms.	Noted. Where open space is not in the ownership of the Council it would not be appropriate for the Council to pay for ongoing maintenance as set out in section 2C of the SG. No change is proposed to the finalised SG.	No	

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Southside Community Council	Ensure that all the new features are thought through and joined up. For example I did not see mention of more park and ride and we can see how fixes later on (e.g. Sheriffhall) don't sit comfortably with the overall design. Cycle ways, walk ways need to be integrated with new roads to maximise pedestrian pleasure and safety.	This will be ensured through the delivery of the actions in the Action programme and through planning permissions. No change is proposed to the finalised SG.	No	
Craiglockhart Community Council	The calculation outlined for Transport contributions refers to Annex 2 and Appendix 1 (which I could not find)	Change justified.	Yes	Use of 'Appendix' in error on pages 3, 7 and 35 and will be corrected to 'Annex'.
	Developer contributions for housing the Craiglockhart area are difficult to ascertain. Craiglockhart did not appear to be in any of the plans, however the scale made them difficult to read.	Noted. No change is proposed to the finalised SG. .	No	
	Housing costs have recently been pushed up to a level that we are unable in recent Planning Applications (eg 116 Colinton Road - 37 housing units) to benefit from being able to provide affordable housing. The concern is that land costs in Craiglockhart are already high and that by adding contributions for transport that has little benefit to local developments, this pushes up prices. I would hope the effect of the Transport budget (£86 million of which £30m is for Gogar / Maybury additional eastbound lane) would not have cost transferred in any way other way to housing developments in Craiglockhart. In summary I doubt there is much benefit to our area as our arterial routes seem to be unaffected with no budget for upgrades	Noted. Costs towards the transport actions are justified based on the impact the development will have as set out in transport appraisals. Land values should reflect the cost of identified actions. No change is proposed to the finalised SG. .	No	
	Healthcare - Craiglockhart are in the Allermuir area (10) and upgrades are for Craiglockhart group, Colinton and Oxfangs surgeries - Colinton was recently built so are CEC trying to recoup expenditure or is this for a future expansion?	SG states it is for new practice accommodation as part of larger health centre. As a result developers will be expected to pay a proportionate contribution towards the cost of the new health centre consistent with the additional population generated. No change is proposed to the finalised SG.	No	
	Education £980 / flat (Another typical item that is not in our area, cost in respect of 66 extra places for the new school at Boroughmuir. I'm not sure what this means in reality)	The developer contributions required from the Boroughmuir Gillespie's Education Contribution Zone will be used to provide additional secondary school capacity and new primary school classrooms (at the new south Edinburgh Primary School). 66 is the number of additional secondary school pupils that are expected to be generated by new housing development in the area. No change is proposed to the finalised SG.	No	
	I feel that I would like someone at CEC to prepare a presentation and explain to us as to how it would all fit together cost wise. I get the general principal but in the detail there may be costs added that will increase the price of development in our area.	Noted. No change is proposed to the finalised SG. .	No	
	There were different rates for students for medical that is interesting, probably correct if young people don't go to doctors but they play sports and sustain injuries. The point is that there is room for a lot of interpretations and queries, it is not an exact science.	The reduced level of contribution is considered reasonable in light of the evidence. No change is proposed to the finalised SG.	No	
Drum Brae Community Council	The Council should NOT grant any developments which do not include improved and additional infrastructure and services which are affected and impacted on by their new developments which are costly to the City residents and taxpayers ... none at all granted until assurance is given WITH AGREED TIMESCALES.	Timetable for delivery is set out in the Action Programme, and within signed S75 agreements. No change is proposed to the finalised SG.	No	

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Spokes Planning Group	The document sets out the overarching aims of the Local Development Plan which include to “help ensure that the citizens of Edinburgh can get around easily by sustainable transport modes to access jobs and services” And later that “reducing the need to travel and promoting use of sustainable modes of transport are key principles underpinning the LDP strategy and a central objective of the Councils Local Transport Strategy”. These continue to be welcome objectives that underline the continued need to improve cycling infrastructure and how it connects across the city.	Factual. No change is proposed to the finalised SG.	No	
	The West Edinburgh Transport Actions list within Annex 2 sets out and costs improvements and connections within that part of the city. The SG states that it should also be read in association with the LDP Action Programme which list the priorities for cycling elsewhere in the city: many of these, however, do not have a budget identified or a timescale for delivery. Contributions toward the delivery of these will be sought through the Developer Contribution process. All new development, which is subject to developer contributions and the signing of a Section 75 agreement, will generally have considered provision of cycling links as part of good Masterplanning and as required within national and local policy. Spokes understand that they have the ability to comment on just how considered this provision is through the application consultation process.	Factual. No change is proposed to the finalised SG.	No	
	Of greater interest to Spokes is however how the Action Programme will be delivered, just how intrinsic developer contributions are to delivering this, as opposed to other funding sources, and where large developments have transport implications beyond their boundaries, but developers ignore requests for links to existing cycle networks, or delivery of links to other nearby new developments or facilities.	Factual. No change is proposed to the finalised SG.	No	
	The level of contribution within each transport zone is identified but not how the process of funds allocation would be identified- more transparency on this should be provided.	Where contributions are required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed to development within that zone. No change is proposed to the finalised SG.	No	

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	On the second point "Where the formation of an active travel connection would involve use of land outwith the developer's control, and the Council is able and willing to deliver such an action, if necessary using its compulsory purchase powers, the full cost of such an action (including land acquisition costs) will be sought". This rarely happens. We support this strategy but seek a better commitment to this through writing this into planning conditions and linking it to site completion rates as best protection toward delivery.	Noted. The Council is identifying the locations where land acquisition may be required to ensure these links can be made along with associated means of delivering. No change is proposed to the finalised SG.	No	
	Within larger developments, contributions should be required where developments do not adequately plan to achieve Local Transport Strategy (LTS) mode shift targets.	Mitigation in the Action Programme addresses the impact of development and ensures that development is accessible by sustainable transport modes, making them capable of achieving mode shift targets. No change is proposed to the finalised SG.	No	
	The current situation is that larger developments, whether mixed-use or housing, are required to provide a "before" and "after" travel mode share assessment. They typically use the mode share figures from similar existing local housing for their "before" / baseline figures. The LTS has excellent targets for a shift from cars to active travel and public transport. However, developers can present a status quo scenario if they wish. The suggestion would incentivise infrastructure to enable the mode shift envisaged in the LTS. Either plans would need to show how the development would achieve a move in line with LTS mode share targets or developers would need to provide contributions so that the Council was funded to achieve the necessary changes.	Noted, this point relates to the use of transport appraisals generally in the development management process, and not the SG.No change is proposed to the finalised SG.	No	
Drum Property Group	How have the geographical areas been selected for the transportation contribution zones as some of the works detailed with the local development action programme are remote from areas within the zones?	A 1km radius from the point of an action was used. No change is proposed to the finalised SG.	No	
	It is unclear what the contribution amount is within the Leith to Salamander Street transport contribution zone as there are 2 estimated cost of actions, one including Ocean Drive and one without.	The North Edinburgh Transport Contribution Zones have been removed from the Guidance because, unlike the zones for actions identified in the LDP Transport Appraisals or the West Edinburgh Transport Appraisal (WETA), they do not arise directly from an appraisal of the development as set out in the adopted LDP. Instead, individual applications will be assessed using LDP Policy Tra 8.	Yes	Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG
	How have the categories of development been selected which are liable to make a contribution with the transportation zones?	These are the categories of development that are likely to come forward in this transportation zone based on the uses in the LDP spatial strategy and waterfront policies. No change is proposed to the finalised SG.	No	
	Has the completion of the tram (which is still not fully approved) been taken into account when modelling the need for transportation improvements within the surrounding zones?	The tram was included in the LDP's Transport Appraisal's baseline data, as a 'committed' transport intervention. Modal shares were adjusted based on professional judgement of the impact of these interventions on relevant corridors. The north Edinburgh contribution zones actions were from an earlier assessment that pre-dates the LDP TA and does not include the tram line. No change is proposed to the finalised SG.	No	

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	The tram guidance is very clear in that any contribution considers the proposed use minus the existing use. Does this methodology hold for the transportation zones?	Yes. This is set out in Policy TRA8. No change is required to the SG.	No	
	It would be useful if there was a step by step guide for calculating potential contributions as when reviewing the guidance a number of approaches were taken resulting in differing estimates.	Noted. This would be a non-statutory guidance note. No change is proposed to the SG.	No	
	Finally the maps are quite hard to read due to the low resolution.	An online map will be provided with a higher resolution.	Yes	
Port of Leith Housing Association	Port of Leith Housing Association would like to make that point that there should be a relaxation of developer contributions for housing developments in receipt of HAG funding. Developer contributions are generally financed from developer profit, which does not apply to affordable housing, given that the vast majority of affordable housing projects (especially social housing) already run at a significant deficit. Were sufficient capital funding even available to cover this deficit, this would be effectively be a transfer of capital subsidy for housing to subsidising other public service infrastructure, which is not what the housing subsidy is intended for (i.e. to ensure rents remain affordable to low income households). Where, more often than not, a housing association has to use its own reserves to fund the additional shortfall caused by s75 contributions (i.e. where the available capital subsidy is not sufficient to cover the cost of development contributions), this reduces the association's capacity to continue developing further affordable housing in future.	In planning terms, development by Housing Associations will have an impact on services and infrastructure, and therefore is not exempt for contributions. No change is proposed to the finalised SG.	No	
Taylor Wimpey UK Ltd (Strutt & Parker)	We do not believe that it is appropriate to apply draft guidance as a material consideration, particularly whilst it is still out for consultation.	The SG has been prepared to support the revised policy context for funding infrastructure provision set out in the Local Development Plan (Policy Del 1). A number of applications for major housing development are currently being progressed by developers and landowners by the Council. It is therefore appropriate for the Council to provide detailed guidance on how the new policy context will be applied to those applications in time for them to be determined by the Development Management Sub-Committee. No change is proposed to the finalised SG.	No	
	We do not believe that the Council has adequately demonstrated compliance with the tests set out in Circular 3/2012 in respect of the approach set out in the SG to recover "the total cost of delivering infrastructure" (page 3 of the SG) from new development within the Zone. We believe that there requires to be a baseline assessment of the current situation and what would be necessary to rectify existing deficiencies in the absence of any development happening (we do not believe this has happened). Following that assessment, a subsequent assessment of what additional infrastructure interventions are required as a result of development should be undertaken and it is this cost that would be recouped from developers in each area.	Baseline assessments were carried out through the Council's Education, Transport and Healthcare Appraisals. No change is proposed to the finalised SG.	No	

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	The payment of fees to the Council for processing S75 Legal Agreements is currently unlawful and this has been raised by the Scottish Government in a number of other cases, at present, the application fee should cover the whole cost of processing the application.	The Council refutes that the payment of fees to the Council for processing S75 Legal Agreements is unlawful in terms of Scots Law. This is not a matter covered in the Supplementary Guidance. No change is proposed to the finalised SG.	No	
	The proposed retention of monies for a 10 or 30 year period (depending on the purpose for which they were sought) is not acceptable. In the case of a school contribution, if the school is not delivered within the target timeframes (most of which are far less than 30 years) this brings in to real question whether the contribution was justified in the first place. The proposed mechanisms for refunding/reimbursement of excess contributions is unclear, there needs to be a clear method of accounting for and monitoring the contributions received.	The funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG.	No	
	The monies received through developer contributions should be used for the purpose for which they are sought (in line with the Guidance) or, if not used for that purpose within a set period, returned to the developer. The statement (on pg20) "the Council may apportion monies received to deliver the infrastructure needed to support the first phases of development on the ground" requires clarification and substantial justification.	Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed to development within that zone. No change is proposed to the finalised SG.	No	
	The use of a model S75 Agreement is useful, however, other Councils who have taken a similar approach have provided an opportunity for consultation on the form and content of the draft agreement, we are not convinced that this has happened with the Councils proposed draft.	The Council has been seeking some limited views in advance and once the SG is adopted it will be published on the Council's website. No change is proposed to the finalised SG.	No	
Builyeon Farms LLP (PPCA LTD)	The City of Edinburgh Council Housing & Economy Committee Report dated 18th January 2018 notes that "On 7 September 2017, Housing and Economy Committee approved amended finalised guidance which addressed Scottish Ministers concern regarding the proposed secondary school". There is no reference in the Committee Report to a masterplan that would allow the Council to prepare new Supplementary Guidance as required by the Scottish Government Direction above. It is contended that the requirements set out by the Scottish Government in 2017 have not been met in full.	Masterplanning requirement related to SG continuing with housing and a new school at that location. Position has been altered on this. New SG does not require to fulfil this point. No change is proposed to the finalised SG.	No	
	With reference to the above, page 3 states – "The total cost of delivering infrastructure with zones, including land requirements will be shared proportionally and fairly between all developments which fall within the zone." Clarification is sought in the context of the Scottish Government Circular that the Council will expect that best use is made of existing infrastructure before the need for new infrastructure is required. For example, and expanded on below, where there is spare capacity in an existing school then that must be used to accommodate children from a new development before the need for a new school is triggered.	The Education Appraisal sets out the baseline assessment, showing education requirements have been calculated, why there is no further capacity in existing infrastructure for new development and why cumulative contributions are required. No change is proposed to the finalised SG.	No	

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	Local Development Plan Policy DEL1 above that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time." As such, it is inappropriate to assume that -all new development will automatically contribute to new infrastructure. Representation is lodged to the Supplementary Guidance to that effect.	CEC consider this to be a flawed interpretation of the SG. The SG is in accordance with LDP DEL1. and the LDP as a whole The SG does not require all new development in the city to contribute to new infrastructure. The SG only requires new development to contribute to new infrastructure, if the new development gives rise to an impact which required to be mitigated. The SG helps provide clarity of what development will require infrastructure to be delivered by the developer or a contributions towards infrastructure to be made to render it acceptable in terms of the LDP. No change is proposed to the finalised SG.	No	
	Representation is lodged to the use of assumptions on page 4 under education infrastructure to predict housing output in general. This is vague and misleading and may result in the identification of infrastructure items that are not required at the size or in the location assumed or, worse than that, required at all because of new development. There is no clear explanation within the Draft Consultation Supplementary Guidance as to how the assumptions were reached.	The Council has assessed the impact of the growth set out in the LDP through an Education Appraisal (January 2018). An assumption has been made as to the amount of new housing development which will come forward ('housing output'). This takes account of new housing sites allocated in the LDP and an assumption of the potential of other land within the urban area for housing development. This ensures that the cumulative impact of new development is considered within the guidance is mitigated. The Education Appraisal and actions within the Action Programme are monitored and updated each year following approval of the Housing Land Audit and Delivery Programme. No change is proposed to the finalised SG.	No	
	The City of Edinburgh Council is aware of current planning applications on a large number of sites that will make contributions to cumulative infrastructure. For example, there is one planning permission in principle application with "minded to grant" status at Builyeon Road, South Queensferry with a masterplan submitted for 835 dwellings (reference 16/01797/PPP lodged in March 2016) on a site that is allocated in the adopted Local Development Plan (ref: HSG32) for between 700-980 dwellings. There is no reasonable prospect of delivering 980 units within the site as expected through the Local Development Plan. It is considered inappropriate, therefore, for the Draft Consultation Supplementary Guidance to "assume" a housing output from that site when the Council could use the empirical information contained within the planning permission in principle application originally submitted in March 2016.	Permission is at PPP stage, with the development not built out. It is entirely open to a developer to submit an application for a larger number of houses in compliance with the LDP allocation. Therefore it is appropriate to continue to use larger numbers. No change is proposed to the finalised SG.	No	
	There is no explanation for using out of date 2012-13 pupil generation rates within the document. There is, further, no explanation as to why the cost per house and cost per flat contribution rates have increased by the proportion that they have since the original draft Supplementary Guidance of March 2016.	There is no evidence to suggest that the pupil generation rates used in the SG are not appropriate for use. They reflect the different impact of houses and flats and are based on the average number of primary and secondary pupils generated from a mix of housing developments across the Council area. The pupil generation rates will be reviewed as part of the preparation of the next Local Development Plan. No change is proposed to the finalised SG.	No	

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	Representation is further lodged to the generic housing / flatted development split assumption that is then applied on a wide geographical basis within cumulative impact zones. Every site will be different based on individual circumstances and to simply assume such a split is unrealistic and misleading.	To generate the number of pupils the midpoint of the unit number capacity range for new housing sites within the LDP are used, as well as the housing capacity assumptions used in the Housing Land Audit. In some cases, information from detailed planning applications has also been used. Future updates to the Education Appraisal will reflect updates to the Housing Land Audit and further detailed planning permissions. No change is proposed to the finalised SG.	No	
	Representation is lodged to a generic assumption for land costs and servicing and remediation requirements contained within the Draft Consultation Supplementary Guidance as, yet again, every site will be different. The Builyeon Road, South Queensferry site has been farmed as agricultural land for many years and is relatively flat over a proportion of its area. As such, the need for remediation should be minimal. It may also be more efficient for developers and / or landowners to service and / or remediate any land ultimately required. Site investigation by developers is a necessary part of the planning application process and such costs will be borne by them. Site servicing for mixed-use development will generally be carried out by developers so there is no need for this to be set as a cost against development. This is not properly explained in the Draft Consultation Supplementary Guidance and makes the assumptions made therein unsafe.	The Council has commissioned an independent valuation of the costs which could be applied to the school sites in Action Programme. The SG reflects the costs set out in this valuation. The costs attributed to 'Servicing and Remediation' are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'. This land value is used to ensure that proportionate shares of the land value is collected from other developments that require the infrastructure. No change is proposed to the finalised SG.	No	
	The Draft Consultation Supplementary Guidance must, if it continues to include reference to housing numbers and costings, strongly caveat these as the actual numbers and costs will only be clear through the submission and assessment of planning applications for individual sites.	To generate the number of pupils, the midpoint of the unit number capacity range for new housing sites within the LDP are used, as well as the housing capacity assumptions used in the Housing Land Audit. In some cases, information from detailed planning applications has also been used. Future updates to the Education Appraisal will reflect updates to the Housing Land Audit and further detailed planning permissions. No change is proposed to the finalised SG.	No	
	An alternative and credible approach would be for the Council to fund the first phase minimum of new infrastructure required to serve new development in a locality with the first planning permission making a reasonable and direct roof tax / occupations contribution in line with the Circular. The Council could then apply a justified and accurate roof tax approach to further developer contributions for the balance / future phases. This has the benefit of clarifying the exact costs involved through the formal planning process at the time of determination (in line with Local Development Plan Policy DEL 1 above) instead of using assumptions that may never materialise and is an approach being examined by West Lothian Council at this time for the delivery of new schools in that Local Authority area in conjunction with the Scottish Government.	The Council's report on 23 January to Finance & Resources Committee sets out the financial impact of delivering the Action Programme. The capital investment framework report considered by the Finance and Resources Committee on 5 September 2017 referred to potential additional capital funding of £35m for LDP Action Programme projects and £1m to help support additional revenue costs. The availability of this funding is subject to the achievement of a balanced revenue budget position and the collection of developer contributions to repay the funding. Once available, this funding will be used to front fund infrastructure in advance of the collection of developer contributions.	No	
	Builyeon Farms LLP supports the application of the developer contributions mechanism to all housing types and tenures as all housing types and tenures impact upon infrastructure provision.	Noted. No change is proposed to the finalised SG. .	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>Clause D of the Section notes that “Where a development proposal is likely to give rise to an impact on education infrastructure which cannot be appropriately mitigated in line with the Council’s cumulative approach, it should be noted that planning permission may be refused.” This is considered inflexible and a reasonable alternative solution may be available at the time of consideration of a planning application for a site or group of sites. The Supplementary Guidance should be adjusted to allow for a reasonable alternative to be considered at the time of determination of a planning application as opposed to only the delivery of one fixed solution that may be inappropriate. It is suggested that the phrase “or any reasonable alternative approach” after “cumulative approach” in that sentence.</p>	<p>Clause D reflects Policy Del 1, Part 2 of the LDP in that development should only progress where sufficient infrastructure is already available, or where it can be demonstrated that it can be delivered at the appropriate time. The Council takes a cumulative approach to the mitigation of new development on infrastructure with the actions set out in the Action Programme and Supplementary Guidance. The Action Programme is reviewed on an annual basis to allow for any required adjustments. No change is proposed to the finalised SG.</p>	No	
	<p>Clause E of the Section notes that “Development should only progress where it is demonstrated that required education infrastructure can be delivered, and at the appropriate time. The Council will assess whether new development will impact on the education actions set out in the Action Programme, and the current education delivery programme, as set in Annex 1. Third party delays in infrastructure delivery will not normally be allowed to prevent the granting of planning permission or the undertaking of development.” This would suggest that third party delay could still be a factor in the determination and issue of planning permissions. This is unacceptable and must be clarified in the final version of the Supplementary Guidance. It is suggested that the last sentence be amended to delete the word “normally”.</p>	<p>The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself. The current wording accurately describes the key principle. The use of the word normally covers rare occasions when it is imperative that the use of suspensive conditions would be required - i.e. to ensure that a new school is delivered at the appropriate time. No change is proposed to the finalised SG.</p>	No	
	<p>Clause F refers to phasing conditions. The Supplementary Guidance must clarify that, for the purposes of education, where there is capacity in existing schools to accommodate children arising from new development then that would be taken up first on a first come, first served basis. In this case, only the balance of the new development would be required to contribute to new infrastructure. This complies with the reasonableness test set out in the Circular. This, again, is the approach being adopted within West Lothian Council Core Development Areas It is suggested that the following sentence be added at the end of the Clause “Where there is capacity in existing schools to accommodate early phases of development then this must be taken up with the balance of development contributing to new infrastructure in line with Circular 3-2012.”</p>	<p>The suggestion that a ‘first come, first served’ basis should be used is not accepted. This does not follow the cumulative approach to mitigating the impact of new development. School roll projections are the basis for determining if there is capacity within a school to accommodate the cumulative number of additional pupils from new development, not the current school roll. No change is proposed to the finalised SG. No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	<p>Under the "Delivery of Education Infrastructure" the Draft Consultation Supplementary Guidance states "Education infrastructure capacity will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The Council reserves the right to adjust the timing of the education delivery programme to take account of relevant circumstances". The finalised version of the Supplementary Guidance must make it clear that the delivery of infrastructure by third parties must not unduly or unnecessarily hold up the delivery of development. It is suggested that an additional sentence is inserted after paragraph 2 of that Section stating "However, third party delays in infrastructure delivery must not be allowed to unnecessarily prevent the issue of planning permissions or undertaking of development".</p>	<p>The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself, this will help ensure that the issue of third party delays in infrastructure delivery does not normally arise. No change is proposed to the finalised SG.</p>	No	
	<p>With respect to transport infrastructure, Builyeon Farms LLP would wish to note that the Builyeon Road Local Development Plan allocation transportation requirements have been previously discussed in detail and agreed with City of Edinburgh Council Transportation Officers and Transport Scotland. This has informed the supporting Transportation Assessment and has been documented in the planning permission in principle applications process. Transport Scotland has not objected to the current planning permission in principle application. It is contended that there is no requirement for that site to make contributions over and above those set out in the Local Development Plan and accompanying Action Programme.</p>	<p>Noted. No change is proposed to the finalised SG. .</p>	No	
	<p>The costings and delivery of any new school should be clarified by the Council as part of the Section 75 legal process associated with relevant planning applications and no later. Any credit should be established at that time. That credit process should not necessarily be limited to benefit in kind given the costs associated with the delivery of new schools. Land need not necessarily be transferred at costs imposed by the Council. Where there is a need for new schooling or community use on land identified in the adopted Local Development Plan e.g. on land at Builyeon Road, South Queensferry, the value of the land being used for these purposes must be equalised in terms of reduced use value by parties other than the land owner on whose land the facility is to be located. Only one landowner in the context of South Queensferry is required to provide land for a new primary school and, on that basis, other relevant allocations can achieve higher end use values and must fairly contribute to the provision of that school (and associated reduction in land value) to benefit from it. It is proposed that this be done by, either, reduced education payments required by the school land provider or the site being purchased by the Council at equivalent residential value and charging such land value back to other consents that will benefit from it through the Section 75 legal agreement process.</p>	<p>The Council has commissioned an independent valuation of the costs which could be applied to the school sites in Action Programme. The SG reflects the costs set out in this valuation. The costs attributed to 'Servicing and Remediation' are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'. This land value is used to ensure that proportionate shares of the land value is collected from other developments that require the infrastructure. If CEC confirm that they require an identified 2 hectare school site then following transfer the land value of this can be credited against the overall value of the required contribution. If the developer has serviced and remediated the site then the costs of this can also be credited against the overall contribution requirement on an open book basis. If the developer wants these costs fixed within the legal agreement then they must provide evidence to demonstrate what these costs are likely to be. Clarification has been made regarding the open book approach.</p>	Yes	<p>Add to page 13: If CEC confirm that they require a identified 2 hectare school site then following transfer the land value of this can be credited against the overall value of the required contribution. Future financial contributions can then be adjusted accordingly. If the developer has serviced and remediated the site then the costs of this can also be credited against the overall contribution requirement on an open book basis. If the developer wants these costs fixed within the legal agreement then they must confirm what work will be carried out and provide evidence to be agreed with the Council that demonstrates what these costs are likely to be.</p>

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Builyeon Farms LLP welcomes and fully supports the additional text in this Section clarifying the ability to modify legal agreements. This should be clarified to make clear that this is under the terms of Section 75A of the Town & Country Planning (Scotland) Act 1997 (as amended).	Noted. No change is proposed to the finalised SG. .	No	
	Whilst it is noted in the draft Supplementary Guidance that a model agreement is available, no such agreement has been provided to the applicants at Builyeon Road, South Queensferry.	Model S75 not yet published as heads of terms will follow that adopted in the SG. No change is proposed to the finalised SG.	No	
	Further justification is required for each of the infrastructure items costings and timings set out in Annex 1. The ability to clarify final costings through the submission of planning applications should be made clear in this Annex.	The educational infrastructure costings table has been removed from the SG. This information will now be in the Education Appraisal along with a more detailed explanation of how the costs have been determined. The delivery dates in Annex 1 reflects the current Action Programme. The Supplementary Guidance acknowledges that the actual costs of each project could vary from the estimates currently provided. If the actual costs of delivering the new infrastructure are lower, S75 legal agreements can make provision for the repayment of unused contributions. In addition, applicants have the opportunity to ask the Council to consider modifying existing S75s to reflect contribution rates that have been updated to take account of up-to-date costs.	Yes	Page 4, add 'Information about how the cost of these actions has been determined is set out in the Education Appraisal (August 2018)' at the end of the third paragraph. Page 18, remove Revised Educational Costings Action Plan Costings as at December 2017 table.
	If the contribution rates and housing / flatted development split shown on the individual Contribution Zone Maps for Education (and Annex 2 – Transportation) are to remain then these must be caveated as indicative only and to be clarified through planning applications.	Refuted any caveat needed. This is the Council's cumulative approach as set out in the SG. No change is proposed to the finalised SG.	No	
	Further clarification is requested for the figures contained with the Table entitled "Land – Estimated School Site Remediation & Servicing Costs" for the cost indicated for South Queensferry and for the assumption of the £3m land cost associated and £2.3m servicing and remediation cost with the purchase of a two-hectare primary school site.	The costs attributed to 'Servicing and Remediation' in the draft guidance came from an external consultant's report that identified potential site abnormal costs. The figures are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'.	Yes.	Page 4, paragraph 5, delete 'the costs of the land, and its servicing and remediation is included' replace with 'the value of the land, as well as potential abnormal site costs are included'. Page 15 + 16, replace all 'S+R' with 'Abnormals', Page 17 Replace 'Q4 2017 Servicing and Remediation' with 'Q4 2017 remediation and other abnormal costs'.
	The S&R costs set out in Annex 1 for Builyeon Road, South Queensferry do not match the S&R costs set out in the equivalent Land Values Table.	Noted. Change justified.	Yes	Correction made
	It is noted that costings have increased for education provision and other items as a result in the delay incurred by the failure of the City of Edinburgh Council to properly progress the Supplementary Guidance. It is considered unreasonable that landowners and developers should shoulder the burden of this costs based on actions that they were not to blame for.	Education and other developer contributions requirements require to reflect current costings of the infrastructure interventions that development gives rise to. The action programme is updated year on year to reflect this and the SG will also be periodically replaced to ensure this. Developers are not being penalised. The Council has advanced the SG as swiftly as possible following adoption of the LDP. Government directions on a specific issue prevented adoption of the previous iteration of the SG. No change is proposed to the finalised SG.	No	

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	It is noted that there is still no action or cost associated with the Transport Action at Dalmeny Station in the draft document which is over one year further forward from the first draft in December 2016. Clarification and cost associated with this is required as soon as possible.	The Queensferry Transport Contribution Zone has been amended to provide overall cost for additional cycle parking action at Dalmeny Train Station. It should be noted the potential for additional car parking at this station is under consideration as part of a Public Transport Priority Action Plan reported in August 2018.	Yes	P46 ACTION and COST still to be established for additional car parking capacity. Additional cycle parking is costed at £4,288.
	The percentage split of 62% for Builyeon Road, South Queensferry is also challenged as being incorrect as the proportional 980-unit contribution assumption is not a realistic outcome from the site. This should be reduced to 835 units and all figures adjusted accordingly.	Permission is at PPP stage, with the development not built out. It is entirely open to a developer to submit an application for a larger number of houses in compliance with the LDP allocation. Therefore it is appropriate to continue to use larger numbers. No change is proposed to the finalised SG.	No	
	It is noted that the expansion to the medical practice at South Queensferry is underway and that the Supplementary Guidance refers to this as necessary to mitigate the impact of development in Queensferry. However, the accompanying map shows that the impact is based on all South Queensferry as existing. Given that this is the case, clarification is sought from the Council that this is not a direct requirement of the new land allocations in South Queensferry contained in the adopted Local Development Plan and, from that, Item 11 will be removed from the Developer Contribution Rates Table.	Contribution to mitigate development within South Queensferry. Map accurate. No change is proposed to the finalised SG.	No	
Homes for Scotland	HFS has consistently argued that healthcare contributions should not be sought through developer obligations as the NHS as an organisation is funded through central government funding, and the burden should not be placed upon the home building industry to cover the cost of centrally funded facilities.	The integration of health and social care services from City of Edinburgh Council and NHS Lothian is now under the authority of the Edinburgh Integration Joint Board (IJB). The planning, resources and operational oversight for the range of NHS and local authority care services, including primary care, is the responsibility of the Edinburgh Health and Social Care Partnership (EHSCP), which is governed by the Edinburgh IJB. The healthcare appraisal assesses the impact of new development, by identifying the new population/patients generated. It is the new development which creates additional patients that results in the requirement for expansion of medical practices. Seeking contributions towards the cost of this new infrastructure is considered reasonable and consistent with Circular 3/2012. No change is proposed to the finalised SG.	No	
	Refer to a recent appeal decision at Ocean Drive, Edinburgh (appeal reference PPA-230-2201). the Reporter comments that "the fact that primary healthcare is not a council-provided service results in difficulty in demonstrating compliance with circular 3/2012" (para 61, page 12) and "there is no evidence on whether that proportion represents a fair and reasonable relationship in scale and kind to the various residential developments that are anticipated [...] it may, but it may not" (para 61, page 12). Therefore, whilst we maintain our objection to the principle of seeking healthcare contributions, we consider that where healthcare contributions are to be sought, these clearly set out the direct relationship between the development and the intervention.	Terms of the singular Reporter decision in the particular Ocean Drive Case is noted by the Council. He gave limited weight to the SG due to it not yet being adopted. Acknowledged that in that case not all background appraisal documents were lodged with the Reporter. There have not been further Appeals by other Reporters who have reached the same conclusion in respect of Edinburgh's SG on this issue. Indeed the Reporter in the more recent case of PPA-230-2208 confirmed they were satisfied the tests were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. No change is proposed to the finalised SG.	No	

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	<p>The planning authority cannot determine a GP surgery catchment area or indeed whether a new surgery as a private business will be formed at all, which raises questions about the ability of the planning authority to adequately meet the tests of Circular 3/2012. This point is also picked up by the Reporter in the Ocean Drive planning appeal case where he states "clearly it is not for the council to establish a new surgery. Nor is it for the council to establish the new surgery's practice boundary (ie catchment area). That raises a question mark about the correctness of the practice capacity of 10,000 persons on which the council relies. [...] that figure of 10,000 is a fundamental component of the calculation that takes the council to the amount of contribution it seeks for this particular development. There is no indication before me that the specified requirement or the calculations on which it is based are supported by those who would be responsible for providing the new surgery. These points confirm the view that a fair and reasonable relationship in scale and kind between the required contribution and the appeal project has simply not been established" (para 62, page 13).</p>	<p>The SG requirements are accordingly based upon the LDP Primary Care Appraisal. It does not appear that the appraisal was before the Reporter in respect of Ocean Drive to demonstrate the relationship. No change is proposed to the finalised SG. No change is proposed to the finalised SG.</p>	No	
	<p>The Reporter in this case determined that the contributions sought do not meet the "scale and kind" test of Circular 3/2012. Whilst this is an appeal decision for one specific development, it is replicable for many other developments across the city. HFS considers that the Reporter's conclusions in this appeal set a precedent and should be taken into consideration in the redrafting of the SG.</p>	<p>As demonstrated in the more recent decision of PPA-230-2208, no precedent is set by the singular Ocean Drive case. The intention Notice containing the grounds of this decision was issued prior to the supreme court decision in Elsick. It did not benefit from the legal clarity of the tests that was provided by that case. As stated above Reporter placed significantly less weight on SG due to it not being adopted. No change is proposed to the finalised SG.</p>	No	
	<p>We also query the proportionality afforded to healthcare interventions within the Guidance. In a number of instances, 100% of the cost of the intervention is sought from developers without any consideration given to the existing homes within catchment / contribution zones.</p>	<p>Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.</p>	Yes	<p>The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. "</p>

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	We note that there is a policy hook within the Local Development Plan for healthcare contributions to be sought, however the recent Elswick Supreme Court Decision highlights an important point that irrespective of a policy hook within a plan, a contribution which is not lawful cannot be sought through developer obligations.	The Elswick Supreme Court Decision point is acknowledged. The Council continues to consider the healthcare contributions requirement to be lawful to seek in terms of the finalised SG.	No	
	As such, HFS argues that the SG should be redrafted to exclude healthcare contributions as it will be extremely difficult for the planning authority to adequately demonstrate the "scale and kind" test of the Circular when it is not in control of the formation of new GP practices, nor the catchment / boundary areas for them.	Not accepted. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.	Yes	The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. "
	The school size has been increased from the previous guidance to this new draft guidance, with no explanation provided as to the increase in size of the floor area of these schools. For example, for a 21-class primary school and 120 nursery, the size has increased by 500sq metres from 4,900 sq metres to 5,483 sq metres. Scottish Schools for the Future metrics should require just over 4,000 sq metres for the primary school floor area, and even taking into consideration the nursery floorspace required, the primary school floor area set out in the guidance far exceeds what would actually be necessary for the school. HFS suggests that the floor area for each required school or extension should not be larger than it needs to be to ensure that additional costs are not laid on the developer with no adequate explanation provided as to why this floorspace is required. HFS notes that the secondary school space requirement per pupil has increased from 10 sq metres to 11 sq metres within the new draft SG. No explanation has been provided for this increase. This will result in the cost per pupil required to be paid by the developer to increase.	The educational infrastructure costings table has been removed from the SG. This information will now be in the Education Appraisal along with a more detailed explanation of how the costs have been determined. The costs quoted within the Supplementary Guidance have been indexed to Q4 2017 (BCIS Forecast All-in Tender Price Index - 313) to take account of inflation. Previous versions of the supplementary guidance indexed costs to Q1 2015 (BCIS All-in Tender Price Index - 270). The estimated area for each infrastructure action is regularly reviewed in order that the actions reflect the Council's current accommodation requirements. The area estimates have been reviewed again as part of finalising the SG. The overall area for each new primary school and nursery has been reduced from what was presented in the draft SG. As a result, the estimated cost of delivering a new primary school and nursery has been reduced which has been reflected in the contribution rates set out in the finalised guidance.	Yes	Page 15, update Capital Cost column with new primary school costs. Annex 1, Update contribution rates where required. Page 4, add 'Information about how the cost of these actions has been determined is set out in the Education Appraisal (August 2018)' at the end of the third paragraph. Page 18, remove Revised Educational Costings Action Plan Costings as at December 2017 table.
	HFS queries the requirement for contributions to be made to a 7.5% contingency for each education intervention and suggests these should be removed.	This provision enables the Council to manage the risk of the developer contributions received not meeting construction costs due to inflation uplift. No change is proposed to the finalised SG.	No	

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	<p>We also query the land value costs set out within the draft guidance. It seems that these may be based on residential value, however this land has not and will not be used for residential development, therefore it is only appropriate for existing use value or final use value (school) to be used. The current land values set out in the draft SG are over inflated and should be reduced. We also query the service and remediation costs set out. We seek clarity on where these costs have come from, and suggest that they are set too high, and are unrealistic. These costs should also be amended in the final guidance to reflect evidenced estimates of servicing and remediation costs.</p>	<p>The Council has commissioned an independent valuation of the costs which could be applied to the school sites in Action Programme. The SG reflects the costs set out in this valuation. The costs attributed to 'Servicing and Remediation' are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'. This land value is used to ensure that proportionate shares of the land value is collected from other developments that require the infrastructure.</p>	Yes.	<p>Page 4, paragraph 5, delete 'the costs of the land, and its servicing and remediation is included' replace with 'the value of the land, as well as potential abnormal site costs are included'. Page 15 + 16, replace all 'S+R' with 'Abnormals', Page 17 Replace 'Q4 2017 Servicing and Remediation' with 'Q4 2017 remediation and other abnormal costs'.</p>
	<p>Evidence must be set out within the SG for each of the education infrastructure interventions sought, and the clear reasons for new development to contribute the costs set out within the guidance. This is not currently as transparent as it should be, and could lead to misunderstanding. For example, we note that there is a requirement for a new 14/15 class primary school and 80 nursery to be provided which will be Victoria Primary School Phase 1. Costs for that whole school are set out as an Education Action under Annex 1 and the Leith Trinity contribution zone attributed to those costs. However, in this case we understand that this primary school is a relocation, not a new school. It is not clear within the draft SG what (if any) responsibility the Council is accepting for its appropriate share of existing pupils which will be relocated from one school to another. Furthermore, in this example, we understand that there is a Section 75 agreement in place offering the land for free, therefore costs should not then be set out within the draft SG for the land cost and service and remediation for this school. This is just one example of the lack of clarity within the SG, and therefore the significant potential for misunderstanding on all sides.</p>	<p>A new non-denominational double stream school is required at Leith Western Harbour to accommodate the pupil growth from new housing developments identified within the Council's Education Appraisal as well as existing pupils from within the Western Harbour. It is estimated that the new school would have to accommodate 395 pupils.</p> <p>There has been a long-standing proposal to provide an additional primary school within as a result of new housing development within the Western Harbour. There are already 120 non-denominational primary school pupils from the first phases of development at Western Harbour, most of which attend the nearby Victoria Primary School. 275 new pupils are expected to come from new housing in the area.</p> <p>A new school is therefore now required to alleviate accommodation pressures as a result of the new development. The Council's Action programme identifies a requirement for the school to be delivered by August 2020.</p> <p>New housing developments are expected to cover approx. 70% of the costs of this new double stream school (275/395). The Council will seek alternative funding mechanisms for the 30% of costs which can be attributed to the 120 existing non-denominational pupils from the Western Harbour. This split applies to the estimated infrastructure and land costs and is reflected in the required contributions set out in the supplementary guidance.</p> <p>The Council has carried out a statutory consultation proposing the relocation of Victoria Primary School to the new school. Although a new double stream primary school is required to accommodate pupils from new development as well as recent developments within the Western Harbour, additional capacity would be required to relocate Victoria Primary School to the new building.</p> <p>A 'phase 2' expansion strategy will therefore be put in place to enable the building to accommodate a relocated Victoria Primary School. This additional capacity is unlikely to be required for 2020 as the anticipated new housing will not have fully progressed and therefore there is likely to be spare capacity in the first few years.</p> <p>As the 'phase 2' expansion would provide education infrastructure over and above what is required to accommodate the number of pupils expected to be cumulatively generated from new development sites and the Western Harbour, the Council will therefore not seek developer contributions to deliver this part of the new infrastructure. No change is proposed to the finalised SG.</p>	Yes	<p>Add to page 26: The housing output for Sub-Area LT-2 is only expected to cover part of the total cost of delivering the New Primary School and Nursery (70%). The remaining part has been attributed to existing housing at the Western Harbour.</p>

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	We also query the ability of the contribution zones to adequately meet the tests of Circular 3/2012. Home builders should only be required to contribute to education infrastructure interventions within the school catchment of their development, and the guidance should clearly set this out. The recent Ocean Drive appeal decision picks up this point regarding education contributions, and the Reporter concluded that in the case of the appeal site, he was “not satisfied that the proposed education contributions meet the tests in Circular 3/20-12 with regard to relationship to the proposed development and being fairly and reasonably related in scale and kind to the proposed development” (para 56, page 11). The Reporter’s findings here should be taken into account by the Council, and the guidance redrafted accordingly.	School Boundaries are determined by the Education Authority not the Planning Authority. The Education Authority seeks to set these in a manner that best delivers the Education needs for the city as a whole and it is critical that this is not be fettered by the SG. New development in one of a number of factors that may result in school boundaries requiring to be amended. In accordance with the Circular 3/2012 tests the SG ensures that developers are only required to contribute to necessary education infrastructure interventions, within the specified zones, that arise from their development. The SG provides developers with clarity on when contributions will be required, while ensuring that the Education Authority is not fettered in adjusting school catchment to best address the current needs of the City. The individual Reporter’s conclusions in Ocean Drive are noted, but refuted by the Council. Account has been had of the Reporter's views in updating the Education Appraisal and expanding the explanatory text.	No	
	Closely related to education contributions, transport contributions must be clearly set out within the SG and adequately demonstrate the connection between a development and the intervention sought. Transport contributions should not be sought for an intervention with little or no relationship to the proposed development. HFS does not consider that the relationship between contributions and individual developments is specifically set out within the draft SG as there is a flat charge within contribution zones.	Transport zones are relatively tightly drawn. Interventions within them can be demonstrated to have more than a trivial connection to development within the zone. Contributions justifiable. No change is proposed to the finalised SG.	No	
	The recent Ocean Drive planning appeal decision deals with this issue whereby the Reporter finds that the Council’s LDP, SG and Action Programme establish a “strategic basis for cumulative contributions” but “that basis does not explain the connection between the individual development proposed in this case and the totality of transport actions in the contribution zone. Circular 3.2012 requires a connection to be established with the individual development” (para 50, page 10). HFS considers that this appeal decision should be taken into account by the Council, and the guidance amended accordingly to ensure that Transport contributions adequately meet the tests of the Circular.	The North Edinburgh Transport Contribution Zones have been removed from the Guidance because, unlike the zones for actions identified in the LDP Transport Appraisals or the West Edinburgh Transport Appraisal (WETA), they do not arise directly from an appraisal of the development as set out in the adopted LDP. Instead, individual applications will be assessed using LDP Policy Tra 8.	Yes	Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG
CALA Management Ltd (Geddes Consulting Ltd)	CALA remains fundamentally concerned that the Council’s approach remains contrary to the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act). It fails to demonstrate more than a trivial connection between development and the infrastructure contribution sought. As such, there is significant risk that obligations sought under the SG may not be for a purpose related to the development and therefore not in accordance with Section 75 of the Act.	The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsieck Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out this matter in more detail. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The key principle that must be demonstrated in this SG is that the contributions will be lawful in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) makes provision for planning obligations from a development to mitigate its impact and allow the grant of planning permission. All planning obligations must comply with the requirements set in Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). Circular 3/2012: Planning Obligations and Good Neighbour Agreements makes provision on how to determine planning obligations from a development to mitigate its impact and allow the grant of planning permission by reference to five tests.</p>	<p>Acknowledged (see response above).</p>	<p>No</p>	
	<p>Section 75(1) requires there to be a relationship between the planning obligation and the land to be burdened by the obligation. The obligation must in some way restrict or regulate the development or the use of that land.</p>	<p>The Council acknowledge that this is what Section 75(1) of the Planning Act requires. The Council considers that the provisions of the finalised SG accord with this requirement. No change is proposed to the finalised SG.</p>	<p>No</p>	
	<p>The circumstances of when a planning obligation becomes a material consideration to the granting of planning permission is set out in section 37(2), which states: ...In dealing with [an application for planning permission] the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.</p>	<p>The Council acknowledges this is one of the relevant provisions. Section 25 is also fundamental. No change is proposed to the finalised SG.</p>	<p>No</p>	
	<p>This includes policies relating to developer obligations. This was further outlined by Lord Keith of Kinkel in the House of Lords in consideration of Tesco Stores Ltd v Secretary of State for the Environment. Lord Kinkel stated that: ... An offered planning obligation which has nothing to do with the proposed development, apart from the fact that it is offered by the developer, will plainly not be a material consideration and could be regarded only as an attempt to buy planning permission. If it has some connection with the proposed development which is not de minimis, then regard must be had to it.</p>	<p>The Council considers that the provisions of the finalised SG accord with this requirement. No change is proposed to the finalised SG.</p>	<p>No</p>	
	<p>Especially relevant for this SG is the Supreme Court decision which quashed the Supplementary Guidance – Strategic Transport Fund, approved by Aberdeen City and Shire Strategic Development Planning Authority (Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Co Ltd).</p>	<p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out this matter in more detail. No change is proposed to the finalised SG.</p>	<p>No</p>	

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	This Strategic Transport Fund Supplementary Guidance required developers to contribute towards the cost of transport improvements. The Aberdeen City and Shire Strategic Development Planning Authority adopted a cumulative assessment approach to transport infrastructure planning in the Aberdeen City region. A package of interventions was identified relating to transport improvements across the region. All developments within the region were then required to pay a proportionate financial contribution towards the total cost of the entire package. The Cumulative Transport Assessment methodology adopted to assess the impacts and the mitigation was flawed because it based its assessment on the proportion of traffic from each new development using the transport improvements, and not the traffic from new developments as a proportion of the total traffic using the transport improvements. However, even in cases where the impact of development was low, the Aberdeen City and Shire Strategic Development Planning Authority still expected development to make financial contributions to the strategic transport infrastructure.	See response above.	No	
	The Supreme Court's decision found that the scheme of the SG and the planning obligations it promotes was unlawful for two separate reasons, as set out in paragraphs 61; 62 and 63	See response above.	No	
	The Supreme Court decision clarified the issue of a trivial connection relating to the determination of the planning obligation. Having established this principal provision, it is reasonable to consider that it equally applies to education, greenspace, public realm and primary healthcare matters in the Council's SG.	See response above. The Council considers that the provisions of the finalised SG on each of these matters accord with this requirement. No change is proposed to the finalised SG.	No	
	Further, the Supreme Court decision also clarified that the planning obligation will be unlawful if it did not serve a purpose that was related to the development, nor if it did not restrict or regulate the development. It is also important to note that the Elsick Judgment clarifies (para 51) ... if a planning obligation, which is otherwise irrelevant to the planning application, is sought as a policy in the development plan, the policy seeking to impose such an obligation is an irrelevant consideration when the planning authority considers the application for planning permission. The Court made it clear that the planning authority did not have the necessary statutory powers to require payment of the planning obligation as a pre-condition of granting planning permission for the development. Therefore, the planning obligation fell out with the provisions of Section 75 of the Planning Act.	The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out this matter in more detail. No change is proposed to the finalised SG.	No	
	The Supreme Court decision has important implications for planning authorities seeking cumulative financial contributions through supplementary guidance. Planning authorities must regulate the necessary infrastructure improvements sought. Accepting an income stream or payment as proposed in the SG from an applicant without regulation is outwith the ambit of Section 75 of the Act.	Denied. See response above.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>This important matter (explained in paragraph 62 of the Supreme Court decision) has not been addressed by the Council in its SG. This is because it does not seek to restrict or regulate any development and there are no triggers to regulate development linked to infrastructure which determines how any of the new or upgraded infrastructure is to be delivered.</p>	<p>Denied. See response above. This important matter was not a part of the pleadings in Elsick and detailed reasoning was not provided in the Judgement. Paragraph 62 states: "Further, the Council did not include any provision in the planning obligation restricting the development of the Elsick site until a contribution was made. Instead it resolved to grant planning permission for the development but to issue that permission only once Elsick had entered into the obligation. The planning obligation was therefore neither restricting nor regulating the development of the Elsick site and so was outside the ambit of section 75." The Council considers that the finalised SG is in general accordance with this legal requirement of Section 75 of the Planning Act. This requirement must be met in each S75 itself. The Council default in the Model S75 that the developer contributions require to be paid prior to the commencement of the development. This entirely accords with the Elsick judgment requiring that the planning obligation must restrict the development of the site until a contribution is made. No change is proposed to the finalised SG.</p>	No	
	<p>It is necessary for the SG or the its supporting technical appraisals to demonstrate how any impacts on the current infrastructure have more than trivial link and clarify when the necessary upgrades to the infrastructure are required to be carried out.</p>	<p>The Council consider that the SG and its supporting technical appraisals provide the necessary information to demonstrate in respect of any planning application whether there is more than a trivial link between the development proposed and the infrastructure interventions required. The Council's Action Programme provides clarity on the timing of when the various infrastructure interventions require to be delivered. No change is proposed to the finalised SG.</p>	No	
	<p>Without this clarification, the Council is promoting a SG which will not be a relevant consideration in the determination of planning applications. The SG instead is aligned with a development land levy, to which Lord Hodge concluded that the Planning Act does not allow for, stating: ...If planning authorities in Scotland wish to establish a local development land levy in order to facilitate development, legislation is needed to empower them to do so... (Paragraph 64; Supreme Court Decision)</p>	<p>The Council deny that the SG approach is any way a levy. Elsick confirms cumulative contributions can be lawful and in no way rules out the use of contribution zones provided the legal tests are met. The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG addressed this issue in more detail. No change is proposed to the finalised SG.</p>	No	
	<p>Case law has also confirmed the critical importance of Circular 3/2012 as a material consideration to be taken into account when granting planning permission.</p>	<p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elsick that, the Council is not bound to follow the Circular, provided it has due regard to it. No change is proposed to the finalised SG.</p>	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>Circular 3/2012 provides a policy background relating to the circumstances where planning obligations can be used. The Circular establishes five policy tests which all planning obligations should meet. Specifically, the Circular emphasises the need to establish a clear and direct link between the development proposal and the infrastructure mitigation offered as part of the developer's financial contribution. This is applicable whether the requirement for infrastructure is a result of a direct consequence or a cumulative impact. This should relate in scale and kind to the proposed development.</p>	<p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	No	
	<p>A significant body of planning case law and appeals has been built up that supports this principle through appeals in Edinburgh and more recently, the Elswick Supreme Court decision. These all have major implications for this SG.</p>	<p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elswick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out this matter in more detail. No change is proposed to the finalised SG.</p>	No	
	<p>The question of the SG's compliance with the Circular has already proved to be a principal consideration in its application through appeals. This is demonstrated in the recent appeal for a site at Ocean Drive, Leith (reference PPA-230-2201). This appeal was sustained, with planning obligations for transport, education and healthcare infrastructure, as sought on the basis of the SG, quashed by the Reporter.</p>	<p>The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elswick Supreme Court decision and therefore did not have regard to it. The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. No change is proposed to the finalised SG.</p>	No	
	<p>Regarding contribution zones, the Reporter was concerned with the linkages of the contribution zones for both education and transport interventions with the appeal proposal. While clear links could be established between some of the Actions proposed within the contribution zones in the SG, the Reporter found that ...the location of others suggest a much more tenuous link.</p>	<p>Noted. The Council generally refutes the Reporter's reasoning on the previous finalised SG. See response above.</p>	No	
	<p>In this case, the Reporter's logic was to apply the tests in Circular 3/2012 in order to establish whether the contributions were appropriate. Regarding transport, the Reporter found that the Council had not demonstrated compliance with Circular 3/2012 requiring a connection to be established with the individual development and the infrastructure Actions. In particular, the Reporter drew on the Elswick case to demonstrate that there is a distinction between ...sharing the costs among developments which cumulatively required a particular transport investment and the funding of a basket of measures not all of which are relevant to every development. On the basis of this, the Reporter removed the obligation on this proposal to pay to transport, primary healthcare and education interventions as set out in the SG.</p>	<p>Noted. The Council generally refutes the Reporter's reasoning on the previous finalised SG. See response above.</p>	No	

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	<p>This appeal decision demonstrated that the Council's proposed Contribution Zones fails to demonstrate a more than trivial link with a proposal and the consequential infrastructure actions. The concept of Contribution Zones based on their underlying methodology put forward in the SG and its supporting technical appraisals was not supported at appeal. It is evident that this has not been addressed in the latest version of the SG. It is therefore incumbent on the Council to demonstrate the necessary direct link between various allocated sites and their supporting infrastructure requirements in this updated SG.</p>	<p>Denied. The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG addressed this issue in more detail. No change is proposed to the finalised SG.</p>	No	
	<p>CALA is concerned that the proposed SG with its supporting technical studies does not demonstrate the necessary compliance with the requirements of Section 75 of the Planning Act as it fails to establish more than a trivial link between development and the infrastructure improvements sought. (ii) The SG does not outline how it regulates or controls development to meet the implementation programme prepared in the Action Programme</p>	<p>Denied. The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail.</p> <p>The Council consider that the SG and its supporting technical appraisals provide the necessary information to demonstrate in respect of any planning application whether there is more than a trivial link between the development proposed and the infrastructure interventions required. The Council's Action Programme provides clarity on the timing of when the various infrastructure interventions require to be delivered. No change is proposed to the finalised SG.</p> <p>The important requirement of Section 75 that any Planning Obligation must restrict or regulate development was not a part of the pleadings in Elsick and detailed reasoning was not provided in the Judgement.</p> <p>Paragraph 62 states: "Further, the Council did not include any provision in the planning obligation restricting the development of the Elsick site until a contribution was made. Instead it resolved to grant planning permission for the development but to issue that permission only once Elsick had entered into the obligation. The planning obligation was therefore neither restricting nor regulating the development of the Elsick site and so was outside the ambit of section 75."</p> <p>The Council considers that the finalised SG is in general accordance with this legal requirement of Section 75 of the Planning Act. This requirement must be met in each Planning Obligation (S75) itself. The Council default in the Model S75 that the developer contributions require to be paid prior to the commencement of the development. This entirely accords with the Elsick judgment requiring that the planning obligation must restrict the development of the site until a contribution is made. No change is proposed to the finalised SG.</p>	No	
	<p>It also fails to meet the tests in Circular 3/2012 as its underlying impact assessment methodologies do not either measure direct impacts alone or cumulatively. In particular, the scale of area chosen as a contribution zone for any topic does not determine if the financial contributions sought ...fairly and reasonably relate in scale and kind to the proposed development.</p>	<p>Denied. The Council's approach implements the principles of the Circular in a way which allows consideration of more than one development, or cumulative impact allowing for the consideration of the scale of growth in Edinburgh, in the interests of good overall infrastructure planning. The Council's cumulative assessment approach is supported by Scottish Planning Policy, Circular 3/2012 Planning Obligations and the approved Strategic Development Plan.</p>	No	

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	<p>This has been demonstrated with regard to independent reviews of previous SGs in the appeal process. The relatively minor changes to the SG by the Council do not address these fundamental points.</p>	<p>The single Appeal decision in Ocean Drive is not a body of case law and does not represent the settled position of Scottish Government. The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elrick Supreme Court decision and therefore did not have regard to it. The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. No change is proposed to the finalised SG.</p>	No	
	<p>The Council has updated its impact assessment and now adopts its Education Infrastructure Appraisal (2018) for the purpose of this SG. This Education Infrastructure Appraisal (2018) in Section 4 notes: ...Some of the primary schools which will require new accommodation as a result of the LDP will also require additional accommodation throughout the period of the LDP as a result of either developments which already have planning approval and/or due to the impact of rising primary school rolls in the area (paragraph 4.16). There is no evidence in the Education Infrastructure Appraisal (2018) or the SG that a further evaluation process has been undertaken by the Council to separate the impacts of rising primary school rolls from the impacts of the LDP strategy. Unless the impacts from these other factors are separated and excluded for the purposes of assessing the financial contributions for allocated sites in the LDP, this confirms that the methodology adopted by the Council as Education Authority does not comply with the requirements of Section 75 of the Planning Act. As a result, the Council's proportionate share of the cost of the planning obligations is still not known. Therefore, the financial contributions in the SG continue to be an over estimate for the allocated sites in the LDP's development strategy.</p>	<p>Strongly denied that the SG expects developers to contribute to fix existing shortcomings. The finalised SG explicitly sets out that the Council will fund through other methods any component of new infrastructure that is derived from existing capacity issues (final para pg 5). Contributions are only being sought for additional infrastructure required as a result of new developments.</p> <p>School roll projections allow the Council to assess whether there is sufficient spare capacity to accommodate the number of additional pupils expected to be generated by new housing development within an area. Where there is insufficient spare capacity education infrastructure actions have been identified. In order that new housing development is not required to contribute to the provision of additional capacity that is over and above what is required to mitigate the cumulative impact of new development, the scale of the education infrastructure actions reflect the number of additional pupils expected to be cumulatively generated from new development only. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The Council has also carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p> <p>The Education Appraisal will be updated to clarify that none of the identified actions are as a result of housing developments not specified within the Appraisal or rising rolls. No change is proposed to the finalised SG.</p>	No	
	<p>The methodology chosen by the Council to calculate the planning obligations does not meet the tests in Circular 3/2012 or demonstrate a more than trivial link to the development. Planning Obligations sought towards the education Actions proposed require to be lawful under the Planning Act.</p>	<p>The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and that it accords with the Circular. No change is proposed to the finalised SG.</p>	No	

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	<p>In the case of a requirement for a new school, or in some cases an extension to an existing school, it is recommended that a broad indication of the new or amended catchment area is provided, factoring in consequential changes to pupil attendances and their redistribution at the schools affected.</p>	<p>Catchment areas remain an Education Authority matter which should not be fettered by the SG. However, in order to identify the new education infrastructure actions that are required, the Education Appraisal considers which existing primary schools catchment areas are likely to be affected by new schools. No change is proposed to the finalised SG.</p>	No	
	<p>Where existing pupils are expected to attend new schools as a result of catchment area reviews or replacement of existing schools, the Council should be responsible for its proportionate share of the mitigation costs in accord with Circular 3/2012. The methodology used by the Council to calculate the cost of the planning obligations is only explained in part in the SG. It explains that the impact of the approved development strategy in the adopted LDP has now been assessed with reference to the Education Infrastructure Appraisal (2018). The Education Contribution Zone approach in the SG does not explain the implications of establishing new catchment areas for the new schools in the methodology adopted by the Council. In particular, the number of existing pupils which will occupy places in each of the new schools and any extensions has been ignored. This equally applies to highlighting the number of existing pupils being redistributed in any catchment area reviews necessary to utilise existing capacity in the school estate.</p> <p>This is best illustrated with reference to the relocation of the Victoria Primary School to a new site at Western Harbour. The School currently has ten classrooms and is proposed to be replaced by a new two stream (14 classroom) school. The proposed new school will have capacity for 420 pupils, and is due to open by August 2020. The Council's Primary School Roll Projections 2017-2027 confirm that the 2017 school roll for Victoria Primary School was 261 pupils. This is projected to rise to 309 pupils by 2020, but it is not clear what proportion of this is due to the projected impact of new development. The Council's paper entitled Proposal to Relocate Victoria Primary School to a new Building in the Western Harbour (January 2017) also proposes to undertake a catchment review to ...address accommodation issues in the Trinity and Victoria areas. This will involve part of North Leith being realigned from Trinity Primary School to the new Victoria Primary School. The Council's paper notes that only one of the existing 29 primary pupils in the North Leith Area to be relocated currently attend Victoria Primary School. The proposed change to the catchment area will, therefore, result in additional existing pupils attending the new Victoria Primary School. Based on the 2017 school roll for Victoria Primary School, the 29 existing pupils within the North Leith Area and existing rising school rolls, a significant proportion of the new primary school will consist of existing pupils. It is estimated that existing pupils will make up between 280-300 pupils within the new school on opening in 2020. This is equivalent to 67 – 71% of the school roll of a 420 capacity school. As set out above, the Council should be responsible for its proportionate share of the mitigation costs for existing pupils and placing requests. Despite this, Annex 1 of the SG expects financial contributions from the 3,662 flats and 211 homes in the sub-area to provide financial contributions of</p>	<p>School roll projections give an indication of where there may be accommodation pressures. It is acknowledged that some of these accommodation pressures may be attributable to rising rolls from existing housing. Therefore, in order that new housing development is not required to contribute to the provision of additional capacity that is over and above what is required to mitigate the cumulative impact of new development, the education infrastructure actions reflect the number of additional pupils expected to be cumulatively generated from new development only. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing.</p> <p>A new non-denominational double stream school is required at Leith Western Harbour to accommodate the pupil growth from new housing developments identified within the Council's Education Appraisal as well as existing pupils from within the Western Harbour. It is estimated that the new school would have to accommodate 395 pupils.</p> <p>There has been a long-standing proposal to provide an additional primary school within as a result of new housing development within the Western Harbour. There are already 120 non-denominational primary school pupils from the first phases of development at Western Harbour, most of which attend the nearby Victoria Primary School. 275 new pupils are expected to come from new housing in the area.</p> <p>A new school is therefore now required to alleviate accommodation pressures as a result of the new development. The Council's Action programme identifies a requirement for the school to be delivered by August 2020.</p> <p>New housing developments are expected to cover approx. 70% of the costs of this new double stream school (275/395). The Council will seek alternative funding mechanisms for the 30% of costs which can be attributed to the 120 existing non-denominational pupils from the Western Harbour. This split applies to the estimated infrastructure and land costs and is reflected in the required contributions set out in the supplementary guidance.</p> <p>The Council has carried out a statutory consultation proposing the relocation of Victoria Primary School to the new school. Although a new double stream primary school is required to accommodate pupils from new development as well as recent developments within the Western Harbour, additional capacity would be required to relocate Victoria Primary School to the new building.</p> <p>A 'phase 2' expansion strategy will therefore be put in place to enable the building to accommodate a relocated Victoria Primary School. This additional capacity is unlikely to be required for 2020 as the anticipated new housing will not have fully progressed and therefore there is likely to be spare capacity in the first few years.</p> <p>As the 'phase 2' expansion would provide education infrastructure over and above what is required to accommodate the number of pupils expected to be cumulatively generated from new development sites and the Western</p>	Yes	<p>Add to page 26: The housing output for Sub-Area LT-2 is only expected to cover part of the total cost of delivering the New Primary School and Nursery (70%). The remaining part has been attributed to existing housing at the Western Harbour.</p>

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	<p>£12,840,094. This is 92% of the total cost of the new school, as set out in Annex 1 of the SG. While it is noted that this includes a contribution towards an extension at Holycross RC Primary School (£784,388), despite the Council's latest School Roll Projections (December 2017 confirming there is unlikely to be a capacity risk at this school. Taking into account the Council's proportionate share of existing pupils, the total cost for developers should be reduced from 92% of the total costs of the new primary school to approximately 29 - 33%.</p>	<p>Harbour, the Council will therefore not seek developer contributions to deliver this part of the new infrastructure.</p>		
	<p>It is also noted that the Council has assigned a land value against the site for the new school at Western Harbour (£1,450,000) in addition to Servicing and Remediation costs. This is despite the Council confirming in its Proposal to Relocate Victoria Primary School to a new Building in the Western Harbour (January 2017) that the site will be transferred to the Council for free from Forth Ports as part of an existing Section 75 Agreement. Any obligation including the land value and the servicing and remediation costs would therefore fail to be in accordance with Circular 3/2012 and Section 75 of the Planning Act.</p>	<p>Noted. As per the Council's approach across each Education Contribution Zone, each school site is attributed a land value. This is to allow the land value to be attributed to other developments that require the infrastructure and proportionate share of the land value to be calculated.</p>	No	
	<p>This example is only one of several which demonstrates that the Council's methodology for assessing the financial contributions for its infrastructure Actions fails the tests in Circular 3/2012. The Council's methodology simply integrates the cost of rectifying shortcomings in its school estate wholly into the infrastructure Actions arising from the LDP's development strategy.</p>	<p>Denied. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and that it accords with the Circular. No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	This proposed level of financial contribution is dramatically out of proportion to the impact of development. In order to ...fairly and reasonably relate in scale and kind... to the development, the Council should pay a significant proportion of the costs. As it currently stands, the proposed planning obligation for the Leith / Trinity Contribution Zone in the SG does not meet the tests of Circular 3/2012.	Denied. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and that it accords with the Circular. Further explanation and justification is provided in the Education Appraisal point response above. No change is proposed to the finalised SG.	No	
	The SG needs to undergo a further detailed review across each Education Contribution Zones in order to comply with the tests in Circular 3/2012. Planning obligations cannot be used to resolve existing deficiencies in infrastructure provision or to secure financial contributions for the achievement of wider education planning objectives which are not strictly necessary to allow planning permission to be granted for allocated development.	Denied that such reviews are necessary. The finalised SG does not seek contributions from developers to resolve existing deficiencies. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and that it accords with the Circular. Further explanation and justification is provided in the Education Appraisal point response above. No change is proposed to the finalised SG.	No	
	As the Council is aware, the methodology adopted in the SG applies pupil generation rates to the number of new homes proposed in each allocated site. This depends on the Council's assumption about the mix of flats and houses within each development, which is not known at this stage. The outcome of the Council's school projections are significantly impacted upon by this assumption and it is one of key variables in the methodology. If this assumption proves to be incorrect when the house builders confirm their preferred housing mix to meet market demand then the proposed educational requirements may differ. The Council uses the Housing Land Audit as the means to assess the future level of completions in each catchment area. Information has been compiled from other data which is no longer up to date. This still includes infill sites from the Council's Housing Land Study (June 2014) as well as the LDP. This Housing Land Study refers to sites in Housing Land Audit 2013.	The Council has assessed the impact of the growth set out in the LDP through an Education Appraisal (January 2018). An assumption has been made as to the amount of new housing development which will come forward ('housing output'). This takes account of new housing sites allocated in the LDP and an assumption of the potential of other land within the urban area for housing development. This ensures that the cumulative impact of new development is considered within the guidance is mitigated. The Education Appraisal and actions within the Action Programme are monitored and updated each year following approval of the Housing Land Audit and Delivery Programme. No change is proposed to the finalised SG.	No	
	The pupil generation rates enable cumulative impacts to be assessed and proposals for school extensions or new schools to be proposed. These proposals or actions are then set out in the LDP's Action Programme and Appendix 1 of the SG.	Noted. No change is proposed to the finalised SG.	No	
	Annex 1 of the SG summarises all of the actions required to be delivered. It sets out the total capital cost for each action; the delivery date for the action; the current status of the action in terms of the preparatory work undertaken by the Council and its contribution zone. It doesn't factor in any financial contributions from the Council to remedy the proportionate cost of infrastructure Actions which are unrelated to the LDP development strategy.	The Action Programme sets out actions to deliver the Local Development plan. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing. The SG only sets out the costs that are related to the impact of development in the Local Development Plan. No change is proposed to the finalised SG.	No	
	The SG methodology is unclear and does not provide a clear definition between the primary school contribution and the full contribution. It also does not provide a definition for the ...servicing and remediation... or ...land value... costs shown in Annex 1. The text states that ...the costs above have been established through a high level exercise... but there is no document referred to in order to allow scrutiny of this exercise.	The Primary School Contribution only accounts for the identified primary school actions. The Full Contribution accounts for the all the identified actions, i.e. both primary school and secondary school actions. The costs attributed to 'Servicing and Remediation' in the draft guidance came from an external consultant's report that identified potential site abnormal costs. The figures are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'. No change is proposed to the finalised SG.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	This land purchase and site servicing cost is to be recovered from all of the remaining allocated and windfall sites within the zone (presumably on a proportionate basis). As the Contribution Zones do not align with new or proposed catchment areas, it will lead to the Council seeking financial contributions from new development that will not send pupils to the proposed new schools. Again, the cumulative impact audit trail is required from the Council to prove that financial contributions to land and remediation costs comply with the Circular.	It is a matter for the Education Authority to determine how best to meet Education needs, in terms of catchments and school sizes. It is sufficient for SG to demonstrate that there is an infrastructure requirement arising from the development and that the levels of contribution area reasonable of proportionate. SG achieves this. No change is proposed to the finalised SG.	No	
	It is noted that the SG makes provision to modify the requirements set out in the Action Programme and to modify the Education Contribution Zones as well.	Denied. This is actually the reverse, SG is updated following approval of statutory Action Programme. No change is proposed to the finalised SG.	No	
	The SG does not provide an audit trail explaining the justification of the expected cost of the planning obligations. It is therefore not possible for any developer or house builder to properly understand what direct impact an allocated site will have on the available infrastructure.	Denied. SG provides developers sufficient certainty to estimate developer contribution requirements. As acknowledged in SG some aspects will require site specific investigation to finalise precise figures. No change is proposed to the finalised SG.	No	
	The Council's methodology therefore does not define and set a financial obligation for any of the LDP allocated sites based solely on direct impacts. The reporting of the education impact assessments does not detail the necessary information to allow the tests in Circular 3/2012 to be satisfied.	Denied circular not met. SG a strategy to address the cumulative impacts on education arising from development, rather than a piecemeal approach of assessing direct impacts arising from competing development. The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.	No	
	Although the Council has not included any school projections in the Education Infrastructure Appraisal, school projections have recently been published. These school projections however do not explain the impacts on education infrastructure solely arising from the adoption of the Council's development strategy in the LDP.	School roll projections give an indication of where there may be accommodation pressures. It is acknowledged that some of these accommodation pressures may be attributable to rising rolls from existing housing. Therefore, in order that new housing development is not required to contribute to the provision of additional capacity that is over and above what is required to mitigate the cumulative impact of new development, the education infrastructure actions reflect the number of additional pupils expected to be cumulatively generated from new development only. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing. No change is proposed to the finalised SG.	No	
	Annex 1 also includes a table entitled Revised Educational Infrastructure Costings Action Plan Costings as at December 2017. This includes data for the size of the proposed new schools and extensions. The table overestimates the size of the schools, and is seeking larger schools (by area) than other local authorities in Scotland require for a school with the same level number of classrooms and streams. The SG also shows an increase in size for all types of schools since the last version of the SG in September 2017. The SG does not provide any explanation for the increase in the required school areas. As an example, the currently accepted metric is 7.5sq.m. Per pupil for 232-462 capacity school and 6.5sq.m. Per pupil for a 463+ capacity school. Taking a three stream school as an example, 630 pupils would require a school with a total area 4,095sq.m. The SG, however, states that a 5,483sq.m. School would be required. The substantial difference in the metric is not justified in the SG. The increase in the school sizes cannot be explained solely by the modifications to the proposed nurseries, which the SG states would account for only 696sq.m. Of the additional 1,388sq.m. Additional area in a three stream school. The Council states	The educational infrastructure costings table has been removed from the SG. This information will now be in the Education Appraisal along with a more detailed explanation of how the costs have been determined. The costs quoted within the Supplementary Guidance have been indexed to Q4 2017 (BCIS Forecast All-in Tender Price Index - 313) to take account of inflation. Previous versions of the supplementary guidance indexed costs to Q1 2015 (BCIS All-in Tender Price Index - 270). The estimated area for each infrastructure action is regularly reviewed in order that the actions reflect the Council's current accommodation requirements. The area estimates have been reviewed again as part of finalising the SG. The overall area for each new primary school and nursery has been reduced from what was presented in the draft SG. As a result, the estimated cost of delivering a new primary school and nursery has been reduced which has been reflected in the contribution rates set out in the finalised guidance.	Yes	Page 15, update Capital Cost column with new primary school costs. Annex 1, Update contribution rates where required. Page 4, add 'Information about how the cost of these actions has been determined is set out in the Education Appraisal (August 2018)' at the end of the third paragraph. Page 18, remove Revised Educational Costings Action Plan Costings as at December 2017 table.

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	in the SG that capital and land costs are estimates ...based on established rates for extensions and new builds. However, no further explanation is given to provide further details or justification of the rates used.			
	The Council has also increased the Additional Secondary School Capacity rate from 10sq.m. Per pupil in the September 2017 version of the SG, to 11sq.m. Per pupil in this version. Again, no explanation is given by the Council to justify this increase in size.	The estimated costs of providing additional capacity at an existing secondary school (for example through an extension or replacing an existing building) has been based on £32,678 per pupil (as at Q4 2017). This is based on a cost metric that comes from the Council's current project to replace Queensferry High School and an assumption that 11 square metres of floor space is required per pupil (as per the new Queensferry High School building and the Scottish Government space target for a mid-ranged secondary school). No change is proposed to the finalised SG.	No	
	The Council must provide further clarity regarding the rates used to calculate the size of new schools. This will allow developers and housebuilders to understand what their proportion of the costs will be and to establish a clear link between financial contributions and their impacts, which could be established under the proposed pupil generation rates.	The educational infrastructure costings table has been removed from the SG. This information will now be in the Education Appraisal along with a more detailed explanation of how the costs have been determined.	Yes	Page 15, update Capital Cost column with new primary school costs. Annex 1, Update contribution rates where required. Page 4, add 'Information about how the cost of these actions has been determined is set out in the Education Appraisal (August 2018)' at the end of the third paragraph. Page 18, remove Revised Educational Costings Action Plan Costings as at December 2017 table.
	The Council's approach continues to levy the costs of all infrastructure Actions on the allocated sites in the LDP's development strategy. The Council's solutions to rising school rolls, or other matters unrelated to the direct and cumulative impacts of the LDP's development strategy, are also included in these costs. The Council is not proposing to fund its proportionate share of education mitigation for existing pupils and problems.	Denied. In order that new housing development is not required to contribute to the provision of additional capacity that is over and above what is required to mitigate the cumulative impact of new development, the education infrastructure actions reflect the number of additional pupils expected to be cumulatively generated from new development only. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing. No change is proposed to the finalised SG.	No	
	The Council's methodology for its education impact assessment is not in accord with the tests in Circular 3/2012.	Denied. The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.	No	
	The conclusions reached by the Reporter at the Ocean Drive Appeal in quashing the need for financial contributions for education have not been resolved by the Council. No change to the methodology for education impact assessments has been made which would enable the current approach to be compliant with the tests in Circular 3/2012 or to demonstrate a more than trivial impact.	The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elsieck Supreme Court decision and therefore did not have regard to it. The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Despite receiving a number of representations seeking a change to the transport contributions methodology, this version of the SG has only introduced modest changes compared to the previous version in September 2017, and have been made on the basis of the Ocean Drive appeal.	Denied that substantial change is required to the SG. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and that it accords with the Circular. See response above in respect of Ocean Drive decision. No change is proposed to the finalised SG.	No	
	The most substantial amendment is to separate out the North Edinburgh Contribution Zone into four smaller contribution zones. This disaggregation recognises that the impacts arising from allocated sites should be better related to their immediate surrounding road network.	Noted	No	
	The approach of using large geographic areas as Contribution Zones for the delivery of transport infrastructure makes it difficult to reconcile the mitigation measures required with the direct impacts arising from the various proposals allocated in the LDP.	Denied. The Council considers that the transport contribution zones (and the other types of zone) in the finalised SG are of a relatively small scale which ensure that the actions within them maintain a more than trivial connection to development within the zone. The Council considers that the finalised SG in this respect is in accordance with the legal requirements of Section 75 of the Planning Act and in accordance with the Circular. No change is proposed to the finalised SG.	No	
	As reported in Section 2, a large body of planning case law has been developed over the course of 2017. This case law especially the Supreme Court decision on Elsick supported by recent appeal decisions in Edinburgh, demonstrates that if the direct impact is trivial then the Council's approach in this SG is not appropriate.	The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out this matter in more detail. No change is proposed to the finalised SG.	No	
	This also applies if it is not possible to understand the direct relationship between the mitigation and the impact from the proposal. This is specifically demonstrated in the recent appeal for a site at Ocean Drive, Leith (reference PPA-230-2201).	The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elsick Supreme Court decision and therefore did not have regard to it. The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. No change is proposed to the finalised SG.	No	
	In this appeal, as described in Section 2, the Reporter drew on the Elsick case to demonstrate that there is a distinction between ...sharing the costs among developments which cumulatively required a particular transport investment and the funding of a basket of measures not all of which are relevant to every development. On the basis of this, the Reporter removed the obligation on this proposal to pay to transport interventions in the North Edinburgh Transport Contribution Zone.	See response above.	No	
	Despite the Reporter's decision being available at the time of publication, the revised SG has failed to demonstrate a clear audit trail between the proposed transport actions and the allocations in the LDP.	See response above.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	The Council considers that its methodology supporting its calculation of financial contributions ...still relate to the local area in which infrastructure impacts of development will occur (paragraph 3.3; Developer Contributions: update and new Supplementary Guidance: Report to Housing and Economy Committee: January 2018). No evidence has been presented to confirm this conclusion and there is no mention of the Reporter's conclusion in the Committee Report about the issues arising from the Ocean Drive appeal decision. There is therefore no evidence that the updated SG meets the tests set out in Circular 3/2012, even with the re-formulation of a limited number of transport contribution zones.	Denied. See response above. The Council is not bound by the views of a single reporter in Ocean Drive. The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elrick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. No change is proposed to the finalised SG.	No	
	The Action Programme does not reference the necessary further detail to explain the traffic/travel impacts of those allocations on the specific mitigation measures identified. Consequently, the SG fails to demonstrate the necessary direct link between the proposal and the planning obligation being sought.	Denied that the link is insufficient. The links are sufficiently identified via the SG, accompanying Education, Transport and Healthcare Appraisals and the information contained in the action programme. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and the Circular on this issue. No change is proposed to the finalised SG.	No	
	The geographic scale of the transport contribution zones requires a well-defined relationship to allow the proper understanding of the impacts of each allocation to be understood. Circular 3/2012 is clear that contributions must be on the basis that they are fairly and reasonably relate in scale and kind to the proposed development.	Denied. The Council considers that the transport contribution zones (and the other types of zone) in the finalised SG are of a relatively small scale which ensure that the actions within them maintain a more than trivial connection to development within the zone. The finalised SG, together the associated appraisal documents, provides the necessary framework to demonstrate in accordance with the Circular that contributions being sought fairly and reasonably relate in scale and kind to the proposed development. The Council considers that the finalised SG in this respect is in accordance with the legal requirements of Section 75 of the Planning Act and in accordance with the Circular. No change is proposed to the finalised SG.	No	
	This fundamental issue is not demonstrated in the SG. Until the direct impact of the allocations on the transport/travel infrastructure in the contribution zones are clearly stated and the cumulative impacts assessed – taking account as to whether a t	Denied. See above response	No	Legal considering issue. No change expected.
Taylor Wimpey (Geddes Consulting)	It is noted that the Council has not made any substantive changes to the various versions of the SG despite the comprehensive responses made by a variety of stakeholders. In particular, the advice and guidance about the appropriate methodology to assess direct and cumulative impacts provided during the previous SG consultation process has been ignored by the Council.	The Council has had regard to all representations made and considered whether substantive change to the previous SG is required. The Council continue to consider that the Finalised SG represents the most appropriate process for securing developer contributions and infrastructure delivery across the City. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and the Circular. No change is proposed to the finalised SG.	No	
	It is noted that the current revisions to the SG are mainly as a consequence of planning case law which have not supported the Council's methodology and in particular the lack of compliance with the tests in Circular 3/2012. As set out in the previous representations by Taylor Wimpey, the tests set out in Circular 3/2012 emphasise the need to establish a direct impact including cumulatively between a proposal and the mitigation required.	Denied that the Council approach is flawed. See below.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The mitigation methodology chosen by the Council still seeks to assess impacts directly and cumulatively over large, contribution zones with the overall mitigation then being determined and costed. Thereafter, individual proposals are required to make a proportionate financial contribution to this mitigation. It is evident from ongoing planning case law that not all of the contributing sites highlighted by the Council have a direct impact on the mitigating infrastructure.</p>	<p>Denied that the Council approach is flawed. See below.</p>	<p>No</p>	
	<p>The Council has consistently failed to demonstrate in, either the SG or the supporting technical appraisals, how allocated sites have a direct or cumulative impact requiring the scale of financial contribution to meet the required mitigation. As a result, the Council's proposed financial contributions for the proposed mitigation fail to meet the tests in Circular 3/2012. This lack of compliance with the tests in Circular 3/2012 is supported by the growing body of planning case law through appeal decisions in Edinburgh. Furthermore, the case for a cumulative assessment which results in a trivial connection has been tested in the Supreme Court, as demonstrated in the conclusion from paragraphs 61, 62 and 63 of the Supreme Court Decision on Elsick, Aberdeenshire and found to be unlawful. The proposed changes in the draft SG still fail to address the reasoning highlighted in case law and the Supreme Court decision on Elsick relating to compliance with Circular 3/2012.</p>	<p>Denied that the Council approach is flawed.</p> <p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail.</p> <p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elsick that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	<p>No</p>	
	<p>Accordingly, Taylor Wimpey remains fundamentally concerned that the draft SG continues to fail to meet the requirements in Circular 3/2012 and urges the Council to make further and substantial amendments to the impact assessment methodology underpinning its SG and consequently, its overall approach to defining planning obligations and their financial contributions, prior to approval. Without a change in its impact assessment methodology by the Council, it is inevitable that the Council's financial strategy to fund its proposed mitigation in the SG will not be delivered. Despite the weight of objections against the Council's proposed approach, the Council has failed to make any substantive changes to the SG, save for those required by Scottish Government and to respond to the outcome of the Ocean Drive appeal (PPA-230-2201) and Supreme Court decision on Elsick.</p>	<p>Denied that the Council approach is flawed. See above.</p>	<p>No</p>	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>This Direction required the Council not to adopt the SG (published in December 2016). Scottish Government's objection was due to the inclusion of an additional secondary school and additional housing on the International Business Gateway (IBG) – contrary to the requirements of a national development site. The Scottish Government objected to the inclusion of additional housing capacity, as ...these capacities are not supported by the LDP... and have not yet been established via a masterplan or planning permission. On the basis of the comments from the Scottish Government, the Council amended the SG to reduce the number of houses expected within the West Education Contribution Zone and to confirm the location of the proposed new high school in that Contribution Zone at a later date – albeit the IBG site is still actively being promoted as an option. The Council is currently consulting on a review of schools in the West and South West, including a new West Edinburgh High School and a catchment area review. The Council's consultation paper, published January 2018, still includes a proposed new West Edinburgh High School within the area safeguarded in the LDP for the International Business Gateway (Emp 6), which is supported as an infrastructure Action identified in this SG.</p>	<p>New secondary school capacity is required in West Edinburgh to accommodate the growth in pupils from new housing development. Although the Council's preferred solution is to deliver one or more new secondary school, there are currently no sites identified within the Action Programme. Therefore, contributions towards new secondary capacity will be based on the estimated cost of providing additional secondary school capacity on a per pupil basis. This is the same approach that is applied across other parts of the city where additional secondary school capacity is required which may be delivered by a replacement building or extension. The finalised SG does not therefore require contributions to be taken in West Edinburgh towards the acquisition, servicing and remediation of land for a new secondary school. The location/s for new secondary school infrastructure in West Edinburgh will be progressed through development of a West Edinburgh spatial strategy to be prepared as part of the new Local Development Plan process. No change is proposed to the finalised SG.</p>	Yes	<p>Page 16 Annex 1, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity - 420 pupils (to mitigate the impact of development within the catchment areas of non-denominational secondary schools within West Edinburgh)'. Page 17 Remove land cost information for west secondary school. Page 32, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity (West Edinburgh)'. Page 32, update contribution rates.</p>
	<p>In September 2017, the Council submitted an amended SG to the Scottish Government only, with the intention to adopt ...following procedural steps (as stated in the minutes of the Housing and Economy Committee, 7 September 2017).The Scottish Government once again directed the Council not to adopt the SG (published September 2017). The reason for doing so on this occasion was that the Scottish Government considered that ...the process relating to [the previous] supplementary guidance was concluded by the Direction. Accordingly, any further iterations of the SG must be treated as a new document requiring further consultation. As such, the Council is now required to consult on the latest draft of the SG, dated January 2018.</p>	<p>Factual points. No change is proposed to the finalised SG.</p>	No	
	<p>This latest version of the SG therefore still incorporates the changes made to the SG (published in December 2016), removing the increased housing and secondary school on the IBG site. Further changes to the SG (as reported to the Housing and Economy Committee, on 18 January 2018) include: • Regrouping the transport infrastructure contribution zone in the north of the City into several smaller zones, • Redrafting of the healthcare contributions to add greater clarity; and, Updated annexes to reflect January 2018 Action Programme.</p>	<p>Factual points. No change is proposed to the finalised SG.</p>	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The Council's update of the SG makes reference to the Elswick Supreme Court judgement. In the report to the Housing and Economy Committee (18 January 2018), the Council stated that: "...while some of the contribution zones identified in the Council's previously proposed Supplementary Guidance are relatively large, they still relate to the local area in which infrastructure impacts of development will occur. In contrast, the very broad Strategic Transport Fund approach in Elswick was far more radical than the contribution zone approach as set out by this Council. It is considered that this Council's zonal approach, in the previously proposed Supplementary Guidance, clearly meets the Elswick legal test for planning obligation requirements by ensuring that contributions sought have more than a trivial connection to the relevant development. Despite this reference, the Council has not sought to define "...trivial connection..." in the SG. The Council considers that it has taken full regard of the findings in the Elswick Decision in the update of the SG. It should be noted that the "...trivial connection..." relates to all infrastructure impacts and not just transport. Therefore, trivial connections apply to all the topics in the SG. In spite of the changes made to the latest version of the SG, Taylor Wimpey remains concerned that the substantive issue of ensuring its impact methodologies are fully compliant with Circular 3/2012 continues to be ignored. It is noted that in the Introduction of the SG the Council makes no commitment to the compliance [our emphasis] with the tests in Circular 3/2012, using phrases such as: "...ensures that developers make a fair and realistic contribution to the delivery of necessary infrastructure and improvement associated with development;</p>	<p>Denied that the Council approach is flawed.</p> <p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elswick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail. The Council is satisfied that the finalised SG provides sufficient basis to demonstrate in respect of all infrastructure impacts that a more than trivial connection between the requirement and a specific development.</p> <p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elswick that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	No	
	<p>It should be noted that the planning obligations and financial contributions set out in this SG are now significantly different from the Action Programme scrutinised during the Local Development Plan (LDP) Examination. As such, this latest version of the SG suffers from having no external independent scrutiny of the Council's revisions as the vast majority of consultation responses continue to be ignored by the Council. The only external scrutiny to date has been the appeal process. This case law supports the general observation that the Council's impact methodologies and determination of mitigation measures through planning obligations and required financial contributions do not meet the tests in Circular 3/2012.</p>	<p>Denied that the Council has not had regard to representations. The Council has had regard to all representations made and considered whether substantive change to the previous SG is required. The Council continue to consider that the Finalised SG represents the most appropriate process for securing developer contributions and infrastructure delivery across the City. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and the Circular.</p> <p>The Council deny that there is body of case law to demonstrate that the Council's SG approach does not comply with the Circular. Reporter's decisions mixed. The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elswick Supreme Court decision and therefore did not have regard to it.</p> <p>The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. The Reporters in that appeal did not</p>	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
		conclude that the SG generally failed the tests in the Circular. No change is proposed to the finalised SG.		
	<p>The key principle that must be demonstrated in this SG is that the contributions will be lawful in in terms of S75. Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) makes provision for planning obligations from a development to mitigate its impact and allow the grant of planning permission. All planning obligations must comply with the requirements set in Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). Circular 3/2012: Planning Obligations and Good Neighbour Agreements makes provision on how to determine planning obligations from a development to mitigate its impact and allow the grant of planning permission by reference to five tests. Section 75(1) requires there to be a relationship between the planning obligation and the land to be burdened by the obligation. The obligation must in some way restrict or regulate the development or the use of that land. The circumstances of when a planning obligation becomes a material consideration to the granting of planning permission is set out in section 37(2), which states: "...In dealing with [an application for planning permission] the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. This includes policies relating to developer obligations. This was further outlined by Lord Keith of Kinkel in the House of Lords in consideration of Tesco Stores Ltd v Secretary of State for the Environment. Lord Kinkel stated that: "... An offered planning obligation which has nothing to do with the proposed development, apart from the fact that it is offered by the developer, will plainly not be a material consideration and could be regarded only as an attempt to buy planning permission. If it has some connection with the proposed development which is not de minimis, then regard must be had to it. Case law has also confirmed the critical importance of Circular 3/2012 as a material consideration to be taken into account when granting planning permission. Circular 3/2012: Planning Obligations and Good Neighbour Agreements makes provision for planning obligations from a development to mitigate its impact and allow the grant of planning permission by reference to five tests. All planning obligations must comply with the requirements of Circular 3/2012.Circular 3/2012</p>	<p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail. The Council is satisfied that the finalised SG provides sufficient basis to demonstrate in respect of all infrastructure impacts that a more than trivial connection between the requirement and a specific development.</p> <p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elsick that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>Para 60 of decision: "The guidance in the Circular is simply a material consideration which the planning authority must take into account when deciding whether to grant planning permission. The weight which the planning authority attaches to such guidance is a matter of planning judgement."</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p> <p>No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>provides a policy background relating to the circumstances where planning obligations can be used. The Circular establishes five policy tests which all planning obligations should meet. Specifically, the Circular emphasises the need to establish a clear and direct link between the development proposal and the infrastructure mitigation offered as part of the developer's financial contribution. This is applicable whether the requirement for infrastructure is a result of a direct consequence or a cumulative impact. This should relate in scale and kind to the proposed development. A significant body of planning case law and appeals has been built up that supports this principle through appeals in Edinburgh and more recently, the Elswick Supreme Court decision. These all have major implications for this SG.</p>			

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	<p>Especially relevant for this SG is the Supreme Court decision which quashed the Supplementary Guidance – Strategic Transport Fund, approved by Aberdeen City and Shire Strategic Development Planning Authority (Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Co Ltd). This Strategic Transport Fund Supplementary Guidance required developers to contribute towards the cost of transport improvements. The Aberdeen City and Shire Strategic Development Planning Authority adopted a cumulative assessment approach to transport infrastructure planning in the Aberdeen City region. A package of interventions was identified relating to transport improvements across the region. All developments within the region were then required to pay a proportionate financial contribution towards the total cost of the entire package. The Cumulative Transport Assessment methodology adopted to assess the impacts and the mitigation was flawed because it based its assessment on the proportion of traffic from each new development using the transport improvements, and not the traffic from new developments as a proportion of the total traffic using the transport improvements. However, even in cases where the impact of development was low, the Aberdeen City and Shire Strategic Development Planning Authority still expected development to make financial contributions to the strategic transport infrastructure. The Supreme Court's decision found that the scheme of the SG and the planning obligations it promotes was unlawful for two separate reasons, as set out in paragraphs 61; 62 and 63. Therefore, a planning obligation will be unlawful if the development had no more than a trivial connection with the infrastructure intervention to which the planning obligation was directed towards, and in other circumstances if there is no restriction or control over the proposal. The Supreme Court decision clarified the issue of a trivial connection relating to the determination of the planning obligation. Having established this principal provision, the Supreme Court decision applies to all planning obligations and is not restricted to transport matters. Therefore, it equally applies to education, greenspace, public realm and primary healthcare matters in the Council's SG. Further, the Supreme Court decision also clarified that the planning obligation will be unlawful if it did not serve a purpose that was related to the development, nor if it did not restrict or regulate the development. The Court made it clear that the planning authority did not have the necessary statutory powers to require payment of the planning obligation as a pre-condition of granting planning permission for the development. Therefore, the planning obligation fell out with the provisions of Section 75 of the Planning Act. This important matter (explained in paragraph 62 of the Supreme Court decision) has been ignored by the Council in its SG. This is because it does not seek to restrict or regulate any development in terms of a requirement to have the necessary upgraded or new infrastructure in place. There are no triggers to restrict or regulate development as set out in the SG which determines how any of the new or upgraded infrastructure is to be delivered. There is therefore no evidence to identify how the Council's assessment of infrastructure requirements are linked to the infrastructure actions and therefore the planning obligations. Until it is proven that there is more than a trivial link, it will not be possible to</p>	<p>The importance of the Supreme Court Elsick Judgment is acknowledged. The Council denies that the finalised SG does not comply with the legal requirements set out in this Judgment.</p> <p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail.</p> <p>The Council consider that the SG and its supporting technical appraisals provide the necessary information to demonstrate in respect of any planning application whether there is more than a trivial link between the development proposed and the infrastructure interventions required. The Council's Action Programme provides clarity on the timing of when the various infrastructure interventions require to be delivered. No change is proposed to the finalised SG.</p> <p>The important requirement of Section 75 that any Planning Obligation must restrict or regulate development was not a part of the pleadings in Elsick and detailed reasonings was not provided in the Judgement.</p> <p>Paragraph 62 states: "Further, the Council did not include any provision in the planning obligation restricting the development of the Elsick site until a contribution was made. Instead it resolved to grant planning permission for the development but to issue that permission only once Elsick had entered into the obligation. The planning obligation was therefore neither restricting nor regulating the development of the Elsick site and so was outside the ambit of section 75."</p> <p>The Council considers that the finalised SG is in general accordance with this legal requirement of Section 75 of the Planning Act. This requirement must be met in each Planning Obligation (S75) itself. The Council default in the Model S75 that the developer contributions require to be paid prior to the commencement of the development. This entirely accords with the Elsick judgment requiring that the planning obligation must restrict the development of the site until a contribution is made. No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	<p>determine the lawfulness of the SG, leaving it vulnerable to legal challenges. The Supreme Court decision has important implications for planning authorities seeking cumulative financial contributions through supplementary guidance. Planning authorities must regulate the necessary infrastructure improvements sought. Accepting an income stream or payment as proposed in the SG from an applicant without regulation is outwith the ambit of Section 75 of the Act.</p>			
	<p>It is necessary for the SG or the its supporting technical appraisals to demonstrate how any impacts on the current infrastructure have more than trivial link and clarify when the necessary upgrades to the infrastructure are required to be carried out. Without this clarification, the Council is promoting a SG which is aligned with a development land levy, to which Lord Hodge concluded that the Planning Act does not allow for an infrastructure levy, stating: ...If planning authorities in Scotland wish to establish a local development land levy in order to facilitate development, legislation is needed to empower them to do so... (Paragraph 64; Supreme Court Decision)</p>	<p>Denied. See above response</p>	<p>No</p>	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	<p>The question of the SG's compliance with the Circular has already proved to be a principal consideration in its application through appeals. This is demonstrated in the recent appeal for a site at Ocean Drive, Leith (reference PPA-230-2201). This appeal was sustained, with planning obligations for transport, education and healthcare infrastructure, as sought on the basis of the SG, quashed by the Reporter. In this appeal, the Reporter indicated his concerns with the SG on a number of reasons relating to the methodology for the transport, education and healthcare contributions sought by the Council. Regarding contribution zones, the Reporter was concerned with the linkages of the contribution zones for both education and transport interventions with the appeal proposal. While clear links could be established between some of the Actions proposed within the contribution zones in the SG, the Reporter found that ...the location of others suggest a much more tenuous link. In this case, the Reporter's logic was to apply the tests in Circular 3/2012 in order to establish whether the contributions were appropriate. Regarding transport, the Reporter found that the Council had not demonstrated compliance with Circular 3/2012 requiring a connection to be established with the individual development and the infrastructure Actions. In particular, the Reporter drew on the Elswick case to demonstrate that there is a distinction between ...sharing the costs among developments which cumulatively required a particular transport investment and the funding of a basket of measures not all of which are relevant to every development. On the basis of this, the Reporter removed the obligation on this proposal to pay to transport, primary healthcare and education interventions as set out in the SG. This appeal decision demonstrated that the Council's proposed Contribution Zones fails to demonstrate a more than trivial link with a proposal and the consequential infrastructure actions. The concept of Contribution Zones based on their underlying methodology put forward in the SG and its supporting technical appraisals was not supported at appeal.</p>	<p>Denied. Reporter decisions mixed. The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elswick Supreme Court decision and therefore did not have regard to it. The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. The Reporters in that appeal did not conclude that the SG generally failed the tests in the Circular. No change is proposed to the finalised SG.</p>	No	
	<p>It is evident that the concept of contribution zones requires a further review by the Council to comply with the tests in Circular 3/2012. It is therefore incumbent on the Council to demonstrate the necessary direct link between various allocated sites and their supporting infrastructure requirements in this updated SG.</p>	<p>Denied. Reporters have accepted SG in other decisions such as PPA-230-2208. See above response.</p>	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>Taylor Wimpey is concerned that the proposed SG with its supporting technical studies does not demonstrate the necessary compliance with the requirements of Section 75 of the Planning Act as it fails to establish more than a trivial link between development and the infrastructure improvements sought. The SG does not outline how it regulates or controls development to meet the implementation programme prepared in the Action Programme. It also fails to meet the tests in Circular 3/2012 as its underlying impact assessment methodologies do not either measure direct impacts alone or cumulatively. In particular, the scale of area chosen as a contribution zone for any topic does not determine if the financial contributions sought ...fairly and reasonably relate in scale and kind to the proposed development.</p>	<p>Denied. The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail.</p> <p>The Council consider that the SG and its supporting technical appraisals provide the necessary information to demonstrate in respect of any planning application whether there is more than a trivial link between the development proposed and the infrastructure interventions required. The Council's Action Programme provides clarity on the timing of when the various infrastructure interventions require to be delivered. No change is proposed to the finalised SG.</p> <p>The important requirement of Section 75 that any Planning Obligation must restrict or regulate development was not a part of the pleadings in Elsick and detailed reasonings was not provided in the Judgement.</p> <p>Paragraph 62 states: "Further, the Council did not include any provision in the planning obligation restricting the development of the Elsick site until a contribution was made. Instead it resolved to grant planning permission for the development but to issue that permission only once Elsick had entered into the obligation. The planning obligation was therefore neither restricting nor regulating the development of the Elsick site and so was outside the ambit of section 75."</p> <p>The Council considers that the finalised SG is in general accordance with this legal requirement of Section 75 of the Planning Act. This requirement must be met in each Planning Obligation (S75) itself. The Council default in the Model S75 that the developer contributions require to be paid prior to the commencement of the development. This entirely accords with the Elsick judgment requiring that the planning obligation must restrict the development of the site until a contribution is made.</p> <p>The Council's approach implements the principles of the Circular in a way which allows consideration of more than one development, or cumulative impact allowing for the consideration of the scale of growth in Edinburgh, in the interests of good overall infrastructure planning. The Council's cumulative assessment approach is supported by Scottish Planning Policy, Circular 3/2012 Planning Obligations and the approved Strategic Development Plan.</p> <p>No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	<p>In the latest version of the SG, the Council at least now recognises that some future impacts will arise which are unrelated to the approved LDP development strategy. The key issue is whether these additional statements are now reflected in underlying methodology adopted to assess the financial contributions proposed in the SG. The Council has updated its impact assessment and now adopts its Education Infrastructure Appraisal (2018) for the purpose of this SG. This Education Infrastructure Appraisal (2018) in Section 4 notes: ...Some of the primary schools which will require new accommodation as a result of the LDP will also require additional accommodation throughout the period of the LDP as a result of either developments which already have planning approval and/or due to the impact of rising primary school rolls in the area (paragraph 4.16). Unless the impacts from these other factors are separated and excluded for the purposes of assessing the financial contributions for allocated sites in the LDP, this confirms that the methodology adopted by the Council as Education Authority does not comply with the requirements of Section 75 of the Planning Act. This approach is necessary to comply with the matters raised in the Supreme Court decision or with the tests in Circular 3/2012. There is no evidence in the Education Infrastructure Appraisal (2018) or the SG that this further stage in the evaluation process has been carried out by the Council and financial contributions adjusted. The Council's proportionate share of the cost of the planning obligations is still not known. Therefore, the financial contributions in the SG continue to be an over estimate for the allocated sites in the LDP's development strategy.</p>	<p>Strongly denied that the SG expects developers to contribute to fix existing shortcomings. The finalised SG explicitly sets out that the Council will fund through other methods any component of new infrastructure that is derived from existing capacity issues (final para pg 5). Contributions are only being sought for additional infrastructure required as a result of new developments.</p> <p>School roll projections allow the Council to assess whether there is sufficient spare capacity to accommodate the number of additional pupils expected to be generated by new housing development within an area. Where there is insufficient spare capacity education infrastructure actions have been identified. In order that new housing development is not required to contribute to the provision of additional capacity that is over and above what is required to mitigate the cumulative impact of new development, the scale of the education infrastructure actions reflect the number of additional pupils expected to be cumulatively generated from new development only. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The Council has also carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p> <p>The Education Appraisal will be updated to clarify that none of the identified actions are as a result of housing developments not specified within the Appraisal or rising rolls. No change is proposed to the finalised SG.</p>	No	
	<p>The methodology for an education impact assessment for planning purposes must comply with the tests in Circular 3/2012 and with the case law regarding the use of Section 75 Agreements. A compliant methodology is recommended to the Council in Annex 1 that has been tested at appeal and upheld. The Council is recommended to adopt this approach. The methodology used in the SG factors in projected future trends in the pupil population across its school estate and does not separately measure the underlying baseline school roll in its schools over its projection period. As a consequence, it does not separately measure the direct impacts of new development as part of the LDP's approved development strategy. The methodology chosen by the Council to calculate the planning obligations does not meet the tests in Circular 3/2012 or demonstrate a more than trivial link to the development. The education actions proposed require to be lawful under the Planning Act. Accordingly, the SG and supporting technical appraisal does not present a robust and evidenced case for the Council to defend.</p>	See above 194 denied	No	
	<p>Without substantial modification, this SG will continue to be subject to continuous challenge as applications for the allocated and windfall sites are submitted for planning consent. Each application could undertake a school impact assessment for all schools in the proposal's catchment, applying an assessment methodology that compliers with</p>	On the SG adopted and forms part of development plan then its approach will require to be afforded very significant weight. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Circular 3/2012, and provide a bespoke solution to remedy any infrastructure deficit arising from its direct impacts.			
	In the case of a requirement for a new school, or in some cases an extension to an existing school, the Council needs to recognise that a broad indication of the new or amended catchment area needs to be provided, factoring in consequential changes to pupil attendances and their re-distribution at the schools affected.	It is a matter for the Education Authority to determine how best to meet Education needs, in terms of catchments and school sizes. It is sufficient for SG to demonstrate that there is an infrastructure requirement arising from the development and that the levels of contribution are reasonable of proportionate. SG achieves this. No change is proposed to the finalised SG.	No	
	Where existing pupils are expected to attend new schools as a result of catchment area reviews or replacement of existing schools, the Council should be responsible for its proportionate share of the mitigation costs in accord with Circular 3/2012,	If the number of additional classrooms that are delivered is no more than what is necessary to accommodate the number of pupils expected to be cumulatively generated from development sites (as set out in the Education Appraisal and Action Programme), developer contributions from the relevant part of the Contribution Zone will be expected to cover the full cost of delivering the new infrastructure. The Council may identify a need to provide education infrastructure over and above what is required to accommodate the number of pupils expected to be cumulatively generated from development sites. The Council will not seek developer contributions to cover the cost of providing this additional capacity; instead the Council will seek alternative funding mechanisms. No change is proposed to the finalised SG.	no	

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	<p>The methodology used by the Council to calculate the cost of the planning obligations is only explained in part in the SG. It explains that the impact of the approved development strategy in the adopted LDP has now been assessed with reference to the Education Infrastructure Appraisal (2018). The Education Contribution Zone approach in the SG does not explain the implications of establishing new catchment areas for the new schools in the methodology adopted by the Council. In particular, the number of existing pupils which will occupy places in each of the new schools and any extensions has been ignored. This equally applies to highlighting the number of existing pupils being redistributed in any catchment area reviews necessary to utilise existing capacity in the school estate. This is best illustrated with reference to the relocation of the Victoria Primary School to a new site at Western Harbour. The School currently has ten classrooms and is proposed to be replaced by a new two stream (14 classroom) school. The proposed new school will have capacity for 420 pupils, and is due to be open by August 2020. The Council's Primary School Roll Projections 2017-2027 confirm that the 2017 school roll for Victoria Primary School was 261 pupils. This is projected to rise to 309 pupils by 2020, but it is not clear what proportion of this is due to the projected impact of new development. The Council's paper entitled Proposal to Relocate Victoria Primary School to a new Building in the Western Harbour (January 2017) also proposes to undertake a catchment review to ...address accommodation issues in the Trinity and Victoria areas. This will involve part of North Leith being realigned from Trinity Primary School to the new Victoria Primary School. The Council's paper notes that only one of the existing 29 primary pupils in the North Leith Area to be relocated currently attend Victoria Primary School. The proposed change to the catchment area will, therefore, result in additional existing pupils attending the new Victoria Primary School. Based on the 2017 school roll for Victoria Primary School, the 29 existing pupils within the North Leith Area and existing rising school rolls, a significant proportion of the new primary school will consist of existing pupils. It is estimated that existing pupils will make up between 280-300 pupils within the new school on opening in 2020. This is equivalent to 67 – 71% of the school roll of a 420 capacity school. As set out above, the Council should be responsible for its proportionate share of the mitigation costs for existing pupils and placing requests. Despite this, Annex 1 of the SG expects financial contributions from the 3,662 flats and 211 homes in the sub-area to provide financial contributions of £12,840,094. This is 92% of the total cost of the new school, as set out in Annex 1 of the SG. While it is noted that this includes a contribution towards an extension at Holycross RC Primary School (£784,388), taking into account the Council's proportionate share of existing pupils, the total cost for developers should be reduced from 92% of the total costs of the new primary school to approximately 29 - 33%.</p>	<p>School roll projections give an indication of where there may be accommodation pressures. It is acknowledged that some of these accommodation pressures may be attributable to rising rolls from existing housing. Therefore, in order that new housing development is not required to contribute to the provision of additional capacity that is over and above what is required to mitigate the cumulative impact of new development, the education infrastructure actions reflect the number of additional pupils expected to be cumulatively generated from new development only. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing.</p> <p>A new non-denominational double stream school is required at Leith Western Harbour to accommodate the pupil growth from new housing developments identified within the Council's Education Appraisal as well as existing pupils from within the Western Harbour. It is estimated that the new school would have to accommodate 395 pupils.</p> <p>There has been a long-standing proposal to provide an additional primary school within as a result of new housing development within the Western Harbour. There are already 120 non-denominational primary school pupils from the first phases of development at Western Harbour, most of which attend the nearby Victoria Primary School. 275 new pupils are expected to come from new housing in the area.</p> <p>A new school is therefore now required to alleviate accommodation pressures as a result of the new development. The Council's Action programme identifies a requirement for the school to be delivered by August 2020.</p> <p>New housing developments are expected to cover approx. 70% of the costs of this new double stream school (275/395). The Council will seek alternative funding mechanisms for the 30% of costs which can be attributed to the 120 existing non-denominational pupils from the Western Harbour. This split applies to the estimated infrastructure and land costs and is reflected in the required contributions set out in the supplementary guidance.</p> <p>The Council has carried out a statutory consultation proposing the relocation of Victoria Primary School to the new school. Although a new double stream primary school is required to accommodate pupils from new development as well as recent developments within the Western Harbour, additional capacity would be required to relocate Victoria Primary School to the new building.</p> <p>A 'phase 2' expansion strategy will therefore be put in place to enable the building to accommodate a relocated Victoria Primary School. This additional capacity is unlikely to be required for 2020 as the anticipated new housing will not have fully progressed and therefore there is likely to be spare capacity in the first few years.</p> <p>As the 'phase 2' expansion would provide education infrastructure over and above what is required to accommodate the number of pupils expected to be cumulatively generated from new development sites and the Western Harbour, the Council will therefore not seek developer contributions to deliver this part of the new infrastructure.</p>	Yes	Add to page 26: The housing output for Sub-Area LT-2 is only expected to cover part of the total cost of delivering the New Primary School and Nursery (70%). The remaining part has been attributed to existing housing at the Western Harbour.

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	It is also noted that the Council has assigned a land value against the site for the new school at Western Harbour (£1,450,000). This is despite the Council confirming in its Proposal to Relocate Victoria Primary School to a new Building in the Western Harbour (January 2017) that the site will be transferred to the Council for free from Forth Ports as part of an existing Section 75 Agreement.	If land value is offset against contribution requirements, it is perfectly proper for the Council to require proportionate shares of the land value from other developments that require the infrastructure. No change is proposed to the finalised SG. .	No	
	This example is only one of several which demonstrates that the Council's methodology for assessing the financial contributions for its infrastructure Actions fails the tests in Circular 3/2012. The Council's methodology simply integrates the cost of rectifying shortcomings in its school estate wholly into the infrastructure Actions arising from the LDP's development strategy.	<p>Strongly denied that the SG expects developers to contribute to fix existing shortcomings. The finalised SG explicitly sets out that the Council will fund through other methods any component of new infrastructure that is derived from existing capacity issues (final para pg 5). Contributions are only being sought for additional infrastructure required as a result of new developments.</p> <p>School roll projections allow the Council to assess whether there is sufficient spare capacity to accommodate the number of additional pupils expected to be generated by new housing development within an area. Where there is insufficient spare capacity education infrastructure actions have been identified. In order that new housing development is not required to contribute to the provision of additional capacity that is over and above what is required to mitigate the cumulative impact of new development, the scale of the education infrastructure actions reflect the number of additional pupils expected to be cumulatively generated from new development only. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The Council has also carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p> <p>The Education Appraisal will be updated to clarify that none of the identified actions are as a result of housing developments not specified within the Appraisal or rising rolls. No change is proposed to the finalised SG.</p>	No	
	This proposed level of financial contribution is dramatically out of proportion to the impact of development. In order to ...fairly and reasonably relate in scale and kind... to the development, the Council should pay a significant proportion of the costs. As it currently stands, the proposed planning obligation for the Leith / Trinity Contribution Zone in the SG does not meet the tests of Circular 3/2012.	Denied. See response above.	No	
	The SG needs to undergo a further detailed review across each Education Contribution Zones in order to comply with the tests in Circular 3/2012. Planning obligations cannot be used to resolve existing deficiencies in infrastructure provision or to secure financial contributions for the achievement of wider education planning objectives which are not strictly necessary to allow planning permission to be granted for allocated development.	Denied. See response above.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	As the Council is aware, the methodology adopted in the SG applies pupil generation rates to the number of new homes proposed in each allocated site. This depends on the Council's assumption about the mix of flats and houses within each development, which is not known.	The pupil generation rates used in the SG reflect the different impact of houses and flats and are based on the average number of primary and secondary pupils generated from a mix of housing developments across the Council area. To generate the number of pupils, the midpoint of the unit number capacity range for new housing sites within the LDP are used, as well as the housing capacity assumptions used in the Housing Land Audit. In some cases, information from detailed planning applications has also been used. Future updates to the Education Appraisal will reflect updates to the Housing Land Audit and further detailed planning permissions. No change is proposed to the finalised SG. No change is proposed to the finalised SG.	No	
Wallace Land Investments (Geddes Consulting)	It is noted that the Council has not made any substantive changes to the various versions of the SG despite the comprehensive responses made by a variety of stakeholders. In particular, the advice and guidance about the appropriate methodology to assess direct and cumulative impacts provided during the previous SG consultation process has been ignored by the Council.	Noted. This is a new draft SG for consultation purposes. No change is proposed to the finalised SG.	No	
	It is noted that the current revisions to the SG are mainly as a consequence of planning case law which have not supported the Council's methodology and in particular the lack of compliance with the tests in Circular 3/2012. As set out in the previous representations by Wallace, the tests set out in Circular 3/2012 emphasise the need to establish a direct impact including cumulatively between a proposal and the mitigation required.	Denied that the Council approach is flawed. See below.	No	
	The mitigation methodology chosen by the Council still seeks to assess impacts directly and cumulatively over large, contribution zones with the overall mitigation then being determined and costed. Thereafter, individual proposals are required to make a proportionate financial contribution to this mitigation. It is evident from ongoing planning case law that not all of the contributing sites highlighted by the Council have a direct impact on the mitigating infrastructure.	Denied that the Council approach is flawed. See below.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The Council has consistently failed to demonstrate in, either the SG or the supporting technical appraisals, how allocated sites have a direct or cumulative impact requiring the scale of financial contribution to meet the required mitigation. As a result, the Council's proposed financial contributions for the proposed mitigation fail to meet the tests in Circular 3/2012. This lack of compliance with the tests in Circular 3/2012 is supported by the growing body of planning case law through appeal decisions in Edinburgh. Furthermore, the case for a cumulative assessment which results in a trivial connection has been tested in the Supreme Court, as demonstrated in the conclusion from paragraphs 61, 62 and 63 of the Supreme Court Decision on Elsick, Aberdeenshire and found to be unlawful. The proposed changes in the draft SG still fail to address the reasoning highlighted in case law and the Supreme Court decision on Elsick relating to compliance with Circular 3/2012.</p>	<p>Denied that the Council approach is flawed.</p> <p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail.</p> <p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elsick that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	No	
	<p>Accordingly, Wallace remains fundamentally concerned that the draft SG continues to fail to meet the requirements in Circular 3/2012 and urges the Council to make further and substantial amendments to the impact assessment methodology underpinning its SG and consequently, its overall approach to defining planning obligations and their financial contributions, prior to approval. Without a change in its impact assessment methodology by the Council, it is inevitable that the Council's financial strategy to fund its proposed mitigation in the SG will not be delivered. Despite the weight of objections against the Council's proposed approach, the Council has failed to make any substantive changes to the SG, save for those required by Scottish Government and to respond to the outcome of the Ocean Drive appeal (PPA-230-2201) and Supreme Court decision on Elsick.</p>	<p>Denied that the Council approach is flawed. See above.</p>	No	
	<p>This Direction required the Council not to adopt the SG (published in December 2016). Scottish Government's objection was due to the inclusion of an additional secondary school and additional housing on the International Business Gateway (IBG) – contrary to the requirements of a national development site. The Scottish Government objected to the inclusion of additional housing capacity, as ...these capacities are not supported by the LDP... and have not yet been established via a masterplan or planning permission. On the basis of the comments from the Scottish Government, the Council amended the SG to reduce the number of houses expected within the West Education Contribution Zone and to confirm the location of the proposed new high school in that Contribution Zone at a later date – albeit the IBG site is still actively being promoted as an option. The Council is currently consulting on a review of schools in the West and South West, including a new West Edinburgh High School and a catchment area review. The Council's consultation paper, published January 2018, still includes a proposed new West Edinburgh High School within the area safeguarded in the LDP for the International</p>	<p>New secondary school capacity is required in West Edinburgh to accommodate the growth in pupils from new housing development. Although the Council's preferred solution is to deliver one or more new secondary school, there are currently no sites identified within the Action Programme. Therefore, contributions towards new secondary capacity will be based on the estimated cost of providing additional secondary school capacity on a per pupil basis. This is the same approach that is applied across other parts of the city where additional secondary school capacity is required which may be delivered by a replacement building or extension. The finalised SG does not therefore require contributions to be taken in West Edinburgh towards the acquisition, servicing and remediation of land for a new secondary school. The location/s for new secondary school infrastructure in West Edinburgh will be progressed through development of a West Edinburgh spatial strategy to be prepared as part of the new Local Development Plan process. No change is proposed to the finalised SG.</p>	Yes	<p>Page 16 Annex 1, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity - 420 pupils (to mitigate the impact of development within the catchment areas of non-denominational secondary schools within West Edinburgh)'. Page 17 Remove land cost information for west secondary school. Page 32, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity (West Edinburgh)'. Page 32, update contribution rates.</p>

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>Business Gateway (Emp 6), which is supported as an infrastructure Action identified in this SG.</p>			
	<p>In September 2017, the Council submitted an amended SG to the Scottish Government only, with the intention to adopt ...following procedural steps (as stated in the minutes of the Housing and Economy Committee, 7 September 2017). The Scottish Government once again directed the Council not to adopt the SG (published September 2017). The reason for doing so on this occasion was that the Scottish Government considered that ...the process relating to [the previous] supplementary guidance was concluded by the Direction. Accordingly, any further iterations of the SG must be treated as a new document requiring further consultation. As such, the Council is now required to consult on the latest draft of the SG, dated January 2018.</p>	<p>Noted. This is a new draft SG for consultation purposes. No change is proposed to the finalised SG.</p>	<p>No</p>	
	<p>This latest version of the SG therefore still incorporates the changes made to the SG (published in December 2016), removing the increased housing and secondary school on the IBG site. Further changes to the SG (as reported to the Housing and Economy Committee, on 18 January 2018) include:• Regrouping the transport infrastructure contribution zone in the north of the City into several smaller zones;• Redrafting of the healthcare contributions to add greater clarity; and• Updated annexes to reflect January 2018 Action Programme.</p>	<p>Noted. No change is proposed to the finalised SG.</p>	<p>No</p>	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The Council's update of the SG makes reference to the Elswick Supreme Court judgement. In the report to the Housing and Economy Committee (18 January 2018), the Council stated that: "...while some of the contribution zones identified in the Council's previously proposed Supplementary Guidance are relatively large, they still relate to the local area in which infrastructure impacts of development will occur. In contrast, the very broad Strategic Transport Fund approach in Elswick was far more radical than the contribution zone approach as set out by this Council. It is considered that this Council's zonal approach, in the previously proposed Supplementary Guidance, clearly meets the Elswick legal test for planning obligation requirements by ensuring that contributions sought have more than a trivial connection to the relevant development. Despite this reference, the Council has not sought to define ...trivial connection... in the SG. The Council considers that it has taken full regard of the findings in the Elswick Decision in the update of the SG. It should be noted that the ...trivial connection... relates to all infrastructure impacts and not just transport. Therefore, trivial connections apply to all the topics in the SG in spite of the changes made to the latest version of the SG, Wallace remains concerned that the substantive issue of ensuring its impact methodologies are fully compliant with Circular 3/2012 continues to be ignored. It is noted that in the Introduction of the SG the Council makes no commitment to the compliance [our emphasis] with the tests in Circular 3/2012, using phrases such as: "...ensures that developers make a fair and realistic contribution to the delivery of necessary infrastructure and improvement associated with development;...this guidance takes account of Scottish Government Circular 3/2012.</p>	<p>Denied that the Council approach is flawed.</p> <p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elswick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail. The Council is satisfied that the finalised SG provides sufficient basis to demonstrate in respect of all infrastructure impacts that a more than trivial connection between the requirement and a specific development.</p> <p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elswick that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	<p>No</p>	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>It should be noted that the planning obligations and financial contributions set out in this SG are now significantly different from the Action Programme scrutinised during the Local Development Plan (LDP) Examination. As such, this latest version of the SG suffers from having no external independent scrutiny of the Council's revisions as the vast majority of consultation responses continue to be ignored by the Council. The only external scrutiny to date has been the appeal process. This case law supports the general observation that the Council's impact methodologies and determination of mitigation measures through planning obligations and required financial contributions do not meet the tests in Circular 3/2012. The key principle that must be demonstrated in this SG is that the contributions will be lawful in terms of S75. Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) makes provision for planning obligations from a development to mitigate its impact and allow the grant of planning permission. All planning obligations must comply with the requirements set in Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). Circular 3/2012: Planning Obligations and Good Neighbour Agreements makes provision on how to determine planning obligations from a development to mitigate its impact and allow the grant of planning permission by reference to five tests. Section 75(1) requires there to be a relationship between the planning obligation and the land to be burdened by the obligation. The obligation must in some way restrict or regulate the development or the use of that land. The circumstances of when a planning obligation becomes a material consideration to the granting of planning permission is set out in section 37(2), which states: "...In dealing with [an application for planning permission] the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. This includes policies relating to developer obligations. This was further outlined by Lord Keith of Kinkell in the House of Lords in consideration of Tesco Stores Ltd v Secretary of State for the Environment. Lord Kinkell stated that: "... An offered planning obligation which has nothing to do with the proposed development, apart from the fact that it is offered by the developer, will plainly not be a material consideration and could be regarded only as an attempt to buy planning permission. If it has some connection with the proposed development which is not de minimis, then regard must be had to it. Case law has also confirmed the critical importance of Circular 3/2012 as a material consideration to be taken into account when granting planning permission. Circular 3/2012: Planning Obligations and Good Neighbour Agreements makes provision for planning obligations from a development to mitigate its impact and allow the grant of planning permission by reference to five tests. All planning obligations must comply with the requirements of Circular 3/2012. Circular 3/2012 provides a policy background relating to the circumstances where planning obligations can be used. The Circular establishes five policy tests which all planning obligations should meet. Specifically, the Circular emphasises the need to establish a clear and direct link between the development proposal and the infrastructure mitigation offered as part of the developer's financial contribution. This is applicable whether the requirement for infrastructure is a result</p>	<p>Denied that the Council has not had regard to representations. The Council has had regard to all representations made and considered whether substantive change to the previous SG is required. The Council continue to consider that the Finalised SG represents the most appropriate process for securing developer contributions and infrastructure delivery across the City. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and the Circular.</p> <p>The Council deny that there is body of case law to demonstrate that the Council's SG approach does not comply with the Circular. Reporter's decisions mixed. The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elsieck Supreme Court decision and therefore did not have regard to it.</p> <p>The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. The Reporters in that appeal did not conclude that the SG generally failed the tests in the Circular.</p> <p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsieck Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail. The Council is satisfied that the finalised SG provides sufficient basis to demonstrate in respect of all infrastructure impacts that a more than trivial connection between the requirement and a specific development.</p> <p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elsieck that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>Para 60 of decision: "The guidance in the Circular is simply a material consideration which the planning authority must take into account when deciding whether to grant planning permission. The weight which the planning authority attaches to such guidance is a matter of planning judgement."</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>of a direct consequence or a cumulative impact. This should relate in scale and kind to the proposed development. A significant body of planning case law and appeals has been built up that supports this principle through appeals in Edinburgh and more recently, the Elsieck Supreme Court decision. These all have major implications for this SG.</p>	<p>No change is proposed to the finalised SG.</p>		

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>Especially relevant for this SG is the Supreme Court decision which quashed the Supplementary Guidance – Strategic Transport Fund, approved by Aberdeen City and Shire Strategic Development Planning Authority (Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Co Ltd). This Strategic Transport Fund Supplementary Guidance required developers to contribute towards the cost of transport improvements. The Aberdeen City and Shire Strategic Development Planning Authority adopted a cumulative assessment approach to transport infrastructure planning in the Aberdeen City region. A package of interventions was identified relating to transport improvements across the region. All developments within the region were then required to pay a proportionate financial contribution towards the total cost of the entire package. The Cumulative Transport Assessment methodology adopted to assess the impacts and the mitigation was flawed because it based its assessment on the proportion of traffic from each new development using the transport improvements, and not the traffic from new developments as a proportion of the total traffic using the transport improvements. However, even in cases where the impact of development was low, the Aberdeen City and Shire Strategic Development Planning Authority still expected development to make financial contributions to the strategic transport infrastructure. The Supreme Court's decision found that the scheme of the SG and the planning obligations it promotes was unlawful for two separate reasons, as set out in paragraphs 61; 62 and 63. Therefore, a planning obligation will be unlawful if the development had no more than a trivial connection with the infrastructure intervention to which the planning obligation was directed towards, and in other circumstances if there is no restriction or control over the proposal. The Supreme Court decision clarified the issue of a trivial connection relating to the determination of the planning obligation. Having established this principal provision, the Supreme Court decision applies to all planning obligations and is not restricted to transport matters. Therefore, it equally applies to education, greenspace, public realm and primary healthcare matters in the Council's SG. Further, the Supreme Court decision also clarified that the planning obligation will be unlawful if it did not serve a purpose that was related to the development, nor if it did not restrict or regulate the development. The Court made it clear that the planning authority did not have the necessary statutory powers to require payment of the planning obligation as a pre-condition of granting planning permission for the development. Therefore, the planning obligation fell out with the provisions of Section 75 of the Planning Act. This important matter (explained in paragraph 62 of the Supreme Court decision) has been ignored by the Council in its SG. This is because it does not seek to restrict or regulate any development in terms of a requirement to have the necessary upgraded or new infrastructure in place. There are no triggers to restrict or regulate development as set out in the SG which determines how any of the new or upgraded infrastructure is to be delivered. There is therefore no evidence to identify how the Council's assessment of infrastructure requirements are linked to the infrastructure actions and therefore the planning obligations. Until it is proven that there is more than a trivial link, it will not be possible to</p>	<p>The importance of the Supreme Court Elsick Judgment is acknowledged. The Council denies that the finalised SG does not comply with the legal requirements set out in this Judgment.</p> <p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail.</p> <p>The Council consider that the SG and its supporting technical appraisals provide the necessary information to demonstrate in respect of any planning application whether there is more than a trivial link between the development proposed and the infrastructure interventions required. The Council's Action Programme provides clarity on the timing of when the various infrastructure interventions require to be delivered. No change is proposed to the finalised SG.</p> <p>The important requirement of Section 75 that any Planning Obligation must restrict or regulate development was not a part of the pleadings in Elsick and detailed reasonings was not provided in the Judgement.</p> <p>Paragraph 62 states: "Further, the Council did not include any provision in the planning obligation restricting the development of the Elsick site until a contribution was made. Instead it resolved to grant planning permission for the development but to issue that permission only once Elsick had entered into the obligation. The planning obligation was therefore neither restricting nor regulating the development of the Elsick site and so was outside the ambit of section 75."</p> <p>The Council considers that the finalised SG is in general accordance with this legal requirement of Section 75 of the Planning Act. This requirement must be met in each Planning Obligation (S75) itself. The Council default in the Model S75 that the developer contributions require to be paid prior to the commencement of the development. This entirely accords with the Elsick judgment requiring that the planning obligation must restrict the development of the site until a contribution is made.</p> <p>No change is proposed to the finalised SG.</p>	No	Response required.

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	<p>determine the lawfulness of the SG, leaving it vulnerable to legal challenges. The Supreme Court decision has important implications for planning authorities seeking cumulative financial contributions through supplementary guidance. Planning authorities must regulate the necessary infrastructure improvements sought. Accepting an income stream or payment as proposed in the SG from an applicant without regulation is outwith the ambit of Section 75 of the Act.</p>			
	<p>It is necessary for the SG or the its supporting technical appraisals to demonstrate how any impacts on the current infrastructure have more than trivial link and clarify when the necessary upgrades to the infrastructure are required to be carried out. Without this clarification, the Council is promoting a SG which is aligned with a development land levy, to which Lord Hodge concluded that the Planning Act does not allow for an infrastructure levy, stating:...If planning authorities in Scotland wish to establish a local development land levy in order to facilitate development, legislation is needed to empower them to do so... (Paragraph 64; Supreme Court Decision)</p>	<p>Denied. See above response</p>	<p>No</p>	<p>Legal considering issue. No change expected.</p>

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The question of the SG's compliance with the Circular has already proved to be a principal consideration in its application through appeals. This is demonstrated in the recent appeal for a site at Ocean Drive, Leith (reference PPA-230-2201). This appeal was sustained, with planning obligations for transport, education and healthcare infrastructure, as sought on the basis of the SG, quashed by the Reporter. In this appeal, the Reporter indicated his concerns with the SG on a number of reasons relating to the methodology for the transport, education and healthcare contributions sought by the Council. Regarding contribution zones, the Reporter was concerned with the linkages of the contribution zones for both education and transport interventions with the appeal proposal. While clear links could be established between some of the Actions proposed within the contribution zones in the SG, the Reporter found that ...the location of others suggest a much more tenuous link. In this case, the Reporter's logic was to apply the tests in Circular 3/2012 in order to establish whether the contributions were appropriate. Regarding transport, the Reporter found that the Council had not demonstrated compliance with Circular 3/2012 requiring a connection to be established with the individual development and the infrastructure Actions. In particular, the Reporter drew on the Elswick case to demonstrate that there is a distinction between ...sharing the costs among developments which cumulatively required a particular transport investment and the funding of a basket of measures not all of which are relevant to every development. On the basis of this, the Reporter removed the obligation on this proposal to pay to transport, primary healthcare and education interventions as set out in the SG. This appeal decision demonstrated that the Council's proposed Contribution Zones fails to demonstrate a more than trivial link with a proposal and the consequential infrastructure actions. The concept of Contribution Zones based on their underlying methodology put forward in the SG and its supporting technical appraisals was not supported at appeal.</p>	<p>Denied. Reporter decisions mixed. The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elswick Supreme Court decision and therefore did not have regard to it. The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. The Reporters in that appeal did not conclude that the SG generally failed the tests in the Circular. No change is proposed to the finalised SG.</p>	No	
	<p>It is evident that the concept of contribution zones requires a further review by the Council to comply with the tests in Circular 3/2012. It is therefore incumbent on the Council to demonstrate the necessary direct link between various allocated sites and their supporting infrastructure requirements in this updated SG.</p>	<p>Denied. Reporters have accepted SG in other decisions such as PPA-230-2208. See above response.</p>	No	Response required.

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>Wallace is concerned that the proposed SG with its supporting technical studies does not demonstrate the necessary compliance with the requirements of Section 75 of the Planning Act as it fails to establish more than a trivial link between development and the infrastructure improvements sought. The SG does not outline how it regulates or controls development to meet the implementation programme prepared in the Action Programme. It also fails to meet the tests in Circular 3/2012 as its underlying impact assessment methodologies do not either measure direct impacts alone or cumulatively. In particular, the scale of area chosen as a contribution zone for any topic does not determine if the financial contributions sought ...fairly and reasonably relate in scale and kind to the proposed development. This has been demonstrated with regard to independent reviews of previous SGs in the appeal process. The relatively minor changes to the SG by the Council do not address these fundamental points.</p>	<p>The Council's approach implements the principles of the Circular in a way which allows consideration of more than one development, or cumulative impact allowing for the consideration of the scale of growth in Edinburgh, in the interests of good overall infrastructure planning. The Council's cumulative assessment approach is supported by Scottish Planning Policy, Circular 3/2012 Planning Obligations and the approved Strategic Development Plan.</p>	No	
	<p>In the latest version of the SG, the Council at least now recognises that some future impacts will arise which are unrelated to the approved LDP development strategy. The key issue is whether these additional statements are now reflected in underlying methodology adopted to assess the financial contributions proposed in the SG. The Council has updated its impact assessment and now adopts its Education Infrastructure Appraisal (2018) for the purpose of this SG. This Education Infrastructure Appraisal (2018) in Section 4 notes: ...Some of the primary schools which will require new accommodation as a result of the LDP will also require additional accommodation throughout the period of the LDP as a result of either developments which already have planning approval and/or due to the impact of rising primary school rolls in the area (paragraph 4.16) Unless the impacts from these other factors are separated and excluded for the purposes of assessing the financial contributions for allocated sites in the LDP, this confirms that the methodology adopted by the Council as Education Authority does not comply with the requirements of Section 75 of the Planning Act. This approach is necessary to comply with the matters raised in the Supreme Court decision or with the tests in Circular 3/2012. There is no evidence in the Education Infrastructure Appraisal (2018) or the SG that this further stage in the evaluation process has been carried out by the Council and financial contributions adjusted. The Council's proportionate share of the cost of the planning obligations is still not known. Therefore, the financial contributions in the SG continue to be an over estimate for the allocated sites in the LDP's development strategy.</p>	<p>Strongly denied that the SG expects developers to contribute to fix existing shortcomings. The finalised SG explicitly sets out that the Council will fund through other methods any component of new infrastructure that is derived from existing capacity issues (final para pg 5). Contributions are only being sought for additional infrastructure required as a result of new developments.</p> <p>School roll projections allow the Council to assess whether there is sufficient spare capacity to accommodate the number of additional pupils expected to be generated by new housing development within an area. Where there is insufficient spare capacity education infrastructure actions have been identified. In order that new housing development is not required to contribute to the provision of additional capacity that is over and above what is required to mitigate the cumulative impact of new development, the scale of the education infrastructure actions reflect the number of additional pupils expected to be cumulatively generated from new development only. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The Council has also carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p> <p>The Education Appraisal will be updated to clarify that none of the identified actions are as a result of housing developments not specified within the Appraisal or rising rolls. No change is proposed to the finalised SG.</p>	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The methodology for an education impact assessment for planning purposes must comply with the tests in Circular 3/2012 and with the case law regarding the use of Section 75 Agreements. A compliant methodology is recommended to the Council in Annex 1 that has been tested at appeal and upheld. The Council is recommended to adopt this approach. The methodology used in the SG factors in projected future trends in the pupil population across its school estate and does not separately measure the underlying baseline school roll in its schools over its projection period. As a consequence, it does not separately measure the direct impacts of new development as part of the LDP's approved development strategy. Without substantial modification, this SG will be subject to continuous challenge as applications for the allocated and windfall sites are submitted for planning consent. Each application could undertake a school impact assessment for all schools in the proposal's catchment, applying an assessment methodology that complies with Circular 3/2012, and provide a bespoke solution to remedy any infrastructure deficit arising from its direct impacts.</p>	<p>Denied. The Council continue to consider that the Finalised SG represents the most appropriate process for securing developer contributions and infrastructure delivery across the City. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act and the Circular . No change is proposed to the finalised SG.</p>	No	
	<p>Without substantial modification, this SG will be subject to continuous challenge as applications for the allocated and windfall sites are submitted for planning consent. Each application could undertake a school impact assessment for all schools in the proposal's catchment, applying an assessment methodology that complies with Circular 3/2012, and provide a bespoke solution to remedy any infrastructure deficit arising from its direct impacts.</p>	<p>Denied. See above response</p>	No	
	<p>In the case of a requirement for a new school, or in some cases an extension to an existing school, the Council needs to recognise that a broad indication of the new or amended catchment area needs to be provided, factoring in consequential changes to pupil attendances and their re-distribution at the schools affected.</p>	<p>Denied that is appropriate to provide this information as part of the SG. It is a matter for the Education Authority to determine how best to meet Education needs, in terms of catchments and school sizes. Where the Education Authority consider it necessary to revise catchment areas they will follow the relevant separate legal process.</p>	No	

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	<p>Where existing pupils are expected to attend new schools as a result of catchment area reviews or replacement of existing schools, the Council should be responsible for its proportionate share of the mitigation costs in accord with Circular 3/2012. The methodology used by the Council to calculate the cost of the planning obligations is only explained in part in the SG. It explains that the impact of the approved development strategy in the adopted LDP has now been assessed with reference to the Education Infrastructure Appraisal (2018). The Education Contribution Zone approach in the SG does not explain the implications of establishing new catchment areas for the new schools in the methodology adopted by the Council. In particular, the number of existing pupils which will occupy places in each of the new schools and any extensions has been ignored. This equally applies to highlighting the number of existing pupils being redistributed in any catchment area reviews necessary to utilise existing capacity in the school estate. This is best illustrated with reference to the relocation of the Victoria Primary School to a new site at Western Harbour. The School currently has ten classrooms and is proposed to be replaced by a new two stream (14 classroom) school. The proposed new school will have capacity for 420 pupils, and is due to be open by August 2020. The Council's Primary School Roll Projections 2017-2027 confirm that the 2017 school roll for Victoria Primary School was 261 pupils. This is projected to rise to 309 pupils by 2020, but it is not clear what proportion of this is due to the projected impact of new development. The Council's paper entitled Proposal to Relocate Victoria Primary School to a new Building in the Western Harbour (January 2017) also proposes to undertake a catchment review to ...address accommodation issues in the Trinity and Victoria areas. This will involve part of North Leith being realigned from Trinity Primary School to the new Victoria Primary School. The Council's paper notes that only one of the existing 29 primary pupils in the North Leith Area to be relocated currently attend Victoria Primary School. The proposed change to the catchment area will, therefore, result in additional existing pupils attending the new Victoria Primary School. Based on the 2017 school roll for Victoria Primary School, the 29 existing pupils within the North Leith Area and existing rising school rolls, a significant proportion of the new primary school will consist of existing pupils. It is estimated that existing pupils will make up between 280-300 pupils within the new school on opening in 2020. This is equivalent to 67 – 71% of the school roll of a 420 capacity school. As set out above, the Council should be responsible for its proportionate share of the mitigation costs for existing pupils and placing requests. Despite this, Annex 1 of the SG expects financial contributions from the 3,662 flats and 211 homes in the sub-area to provide financial contributions of £12,840,094. This is 92% of the total cost of the new school, as set out in Annex 1 of the SG. While it is noted that this includes a contribution towards an extension at Holycross RC Primary School (£784,388), taking into account the Council's proportionate share of existing pupils, the total cost for developers should be reduced from 92% of the total costs of the new primary school to approximately 29 - 33%.</p>	<p>If the number of additional classrooms that are delivered is no more than what is necessary to accommodate the number of pupils expected to be cumulatively generated from development sites (as set out in the Education Appraisal and Action Programme), developer contributions from the relevant part of the Contribution Zone will be expected to cover the full cost of delivering the new infrastructure. The Council may identify a need to provide education infrastructure over and above what is required to accommodate the number of pupils expected to be cumulatively generated from development sites. The Council will not seek developer contributions to cover the cost of providing this additional capacity; instead the Council will seek alternative funding mechanisms.</p> <p>A new non-denominational double stream school is required at Leith Western Harbour to accommodate the pupil growth from new housing developments identified within the Council's Education Appraisal as well as existing pupils from within the Western Harbour. It is estimated that the new school would have to accommodate 395 pupils.</p> <p>There has been a long-standing proposal to provide an additional primary school within as a result of new housing development within the Western Harbour. There are already 120 non-denominational primary school pupils from the first phases of development at Western Harbour, most of which attend the nearby Victoria Primary School. 275 new pupils are expected to come from new housing in the area.</p> <p>A new school is therefore now required to alleviate accommodation pressures as a result of the new development. The Council's Action programme identifies a requirement for the school to be delivered by August 2020.</p> <p>New housing developments are expected to cover approx. 70% of the costs of this new double stream school (275/395). The Council will seek alternative funding mechanisms for the 30% of costs which can be attributed to the 120 existing non-denominational pupils from the Western Harbour. This split applies to the estimated infrastructure and land costs and is reflected in the required contributions set out in the supplementary guidance.</p> <p>The Council has carried out a statutory consultation proposing the relocation of Victoria Primary School to the new school. Although a new double stream primary school is required to accommodate pupils from new development as well as recent developments within the Western Harbour, additional capacity would be required to relocate Victoria Primary School to the new building.</p> <p>A 'phase 2' expansion strategy will therefore be put in place to enable the building to accommodate a relocated Victoria Primary School. This additional capacity is unlikely to be required for 2020 as the anticipated new housing will not have fully progressed and therefore there is likely to be spare capacity in the first few years.</p> <p>As the 'phase 2' expansion would provide education infrastructure over and above what is required to accommodate the number of pupils expected to be cumulatively generated from new development sites and the Western Harbour, the Council will therefore not seek developer contributions to deliver this part of the new infrastructure.</p>	Yes	Add to page 26: The housing output for Sub-Area LT-2 is only expected to cover part of the total cost of delivering the New Primary School and Nursery (70%). The remaining part has been attributed to existing housing at the Western Harbour.

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	It is also noted that the Council has assigned a land value against the site for the new school at Western Harbour (£1,450,000). This is despite the Council confirming in its Proposal to Relocate Victoria Primary School to a new Building in the Western Harbour (January 2017) that the site will be transferred to the Council for free from Forth Ports as part of an existing Section 75 Agreement.	If land value is offset against contribution requirements, it is perfectly proper for the Council to require proportionate shares of the land value from other developments that require the infrastructure. No change is proposed to the finalised SG. .	No	
	This example is only one of several which demonstrates that the Council's methodology for assessing the financial contributions for its infrastructure Actions fails the tests in Circular 3/2012. The Council's methodology simply integrates the cost of rectifying shortcomings in its school estate wholly into the infrastructure Actions arising from the LDP's development strategy.	Strongly denied that the SG expects developers to contribute to fix existing shortcomings. The School roll projections allow the Council to assess whether there remains any capacity at each school which new development can then use up. Contributions are only being sought for additional infrastructure required as a result of new developments. The finalised SG explicitly sets out that the Council will fund through other methods any component of new infrastructure that is derived from existing capacity issues (final para pg 5). School roll projections give an indication of where there may be accommodation pressures. It is acknowledged that some of these accommodation pressures may be attributable to rising rolls from existing housing. Therefore, in order that new housing development is not required to contribute to the provision of additional capacity that is over and above what is required to mitigate the cumulative impact of new development, the education infrastructure actions reflect the number of additional pupils expected to be cumulatively generated from new development only. There is a separate process for providing additional infrastructure to deal with rising school rolls from existing housing. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The Council has also carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.	No	
	This proposed level of financial contribution is dramatically out of proportion to the impact of development. In order to ...fairly and reasonably relate in scale and kind... to the development, the Council should pay a significant proportion of the costs. As it currently stands, the proposed planning obligation for the Leith	Denied. See above response	No	
Barratt David Wilson Homes (Clarendon Planning and Development Ltd)	Process by which non-LDP sites (including Policy Hou1 greenfield sites) or increases in capacity on LDP sites are treated with respect to contributions towards education/transport infrastructure where this infrastructure has essentially already been funded by LDP sites – 'additional' sites/units should be treated on stand-alone impact basis.	The suggestion that a 'first come, first served' basis should be used is not accepted. This does not follow the cumulative approach to mitigating the impact of new development. School roll projections are the basis for determining if there is capacity within a school to accommodate the cumulative number of additional pupils from new development, not the current school roll. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	<p>Significant cost increases for education infrastructure and associated impact on viability and delivery of LDP sites where Section 75 agreements are not already in place. The cost increases require justification (including service and remediation cost base evidence and more realistic valuations of land for new schools). The Guidance utilises costings as at December 2017. The last version of the Guidance (March 2017) utilised costings as at 2015 Q1. There is a significant cost increase over this period for new primary schools (between 18% and 26% depending on school size, with a new single stream 7 class school increasing by 20% from £7.59m to £9.14m) and primary school extensions (between 11% and 13% depending on size) plus lesser increases for new secondary school provision. Where Section 75 agreements are still to be agreed on LDP sites, there is potential for a significant cost impact and direct impact on viability and delivery. Additionally, where land contracts have been concluded on previous s75 figures, renegotiation will be required adding to delivery delays. The costs schedule in Annex 1 contains inflationary provision but the additional costs appear to be significantly in excess of this level – clarity is required on the evidence base for these increases, also to ensure 'double-counting' of inflation and estimated cost increases is avoided.</p>	<p>The educational infrastructure costings table has been removed from the SG. This information will now be in the Education Appraisal along with a more detailed explanation of how the costs have been determined. The costs quoted within the Supplementary Guidance have been indexed to Q4 2017 (BCIS Forecast All-in Tender Price Index - 313) to take account of inflation. Previous versions of the supplementary guidance indexed costs to Q1 2015 (BCIS All-in Tender Price Index - 270). The estimated area for each infrastructure action is regularly reviewed in order that the actions reflect the Council's current accommodation requirements. The area estimates have been reviewed again as part of finalising the SG. The overall area for each new primary school and nursery has been reduced from what was presented in the draft SG. As a result, the estimated cost of delivering a new primary school and nursery has been reduced which has been reflected in the contribution rates set out in the finalised guidance.</p>	Yes	<p>Page 15, update Capital Cost column with new primary school costs. Annex 1, Update contribution rates where required. Page 4, add 'Information about how the cost of these actions has been determined is set out in the Education Appraisal (August 2018)' at the end of the third paragraph. Page 18, remove Revised Educational Costings Action Plan Costings as at December 2017 table.</p>
	<p>Fundamental concern remains in applying contributions to primary healthcare where catchments and delivery are not within the Council's control. Notwithstanding this concern, there is a need to reflect shared funding of primary healthcare infrastructure where developers and Edinburgh Health and Social Care Partnership are to share costs but this is not reflected in rates per unit.</p>	<p>Noted. The Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal as part of the process of planning future health care services in light of changing demands as a result of both greenfield and brownfield development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.</p>	Yes	<p>The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the</p>

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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				EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development. "
	It is noted that the revised Guidance has been prepared in conjunction with the Local Development Plan Action Programme (January 2018). The approach is as previously set out, i.e. cumulative impact of new development on the city's infrastructure based upon Local Development Plan proposals. This approach retains contribution zones for each type of infrastructure with the total cost of delivering infrastructure, including land requirements, shared proportionally between proposed developments within each zone. A concern still exists in relation to infrastructure delivery within contribution zones, i.e. if the Council do not employ forward funding for all necessary education and transport actions, allocated sites could be held back until funds are accrued from all identified sites within a zone. Further clarity would be welcomed in this respect.	The supplementary Guidance acknowledges that the actual costs of each project could vary from the estimates currently provided. If the actual costs of delivering the new infrastructure are lower, S75 legal agreements can make provision for the repayment of unused contributions. In addition, applicants have the opportunity to ask the Council to consider modifying existing S75s to reflect contribution rates that have been updated to take account of up-to-date costs. No change is proposed to the finalised SG.	No	
	The impact of development has been assessed in conjunction with a revised LDP Education Appraisal (January 2018). In terms of the general approach, it is noted that in the case of sites coming forward via LDP Policy Hou1 (part 2), a fair and reasonable approach has to be applied to ensure that existing LDP sites and new sites are treated in the same manner. However, on the basis that the Guidance (and associated Action Programme) have identified necessary infrastructure requirements to accommodate planned growth within each particular zone, this would suggest that the infrastructure costs will be met by LDP sites. Therefore, where a new site via Policy Hou1 comes forward, what is the justification of the Council requesting a similar contribution which not actually be required to implement the works?	If additional greenfield land is brought forward under Policy Hou 1, this is dealt with by Clause C of the SG. No change is proposed to the finalised SG.	No	
	It is noted that the Guidance allows for the Council to re-assess contribution zones and actions where new sites come forward but, in terms of Section 2a Part C (i) where the Council deem existing actions to be sufficient, it is not clear where the additional funds would be directed if the infrastructure is already funded. Whilst it is appreciated that the Council wish to apply a degree of fairness to contribution towards new infrastructure, the proposed approach raises the question of whether seeking additional contributions (on the same pro-rata basis) in cases where infrastructure actions are already funded is reasonable under the tests of Government advice within Circular 3/2012 (Planning Obligations).	If infrastructure is built and funded by borrowing then contributions will be used to service borrowing costs associated with the action. The review of the Action Programme on an annual basis provides the opportunity to revise actions and the associated costs set out in the SG. No change is proposed to the finalised SG. .	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	New non-LDP sites (or increases in capacity on LDP sites) should be treated on a stand-alone basis with respect to their direct impact. Whilst not wholly equitable with LDP sites, this would provide a clearer basis to identify direct impact and all parties would be aware of the position whereby the certainty of allocated sites would come with the burden of associated infrastructure costs (in relation to their own impact) which may not be replicated by subsequent 'new' sites.	The Council takes a cumulative approach to the mitigate of new development on infrastructure. Under the approach no sites are considered on a standalone basis. If additional greenfield land is brought forward under Policy Hou 1, this is dealt with by Clause C of the SG. No change is proposed to the finalised SG. .	No	
	Land values for new school sites have been retained as per the previous version of the Guidance (i.e. £2.95m for 2 hectare/4.94 acre site at Broomhills, equating to £600k per acre). The values per acre range from £177k at Granton Waterfront to £961k at Maybury. These values approximate residential values and are over-inflated.	The Council has commissioned an independent valuation of the costs which could be applied to the school sites in Action Programme. The SG reflects the costs set out in this valuation. No change is proposed to the finalised SG. .	No	
	It is noted that 'servicing and remediation' costs have been applied, i.e. £5.12m at Broomhills. An evidence base is also required to justify these cost assumptions.	The costs attributed to 'Servicing and Remediation' in the draft guidance came from an external consultant's report that identified potential site abnormal costs. The figures are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'. The Council commissioned an independent assessment by the District Valuer in regards to the land values in the SG	Yes.	Page 4, paragraph 5, delete 'the costs of the land, and its servicing and remediation is included' replace with 'the value of the land, as well as potential abnormal site costs are included'. Page 15 + 16, replace all 'S+R' with 'Abnormals', Page 17 Replace 'Q4 2017 Servicing and Remediation' with 'Q4 2017 remediation and other abnormal costs'.
	Cost breakdowns per contribution zone can be derived from the information contained within Annex 1 and the LDP Action Programme. However, it would be useful to state the overall capital costs per zone within each zone map page (where rates per unit are provided). Total cost as per Annex 1 table on pages 15-16 of Guidance is £58.2m. Total housing output is 3,267 units (2,496 houses and 771 flats) as per Table 7B of the LDP Education Appraisal 2018. The rates per house and flat set out in the new Guidance equate to the total sum for this area but for clarity, it would be useful for ease of reference to state the total capital sum for the zone in the same section.	Noted. Change justified.	Yes	Total zone costs to be added to finalised SG.
	The cost increases will impact upon LDP sites which have not yet reached s75 agreement stage. The impact upon overall viability requires to be monitored and assessed if the LDP strategy is to be delivered via existing allocated sites.	Noted. No change is proposed to the finalised SG.	No	
	Additionally, within West Edinburgh it is noted that the location of the new secondary school is still to be confirmed. The associated uncertainty over financial contribution levels for allocated sites (land and servicing contributions could vary considerably) within this zone is a clear issue in the context of bringing sites forward (and associated land contracts).	New secondary school capacity is required in West Edinburgh to accommodate the growth in pupils from new housing development. Although the Council's preferred solution is to deliver one or more new secondary school, there are currently no sites identified within the Action Programme. Therefore, contributions towards new secondary capacity will be based on the estimated cost of providing additional secondary school capacity on a per pupil basis. This is the same approach that is applied across other parts of the city where additional secondary school capacity is required which may be delivered by a replacement building or extension. The finalised SG does not therefore require contributions to be taken in West Edinburgh towards the acquisition, servicing and remediation of land for a new secondary school. The location/s for new secondary school	Yes	Page 16 Annex 1, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity - 420 pupils (to mitigate the impact of development within the catchment areas of non-denominational secondary schools within West Edinburgh). Page 17 Remove land cost information for west secondary school. Page 32, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity (West Edinburgh)'. Page 32, update contribution rates.

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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		infrastructure in West Edinburgh will be progressed through development of a West Edinburgh spatial strategy to be prepared as part of the new Local Development Plan process. No change is proposed to the finalised SG.		
	The proposed approach is as per previous guidance with specific actions linked to the LDP Action Programme and, where cumulative impact is identified, the establishment of contribution zones, taking into account the LDP Transport Appraisal. It is noted that the Council will continue to seek contributions towards the Edinburgh Tram to allow for repayment of borrowing for the completed Phase 1A and future provision of extension of the route to Leith and Newhaven with contributions based on the type of development, distance from tram route and size of development.	Noted. No change is proposed to the finalised SG.	No	
	The delivery of other transport infrastructure is noted as set out within the Guidance, being by way of planning condition/legal agreement of planning permissions with associated contributions.	Noted. No change is proposed to the finalised SG.	No	
	As with education infrastructure, where Action Programme requirements are funded by LDP proposals, it is not clear what justification the Council would have to seek contributions from additional sites within a contribution zone.	Other sites that are considered to generate a significant amount of traffic will demonstrate through an appropriate transport assessment the impacts, as required by policy Tra 8, through the development management process. The mitigation identified may be the same actions as identified in the Action Programme and they should contribute their share towards the cost of the action. No change is proposed to the finalised guidance.	No	
	Proposals are noted with regard to policy requirements, maintenance provisions and investment priority review. Further information on the latter is welcomed to ensure provisions are fair and reasonable and related to specific sites.	The Council's report on 23 January to Finance & Resources Committee sets out the financial impact of delivering the Action Programme. The capital investment framework report considered by the Finance and Resources Committee on 5 September 2017 referred to potential additional capital funding of £35m for LDP Action Programme projects and £1m to help support additional revenue costs. The availability of this funding is subject to the achievement of a balanced revenue budget position, and will be considered by the Council as part of its budget setting process. No change is proposed to the finalised SG.	No	
	The Guidance provides further information on the justification for primary healthcare requirements. It is noted that the Edinburgh Health and Social Care Partnership (EHSCP) has prepared an appraisal (December 2017) of the impact of new development via the LDP and this has been used as a basis for actions within the LDP Action Programme and contributions sought via this Guidance.	Noted. Noted. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	The wider integration of service delivery is welcomed and it is noted that the EHSCP is responsible for operational oversight for NHS and local authority care services and is governed by the Edinburgh Integration Joint Board, a partnership between City of Edinburgh Council and NHS Lothian.	Noted. Noted. No change is proposed to the finalised SG.	No	
	However, there remains a fundamental concern with applying developer contributions to primary healthcare and the ability of the Council to enforce/implement a service that is not wholly within their control (NHS and/or private delivery). It is noted that this concern was supported in the findings of a recent planning appeal case (Port of Leith HA, Ocean Drive, Ref.PPA-230-2201).	Noted. Planning Appeal decisions on this issue have been mixed. The Council has had regard to the Reporters concerns in revising the text of the SG on this matter (see below). The Council considers that the finalised SG complies with the law and is in accordance with the aims and requirements of the Circular, in respect of the healthcare requirement.	No	
	Furthermore, in applying a contribution to a wider area where site-specific impact is clearly more ambiguous (and the Council are not in control of defining catchments), the Guidance risks being contrary to the recent Elswick Supreme Court decision in terms of adherence with Circular 3/2012.	Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.	Yes	The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development. "

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	Annex 1 provides actions with associated costs which are split into rates per dwelling and per student (at a lesser rate). It is noted that funding of the healthcare requirements is to be a combination of developer and the EHSCP. On the basis that developers are not being asked to fund all of the proposed healthcare actions, this will require to be reflected in the rate per dwelling/student set out on Pages 60-61. For example, the cost of a required new practice at Leith Waterfront is £4.5m covering a new population of 10,000 (£450 per patient). The per dwelling rate is £945 (the Guidance utilises an average household size of 2.1 x £450) and the per student cost is £150 (one third that of patient cost). As set out, the developer of housing or student accommodation would fund 100% of the costs of the new practice. This is at odds with the healthcare actions set out on Page 59 which indicate funding is a combination of EHSCP and developer.	Developers will be expected to fund 100% of the cost of the Leith Waterfront practice as the new practice is required as a direct result of new development only.	Yes	The text of the table in Annex 4 will be changed to provide additional clarification as to which actions will be entirely funded by developer contributions.
	Notwithstanding the mechanics of how primary healthcare costs are shared, there remains a concern that developers are now being asked to contribute financially to facilities that are already the subject of alternative funding streams via the NHS and private investment. Indeed, it is noted in the Guidance that 64 of the 72 health practices in Edinburgh are independent contractors, where private investment is applied on a business case basis. It is also not clear as to whether staffing costs will start to fall under this wider contribution remit as this seems to be one of the primary issues in general which is hindering healthcare provision.	Developer contributions are towards capital costs of new infrastructure only required as a result of new development and not staffing costs. The text of the SG will be altered to provide additional clarification.	Yes	The text of the section 2e of the SG will be altered to provide additional clarification as follows; "The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development. "
	It is noted that the provisions for taking into account development viability, the approach to legal agreements and the audit/review process is as per previous Guidance. It should be reiterated that the increased costs attributed to education infrastructure will have a further direct impact on development viability, with particular regard to sites where contractual agreements are in place.	Noted	No	

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<p>• New Ingliston Ltd • FSH Airport (Edinburgh) Services Ltd • Murray Estates Lothian Ltd (GVA Grimley Ltd)</p>	<p>It is acknowledged that infrastructure provision associated with new development can be required, where reasonably and fairly related to the nature of development proposed. The content and objective of Policy DEL1 within the Edinburgh Local Development Plan (ELDP) is acknowledged. However at the ELDP Hearing it was explained by the Council that it would carry the risk of the required infrastructure provision and this would not delay development (Reporters Report, page 146, paragraph 96). This is relevant in the context of the statement made within the SG (section 2) that 'development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time'. We are concerned that this, together with other statements made within the draft SG e.g. page 5, criteria 'E' and 'F'; page 13, paragraphs 1 and 2 which contradict the position taken by the Council in the ELDP Hearing as noted above. A particular concern that emerges from the above is in relation to criterion 'E' (page 5) which suggests that development should only progress where it is demonstrated that education infrastructure can be delivered; criterion 'F' identifies phasing conditions as a potential mechanism to reflect the delivery programme of education infrastructure. Although this point is raised under 'education', we are nevertheless concerned about the principle of this. It is unreasonable for the delivery of development to be constrained particularly when developer contributions have been secured via S75 agreement(s).</p>	<p>The Council's report on 23 January to Finance & Resources Committee sets out the financial impact of delivering the Action Programme. The capital investment framework report considered by the Finance and Resources Committee on 5 September 2017 referred to potential additional capital funding of £35m for LDP Action Programme projects and £1m to help support additional revenue costs. The availability of this funding is subject to the achievement of a balanced revenue budget position and the collection of developer contributions to repay the funding. Once available, this funding will be used to front fund infrastructure in advance of the collection of developer contributions. No change is proposed to the finalised SG.</p>	No	
	<p>It will be necessary to consider application proposals on their merits in the particular circumstances at the time of their determination to establish appropriate timing and phasing for additional infrastructure improvement / delivery. This is relevant in the context of section 3 (viability and funding mechanisms) and section 4 (legal agreements and use of monies).</p>	<p>Timing and phasing of actions to be delivered by developers apart of a planning application will be considered as part of the planning application. The Action Programme sets out the timing and phasing of actions to be delivered by the Council. No change is proposed to the finalised SG.</p>	No	
	<p>It is necessary to keep technical infrastructure appraisals and assessments under review in order to ensure that infrastructure actions are based on accurate and up to date information, including costs. Consequently, there is still a requirement for the detailed analysis of infrastructure developer contributions to be tested in the context of Circular 3/2012. This is relevant in the context of current application proposals such as IBG Phase 1 which is under consideration currently.</p>	<p>Technical Appraisals are reviewed annually as part of the updating of the Action Programme and Housing Land Audit. The SG has been designed to enable technical annexes to be updated as and when required to reflect changes in the Action Programme. No change is proposed to the finalised SG.</p>	No	
	<p>Assuming that contributions have been found to be appropriate having regards to the tests of Circular 3/2012, the phasing and timing of contribution payments is particularly important in respect of matters such as cash flow. We welcome that this is generally acknowledged within the draft SG.</p>	<p>Noted. No change is proposed to the finalised SG.</p>	No	
	<p>With regards to the General Developer Contributions Approach, it is important that existing deficiencies are not sought to be resolved via developer contributions. We therefore welcome the acknowledgement that proposals will be required "where relevant and necessary" to mitigate any negative "additional impact" and "where commensurate to the scale of the proposed development".</p>	<p>Noted. No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	We do not object to the contribution zones insofar as they have been established in the current draft SG.	Noted. No change is proposed to the finalised SG.	No	
	With regards to West Edinburgh Transport Contribution Zone (within which IBG is located), it is noted that a 'spreadsheet tool has been developed to facilitate the calculation of appropriate contributions...'. To our knowledge, this is not yet available and we would welcome confirmation that this will be made available to our client as a significant land owner in West Edinburgh.	Noted. The spreadsheet is not part of the supplementary guidance itself but a tool to aid calculations of the contributions. However, it is intended to be published alongside when the SG is formally published. No change is proposed to the finalised SG.	No	
	Education Infrastructure: We note the location of the site within the West Edinburgh Contribution Zone. We are concerned that contributions – where these have been found to be fair and reasonable - will be held for 30 years from the date of construction of new school infrastructure. It is noted that this is to enable payments to be used for unitary charges but we do not consider that it is reasonable for developers to carry this additional burden.	In response, the funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG.	No	
	Transport Infrastructure: With regards to Part 2b.Transport Infrastructure, the proximity of the tram route and associated infrastructure should be a key consideration in supporting ambitious sustainable mode share targets in new development. For example, the presence of a tram stop in the middle of a site – such as the IBG - means the council should be accepting low impact on the road network and in turn the developer should pay a lower share of road contributions as a result.	In response, junction improvements are important for supporting public transport accessibility and active travel connectivity as well as mitigating increases in private motorised vehicular traffic. Such sustainable modes will also be used by some occupants of development adjacent to tram stops, and so it is reasonable that such developments contribute to non-tram actions. No change is proposed to the finalised SG.	No	
	At section 2b (Transport Infrastructure), we support part H(ii) but would seek confirmation that this also applies in retrospect. In this regard, we would request that the first sentence of part H(ii) should be changed to read: "In the event of a developer contributing or having contributed (our emphasis) land towards the development of the tram system,..."	The wording is considered to be acceptable. Adding additional wording in the past tense weakens the policy. No change is proposed to the finalised SG.	No	
	2c. Greenspace: We note the position in respect of greenspace infrastructure actions but there appears to be a lack of detail to give certainty in respect of the costs. We welcome that the exact figure will depend on the specific nature of the greenspace in question although the three examples upon which cost calculations have been made may require further scrutiny before any commitments can be made.	Noted. No change is proposed to the finalised SG.	No	
	2d. Public Realm: With regards to public realm, we note that a new process is being developed to help set priorities for public realm investment. In the meantime, pending an updated public realm strategy, strategic public realm contributions will not be pursued. On this basis, we would welcome and seek the opportunity to engage with this process.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes. No change is proposed to the finalised SG.	No	
	2e. Primary Healthcare: The status of this action in respect of West Edinburgh, insofar as it relates to IBG, is 'exploring options' yet a location has been established i.e. co-located with new Maybury Primary School. We would welcome clarity in respect of this e.g. location, the estimated cost and how this will be delivered and funded (including apportionment of costs to relevant landowners and developers etc).	At this time the co-location with the new school is currently a proposal and yet to be finalised. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Summary: In overall terms, it is important that where development contributions are sought, these will only be where fairly and reasonably related to the development proposed, as advised in Circular 3/2012. We broadly support the overall approach and the Council's acknowledgement in the draft SG that contributions will be sought in this context; and that final costs and funding mechanisms will be subject to further discussion in the context of proposals made.	Noted. No change is proposed to the finalised SG.	No	
	As a final comment, reform of the planning system in Scotland is underway and the emphasis on development delivery is apparent. With this in mind, we hope that the final version of the SG will be drafted in this spirit and implemented accordingly.	Draft Planning Bill not relevant to this SG, Council has responded separately to it. SG requires to be prepared in accordance with the current law. No change is proposed to the finalised SG.	No	
New Ingliston Ltd (GVA Grimley Ltd)	It is acknowledged that infrastructure provision associated with new development can be required, where reasonably and fairly related to the nature of development proposed. The content and objective of Policy DEL1 within the Edinburgh Local Development Plan (ELDP) is acknowledged. However at the ELDP Hearing it was explained by the Council that it would carry the risk of the required infrastructure provision and this would not delay development (Reporters Report, page 146, paragraph 96). This is relevant in the context of the statement made within the SG (section 2) that 'development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time'. We are concerned that this, together with other statements made within the draft SG e.g. page 5, criteria 'E' and 'F'; page 13, paragraphs 1 and 2 which contradict the position taken by the Council in the ELDP Hearing as noted above. A particular concern that emerges from the above is in relation to criterion 'E' (page 5) which suggests that development should only progress where it is demonstrated that education infrastructure can be delivered; criterion 'F' identifies phasing conditions as a potential mechanism to reflect the delivery programme of education infrastructure. Although this point is raised under 'education', we are nevertheless concerned about the principle of this. It is unreasonable for the delivery of development to be constrained particularly when developer contributions have been secured via S75 agreement(s).	Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development. The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself, this will help ensure that the issue of third party delays in infrastructure delivery does not normally arise. No change is proposed to the finalised SG.	No	
	It will be necessary to consider application proposals on their merits in the particular circumstances at the time of their determination to establish appropriate timing and phasing for additional infrastructure improvement / delivery. This is relevant in the context of section 3 (viability and funding mechanisms) and section 4 (legal agreements and use of monies).	Noted. No change is proposed to the finalised SG.	No	
		Noted. No change is proposed to the finalised SG.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Assuming that contributions have been found to be appropriate having regards to the tests of Circular 3/2012, the phasing and timing of contribution payments is particularly important in respect of matters such as cash flow. We welcome that this is generally acknowledged within the draft SG.	Noted. No change is proposed to the finalised SG.	No	
	With regards to the General Developer Contributions Approach, it is important that existing deficiencies are not sought to be resolved via developer contributions. We therefore welcome the acknowledgement that proposals will be required "where relevant and necessary" to mitigate any negative "additional impact" and "where commensurate to the scale of the proposed development".	Noted. No change is proposed to the finalised SG.	No	
	We do not object to the contribution zones insofar as they have been established in the current draft SG.	Noted. No change is proposed to the finalised SG.	No	
	With regards to West Edinburgh Transport Contribution Zone (within which IBG is located), it is noted that a 'spreadsheet tool has been developed to facilitate the calculation of appropriate contributions...'. To our knowledge, this is not yet available and we would welcome confirmation that this will be made available to our client as a significant land owner in West Edinburgh.	Noted. The spreadsheet is not part of the supplementary guidance itself but a tool to aid calculations of the contributions. However, it is intended to be published alongside when the SG is formally published. No change is proposed to the finalised SG.	No	
	Education Infrastructure: We note the location of the site within the West Edinburgh Contribution Zone. We are concerned that contributions – where these have been found to be fair and reasonable - will be held for 30 years from the date of construction of new school infrastructure. It is noted that this is to enable payments to be used for unitary charges but we do not consider that it is reasonable for developers to carry this additional burden.	In response, the funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG. No change is proposed to the finalised SG.	No	
	Transport Infrastructure: With regards to Part 2b.Transport Infrastructure, the proximity of the tram route and associated infrastructure should be a key consideration in supporting ambitious sustainable mode share targets in new development. For example, the presence of a tram stop in the middle of a site – such as the IBG - means the council should be accepting low impact on the road network and in turn the developer should pay a lower share of road contributions as a result.	In response, junction improvements are important for supporting public transport accessibility and active travel connectivity as well as mitigating increases in private motorised vehicular traffic. Such sustainable modes will also be used by some occupants of development adjacent to tram stops, and so it is reasonable that such developments contribute to non-tram actions. No change is proposed to the finalised SG.	No	
	Greenspace: We note the position in respect of greenspace infrastructure actions but there appears to be a lack of detail to give certainty in respect of the costs. We welcome that the exact figure will depend on the specific nature of the greenspace in question although the three examples upon which cost calculations have been made may require further scrutiny before any commitments can be made.	Noted. No change is proposed to the finalised SG.	No	
	Public Realm: With regards to public realm, we note that a new process is being developed to help set priorities for public realm investment. In the meantime, pending an updated public realm strategy, strategic public realm contributions will not be pursued. On this basis, we would welcome and seek the opportunity to engage with this process.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Primary Healthcare: The status of this action in respect of West Edinburgh, insofar as it relates to IBG, is 'exploring options' yet a location has been established i.e. co-located with new Maybury Primary School. We would welcome clarity in respect of this e.g. location, the estimated cost and how this will be delivered and funded (including apportionment of costs to relevant landowners and developers etc).	At this time the co-location with the new school is currently a proposal and yet to be finalised. No change is proposed to the finalised SG.	No	
	In overall terms, it is important that where development contributions are sought, these will only be where fairly and reasonably related to the development proposed, as advised in Circular 3/2012. We broadly support the overall approach and the Council's acknowledgement in the draft SG that contributions will be sought in this context; and that final costs and funding mechanisms will be subject to further discussion in the context of proposals made.	Noted. No change is proposed to the finalised SG.	No	
	As a final comment, reform of the planning system in Scotland is underway and the emphasis on development delivery is apparent. With this in mind, we hope that the final version of the SG will be drafted in this spirit and implemented accordingly.	Draft Planning Bill not relevant to this SG, Council has responded separately to it. SG requires to be prepared in accordance with the current law. No change is proposed to the finalised SG.	No	
South East Edinburgh Development Company Ltd (HolderPlanning)	SEEDco has concerns regarding the growing level of contribution required by Planning Authorities, including the City of Edinburgh's proposed approach, which increasingly undermine the financial viability of development. The increasing level of funding sought, coupled with an increasing competition for and a reliance upon overseas capital, makes the raising of capital more challenging. There are very real challenges in bringing much needed development forward.	Noted. No change is proposed to the finalised SG.	No	
	The Guidance does not refer to any alternative sources of funding. City Deal, for example has the potential to fund new infrastructure which could potentially unlock significant economic growth. Reference in the Guidance should be made to alternative funding sources and set out the circumstances in which these can be utilised. The provision of this information will enhance transparency, helping to ensure that developer contributions are sought only where clearly required to enable development to be acceptable in planning terms and that they will be proportionate and relevant to the scale and nature of development proposed.	In response, it is the Council's opinion that the reference in section 3 is appropriate for Supplementary Guidance, as wider context of alternative funding sources is uncertain and subject to change. No change is proposed to the finalised SG.	No	
	A wide range of contributions are sought including primary healthcare facilities. It is not for developers to provide such facilities or contribute to the cost of facilities where the responsibility for their provision lies with the Health Authority and central Government.	Not accepted. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. In their Notice of Intention (Ref PPA-230-2208) they accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. Planning Appeal decisions on this issue have been mixed. The Council has had regard to the Reporters concerns in revising the text of the SG on this matter (detailed above). The Council considers that the finalised SG complies with the law and is in accordance with the aims and requirements of the Circular, in respect of the healthcare requirement. No change is proposed to the finalised SG.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	The infrastructure has been assessed taking into account the allocations within the Local Development Plan. As the Council is aware, there is a shortfall in the Housing Land Supply amounting to some 7,000 new homes and we are concerned that the Council's assessments do not recognise the full extent of the new infrastructure which will be required, particularly in relation to education and transportation.	The figure of 7,000 referenced by Consultees was the shortfall in delivery in the period 2009-2019. It arose because delivery rates on the established land supply were too low in the early part of that period. The land capacity and associated infrastructure requirements, have already been identified. The Action Programme (December 2016) includes infrastructure actions identified to support the housing sites identified in the adopted LDP; sites otherwise identified in the established housing land supply; and, for education infrastructure, other land within the Urban Area with potential capacity for housing development. This capacity of housing is more than sufficient for what is required (as evidenced in the 2016 HLADP). Accordingly, there is not a need for the Council to identify further infrastructure actions to support further Green Belt housing sites. No change is proposed to the finalised SG.	No	
	As development proposals, which have not been identified in the Local Development Plan, come forward, we are concerned that the Council will resist these proposals on the basis that there is no infrastructure programmed to accommodate them or that their development would undermine infrastructure provision made for allocated sites.	The approach set out in the SG allows the Council to properly plan the cumulative impact of development on infrastructure, whilst allowing for sites within the Urban Area come forward for development. Policy Del 1 of the plan sets out the policy context for other sites not allocated within the plan, or with the urban area. No change is proposed to the finalised SG.	No	
	We note that there is provision for the Supplementary Guidance to be reviewed and that the Action Plan will be reviewed on a yearly basis. It is essential that these documents are kept actively under review to ensure that the necessary infrastructure keeps pace with development.	LDP makes policy provision for such proposals. SG, Legal Test and Circular will enable suitable infrastructure contributions to be sought for such proposals. No change is proposed to the finalised SG.	No	
	Transport - Provision is made for developer contributions both within and outside of contribution zones. We note that where development sites have not been subject to the Council's transport assessments, applicants will require to undertake a transport assessment. The Guidance sets out the developments which transport assessments will require to take into account. In our view, it is only appropriate to include what is known as 'committed' development i.e. that which already has the support of the Council. Item (iii) and (iv) above should therefore be deleted. In our view, it is only appropriate to include what is known as 'committed' development i.e. that which already has the support of the Council. Item (iii) and (iv) above should therefore be deleted.	The definition of 'cumulative impact' in SPP includes development in valid applications which have not been determined. Given the scope for valid PANs to become such applications, it is reasonable to include them within scope. Doing so ensures that cumulative impacts are assessed – a particular concern identified in the LDP as adopted. No change is proposed to the finalised SG.	No	
	We recommend that the wording in item E under the heading of 'Developer Contributions for Education Infrastructure' is amended. Item E states: "Where a development proposal is likely to give rise to an impact on education infrastructure which cannot be appropriately mitigated in line with the Council's cumulative approach, it should be noted that planning permission may be refused." We are not clear what the phrase "in line with the Council's cumulative approach" means and are concerned that it may be interpreted to mean that a proposal will not be permitted simply because it does not accord with a pre-conceived education strategy. We therefore suggest the following rewording: "Where a development proposal is likely to give rise to an impact, including cumulative impacts, on education infrastructure which cannot be appropriately mitigated, planning permission may be refused."	The Council takes a cumulative approach to the mitigation of new development on infrastructure. Under the approach proposed, sites could be considered in isolation and or/ on a standalone basis, therefore the wording proposed is rejected. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Health Care - As stated above we do not agree that it is appropriate for developer contributions to be sought where the responsibility for their provision and funding lies with the Health Authority and central Government.	Not accepted. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. No change is proposed to the finalised SG.	No	
	Public Realm and Open Space. In response to Question 1 we have stated that the level of developer contributions being sought is excessive and has the potential to prevent development. Accordingly, contributions should be sought only where clearly required to enable development to be acceptable in planning terms and that they will be proportionate and relevant to the scale and nature of development proposed.	Noted. No change is proposed to the finalised SG.	No	
	We note that in a number of catchment areas the Education Contribution Zones identify the provision of multiple primary schools within individual sub-areas and identify developer contributions for these sub areas. In our view, it is only reasonable to require contributions towards schools which are directly affected by a development. To require contributions towards schools which are not affected by a proposed development is contrary to Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The sub-areas should therefore be divided into individual primary school catchment areas.	The Council's cumulative approach in the SG and appraisals set out the link is between the development and necessary actions within the zones. The actions required are directly required as the result of the cumulative impact of development. No change is proposed to the finalised SG.	No	
	Site remediation and servicing costs are identified for a number of the proposed new schools. The costs are based on 'high level' assessment and are so excessively high that they act as an impediment to new residential development. It is appreciated that these costs may be initially set prior to any site investigations having taken place, however, they should be updated as soon as possible, as the allowance made would render a site non-viable from a residential development stance. These costs therefore need to be considered in greater detail or if shown to be correct, the Council should consider, in discussion with developers and land owners, alternative locations for the proposed schools where remediation and servicing costs may be lower. In addition, it would be beneficial for the Council to provide greater clarity of what is included in the costs they have identified.	Noted. The costs attributed to 'Servicing and Remediation' in the draft guidance came from an external consultant's report that identified potential site abnormal costs. The figures are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'.	Yes.	Page 4, paragraph 5, delete 'the costs of the land, and its servicing and remediation is included' replace with 'the value of the land, as well as potential abnormal site costs are included'. Page 15 + 16, replace all 'S+R' with 'Abnormals', Page 17 Replace 'Q4 2017 Servicing and Remediation' with 'Q4 2017 remediation and other abnormal costs'.
	We cannot support provision within the Guidance which states, "within Contribution Zones, any remaining contributions will be held and be put towards other actions within the contribution zone that the site lies within as and when required". The provision does not accord with the Circular 2/2012. If developer contributions have not been used for the purpose for which they have been provided, then it is incumbent upon the Council to return the contribution.	Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed to development within that zone. No change is proposed to the finalised SG.	No	
	Whilst it is understood that the Council faces challenges in administering developer contributions, a phased approach to payment of contributions would support development. It would allow marginal development to commence without the burden or uncertainty of raising capital finance. It would be better to see any contributions made, spent within a 5 year period as they are to facilitate	The funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	development. There should be no reason for other contributions to be held for over 10 years. With respect to Education, new homes are likely to generate school pupils, within 5 years of house completions. The impact will require to be addressed well before 30 years.			
	There is very little consideration in the Guidance given to infrastructure delivery. The sections on transportation and education referring to delivery in accordance with the Action Plan. The section headed 'Delivery of Education infrastructure' goes on to caveat delivery of education infrastructure and states, "In setting the programme, the Council aims to balance the need for early provision of infrastructure with the risk of housing development stalling. Education infrastructure capacity will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The Council reserves the right to adjust the timing of the education delivery programme to take account of relevant circumstances." Where developers have made financial contributions, and require to repay capital funding, it is perfectly reasonable for them to expect the infrastructure for which they have paid to be delivered in a timeframe which will not delay development. The Guidance should acknowledge that Council's obligations and state in both the Delivery of Education Infrastructure and Delivery of Transport Infrastructure sections that, "The Council recognises that developers are required to make a substantial contribution towards the provision of infrastructure, and the Council will not unduly delay the provision of infrastructure necessary to enable development to take place."	Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development. The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself, this will help ensure that the issue of third party delays in infrastructure delivery does not normally arise.	No	
	Developer contributions are not the only source of funding for infrastructure. The Guidance requires to recognise that alternative sources of funding are available and identify where they can be utilised.	In response, it is the Council's opinion that the reference in section 3 is appropriate for Supplementary Guidance, as wider context of alternative funding sources is uncertain and subject to change. It is the Council's opinion that such funding/mechanisms are actually necessary because of the uncertainty associated with developer contributions and planning decisions. No change is proposed to the finalised SG.	No	
	As noted in response to Question 3, site remediation and servicing costs are identified for a number of the proposed new schools. The costs are based on 'high level' assessment and are so excessively high that they act as an impediment to new residential development. It is appreciated that these costs may be initially set prior to any site investigations having taken place, however, they should be updated as soon as possible, as the allowance made would render a site non-viable from a residential development stance. These costs therefore need to be considered in greater detail or if shown to be correct, the Council should consider, in discussion with developers and land owners, alternative locations for the proposed schools where remediation and servicing costs may be lower. In addition, it would be beneficial for the Council to provide greater clarity of what is included in the costs they have identified.	Noted. The costs attributed to 'Servicing and Remediation' in the draft guidance came from an external consultant's report that identified potential site abnormal costs. The figures are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'.	Yes.	Page 4, paragraph 5, delete 'the costs of the land, and its servicing and remediation is included' replace with 'the value of the land, as well as potential abnormal site costs are included'. Page 15 + 16, replace all 'S+R' with 'Abnormals', Page 17 Replace 'Q4 2017 Servicing and Remediation' with 'Q4 2017 remediation and other abnormal costs'.

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	We welcome a phased approach towards developer contributions. This would enhance the potential of for delivering marginal development sites and enhance improve the likelihood of development viability.	Noted. No change is proposed to the finalised SG.	No	
South East Edinburgh Development Company Ltd (HolderPlanning)	Stewart Milne Homes is a member of Homes for Scotland and representation has been made by the organisation. Homes for Scotland's representation reflects on the implications of the Elswick Supreme Court Decision and the Port of Leith Housing Associations' recent appeal decision at Ocean Drive. Stewart Milne Homes confirms support for the comments made in their representation and in particular the SG requires to be re-drafted to: • Exclude health care contributions; • Review education contributions on the basis that school sizes should be limited to what is required, contingency payments should be removed, assumed land values should not be based on residential land values, education infrastructure interventions require to be justified and developer contributions sought must fairly and reasonably related in scale and kind to the proposed development; and • Review transportation contributions on the basis that there is a lack of explanation for the connection between development proposals and the intervention sought.	Noted. No change is proposed to the finalised SG.	No	
	Stewart Milne Homes (SMH) have concerns regarding growing level of contribution required by Planning Authorities, including the City of Edinburgh's proposed approach, which increasingly undermine the financial viability of development. The increasing level of funding sought, coupled with an increasing competition for and a reliance upon overseas capital, makes the raising of capital more challenging. There are very real challenges in bringing much needed development forward.	Noted. No change is proposed to the finalised SG.	No	
	The Guidance does not refer to any alternative sources of funding. City Deal and Tax Incremental Financing for example, have the potential to fund new infrastructure that could potentially unlock significant economic growth. City of Edinburgh Council should consider infrastructure funding mechanisms employed by other Council areas, such as Perth and Kinross Council, who have used Scottish Government borrowing to front fund infrastructure and reduce the costs borne by the development industry. The Guidance should be amended to refer to alternative funding sources and identify the circumstances in which they can be utilised. The provision of this information will enhance transparency, helping to ensure that developer contributions are sought only where clearly required to enable development to be acceptable in planning terms and that they will be proportionate and relevant to the scale and nature of development proposed.	it is the Council's opinion that the reference in section 3 is appropriate for Supplementary Guidance, as wider context of alternative funding sources is uncertain and subject to change. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>SMH is concerned about the compliance of the draft guidance with Circular 3/2012 Planning Obligations and Good Neighbour Agreements, particularly in relation to contributions required towards education and healthcare facilities. Paragraph 14 of this Circular sets out the five policy tests which must be met when planning obligations are sought. However, whilst the draft guidance states that it takes account of the Circular and other relevant government advice, it does not explicitly set out its compliance with it. We suggest that a statement of conformity with Circular 3/2012 should be provided by the Council to clearly set out the evidence base for the contributions sought, and their compliance with the tests within the Circular.</p>	<p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in <i>Elsick</i> that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>Para 60 of decision: "The guidance in the Circular is simply a material consideration which the planning authority must take into account when deciding whether to grant planning permission. The weight which the planning authority attaches to such guidance is a matter of planning judgement."</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	Yes	
	<p>Healthcare Facilities - Stewart Milne Homes disagrees with the principle of charging the homebuilding industry for the provision of healthcare facilities. NHS as an organisation is funded through central government funding, and the burden should not be placed upon the development industry to cover any funding shortfall that may hinder the provision of primary healthcare facilities. Primary healthcare provision should not be for the council to provide for, and this certainly should not be for developer contributions to meet the cost of the necessary facilities. Most surgeries act as businesses, and developers should not be expected to supplement other businesses. It appears that a key issue with healthcare provision is the lack of practitioners rather than physical facilities. This is a national issue and not something that can or should be solved by the local authority or developers.</p>	<p>Not accepted. SG seeks contributions purely for health care infrastructure at a local level which is required as a result of the development. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. No change is proposed to the finalised SG.</p>	No	
	<p>The draft guidance does not provide evidence to justify the requirement for new or extended medical practices. We do not believe that these contributions conform to the tests set out within Circular 3/2012. There is a lack of information to justify the costs set out within Annex 4 of the draft guidance. These are estimated costs which are not based on evidenced need or demand in relation to catchment areas or number of patients a practice will serve.</p>	<p>Not accepted. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. No change is proposed to the finalised SG.</p>	No	<p>The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be</p>

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
				required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development. "
	Stewart Milne Homes does not agree with the principle of seeking developer contributions for healthcare facilities, therefore we suggest the removal of this requirement.	Noted and denied. Not accepted. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. No change is proposed to the finalised SG.	No	
	The infrastructure has been assessed taking into account the allocations within the Local Development Plan. As the Council is aware, there is a shortfall in the Housing Land Supply amounting to some 7,000 new homes and we are concerned that the Council's assessments do not recognise the full extent of the new infrastructure which will be required, particularly in relation to education and transportation.	The figure of 7,000 referenced by Consultees was the shortfall in delivery in the period 2009-2019. It arose because delivery rates on the established land supply were too low in the early part of that period. The land capacity and associated infrastructure requirements, have already been identified. The Action Programme (December 2016) includes infrastructure actions identified to support the housing sites identified in the adopted LDP; sites otherwise identified in the established housing land supply; and, for education infrastructure, other land within the Urban Area with potential capacity for housing development. This capacity of housing is more than sufficient for what is required (as evidenced in the 2016 HLADP). Accordingly, there is not a need for the Council to identify further infrastructure actions to support further Green Belt housing sites. No change is proposed to the SG in this regard. No change is proposed to the finalised SG.	No	
	As development proposals, which have not been identified in the Local Development Plan, come forward, we are concerned that the Council will resist these proposals on the basis that there is no infrastructure programmed to accommodate them or that their development would undermine infrastructure provision made for allocated sites. Therefore, SMH would like to see further information and evidence to explain how financial contributions will be sought from windfall sites. If education infrastructure and other infrastructure requirements from windfall developments have been fully factored into the draft guidance's calculations, this is not clear and should be set out far more explicitly. If these have not been taken into consideration, this should be addressed by the Council in a revised draft of this guidance as a priority.	The approach set out in the SG allows the Council to properly plan the cumulative impact of development on infrastructure, whilst allowing for sites within the Urban Area come forward for development. Policy Del 1 of the plan sets out the policy context for other sites not allocated within the plan, or with the urban area. No change is proposed to the finalised SG.	No	
	We note that there is provision for the Supplementary Guidance to be reviewed and that the Action Plan will be reviewed on a yearly basis. It is essential that these documents are kept actively under review to	Noted. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	ensure that the necessary infrastructure keeps pace with development.			
	Transport - The transport contributions do not appear to be fully finalised, as they are pending the publication of Transport Scotland's cross boundary study. The associated costs and actions are therefore absent from this consultation. Arguably, therefore the consultation document is incomplete.	Noted. Transport Scotland's cross boundary study has now been published, however, the costs and actions have yet to be established. The SG is prepared using the best available information. No change is proposed to the finalised SG.	No	
	Provision is made for developer contributions both within and outside of contribution zones. We note that where development sites have not been subject to the Council's transport assessments, applicants will require to undertake a transport assessment. The Guidance sets out the developments which transport assessments will require to take into account. In our view, it is only appropriate to include what is known as 'committed' development i.e. that which already has the support of the Council. Item (iii) and (iv) above should therefore be deleted.	The definition of 'cumulative impact' in SPP includes development in valid applications which have not been determined. Given the scope for valid PANs to become such applications, it is reasonable to include them within scope. Doing so ensures that cumulative impacts are assessed – a particular concern identified in the LDP as adopted. No change is proposed to the finalised SG.	No	
	Education - In addition to the comments submitted in response to question 1, we recommend that the wording in item E under the heading of 'Developer Contributions for Education Infrastructure' is amended. Item E states: "Where a development proposal is likely to give rise to an impact on education infrastructure which cannot be appropriately mitigated in line with the Council's cumulative approach, it should be noted that planning permission may be refused." We are not clear what the phrase "in line with the Council's cumulative approach" means and are concerned that it may be interpreted to mean that a proposal will not be permitted simply because it does not accord with a pre-conceived education strategy. We therefore suggest the following rewording: "Where a development proposal is likely to give rise to an impact, including cumulative impacts, on education infrastructure which cannot be appropriately mitigated, planning permission may be refused."	The Council takes a cumulative approach to the mitigation of new development on infrastructure. Under the approach proposed, sites could be considered in isolation and or/ on a standalone basis, therefore the wording proposed is rejected. No change is proposed to the finalised SG.	No	
	Health Care - As stated above in response to Question 1, we do not agree that it is appropriate for developer contributions to be sought, where the responsibility for their provision and funding lies with the Health Authority and Central Government and therefore object to this requirement.	Not accepted. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. No change is proposed to the finalised SG.	No	
	Public Realm and Open Space - In response to Question 1 we have stated that the level of developer contributions being sought is excessive and has the potential to prevent development. Accordingly, contributions should be sought only where clearly required to enable development to be acceptable in planning terms and that they will be proportionate and relevant to the scale and nature of development proposed.	Noted. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Education - Circular 2/2013 states that "planning obligations must be related in scale and kind to the proposed development", to accord with this, the supplementary guidance should set out the direct impact that allocated sites within the Local Development Plan will have on education capacity of schools within the catchment of the development and set out the direct action required to mitigate any impacts, including cumulative impacts, of the development, and explain the costs of this direct action. If several developments should proportionately share the cost of that direct action, this should be clearly set out within the guidance.	Noted. The Education Appraisal sets out how costs have been apportioned against development within each contribution zone. The Education Appraisal assessed the impact of the following: a) housing sites specifically identified in the adopted LDP; b) sites otherwise identified in the established housing land supply; and, c) other land within the Urban Area with potential capacity for housing development. As set out in the Education Appraisal, the Council's approach allows the Council to properly plan the cumulative impact of development on educational infrastructure, whilst allowing for sites within the Urban Area come forward for development. The Education Appraisal and its urban area assumptions are reviewed on an annual basis, as part of the update to the HLADP and the Action Programme. No change is proposed to the finalised SG.	No	
	We note that it should be a priority for the Council to identify any existing spare capacity within its schools and to include the potential for school catchment reviews to best use the existing available capacity to accommodate pupils from new developments. Any catchment review should set out the redistribution of pupils from one catchment to another. These actions then provide an evidence base to meet the "relationship" test within the Circular. At present, we do not consider that the Council has produced an evidence base, which shows its compliance with Circular 3/2012. We acknowledge that cumulative impacts of new development must be considered, but the scale and kind of contributions sought must relate to the direct impacts of the proposed development.	The potential for catchment change has been considered. This is set out within the Council's Education Appraisal, for example in the South West Cumulative Assessment Area. However, a statutory consultation is required before there can be any changes to catchment areas. There is no certainty that any potential catchment change could be implemented until after this process has been completed. No change is proposed to the finalised SG.	No	
	The draft guidance confirms that the Council has not prepared any projections for secondary school infrastructure. It has assumed that any available capacity within secondary schools will soon be fully utilised because of assumptions about future growth and increased primary school rolls. The draft guidance seeks to apply a cost per pupil generated regardless of whether there is an identified need. We are concerned that this approach is contrary to the "relationship" and "scale and kind" of Circular 3/2012, which requires there to be a clear link between the development and the mitigation required.	Denied. School roll projections for secondary schools have been prepared. Where projections indicate that there will be insufficient spare capacity to accommodate the growth in pupils from new housing developments, education infrastructure actions have been identified and a requirement for contributions towards the delivery of additional capacity identified. No change is proposed to the finalised SG.	No	
	Similarly, we note that in a number of catchment areas the Education Contribution Zones identify the provision of multiple primary schools within individual sub-areas and identify developer contributions for these sub areas. In our view, this is also contrary to the Circular, as it is only reasonable to require contributions towards schools, which are directly affected by a development. The sub-areas should therefore be divided into individual primary school catchment areas.	The Council's cumulative approach in the SG and appraisals set out the link between the development and necessary actions within the zones. The actions required are directly required as the result of the cumulative impact of development. No change is proposed to the finalised SG.	No	
	The costs attributed to the delivery of education infrastructure is excessive. Developers who contribute land for an infrastructure item (e.g. school) will be contributed in kind for further contributions. The price for land required for schools is set (£2 million for a 3ha site - Primary), but this does not have any recognition of the actual site value if delivered for some other use (e.g. housing).	The Council has commissioned an independent valuation of the costs which could be applied to the school sites in Action Programme. The SG reflects the costs set out in this valuation. This land value is used to ensure that proportionate shares of the land value is collected from other developments that require the infrastructure. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Site remediation and servicing costs are identified for a number of the proposed new schools. The costs are based on 'high level' assessment and are so excessively high that they act as an impediment to new residential development. It is appreciated that these costs may be initially set prior to any site investigations having taken place, however, they should be updated as soon as possible, as the allowance made would render a site non-viable from a residential development stance. These costs therefore need to be considered in greater detail or if shown to be correct, the Council should consider, in discussion with developers and land owners, alternative locations for the proposed schools where remediation and servicing costs may be lower. In addition, it would be beneficial for the Council to provide greater clarity of what is included in the costs they have identified.	Noted. The costs attributed to 'Servicing and Remediation' in the draft guidance came from an external consultant's report that identified potential site abnormal costs. The figures are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'.	Yes.	Page 4, paragraph 5, delete 'the costs of the land, and its servicing and remediation is included' replace with 'the value of the land, as well as potential abnormal site costs are included'. Page 15 + 16, replace all 'S+R' with 'Abnormals', Page 17 Replace 'Q4 2017 Servicing and Remediation' with 'Q4 2017 remediation and other abnormal costs'.
	With cross-boundary transport assessment works still on-going, transport costs remain incomplete. There is no evidence that these matters will be consulted upon and therefore the Supplementary Guidance is arguably incomplete and will not be subject to full consultation.	Noted. Transport Scotland's cross boundary study has now been published, however, the costs and actions have yet to be established. The SG is prepared using the best available information.	No	
	Public Realm - Public realm contributions will be required in future, but there is no completed strategy in place for this at present. SMH agree that contributions should not be sought at this time.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes. No change is proposed to the finalised SG.	No	
	Public Health - As noted in response to questions 1 and 2, it is not appropriate for developer contributions to be sought where the responsibility for their provision and funding lies with the Health Authority and Central Government. Notwithstanding this, final costs have not been calculated and the contribution zones have not been finalised/established. There is no evidence that these matters will be consulted upon and therefore the Supplementary Guidance is arguably incomplete and will not be subject to full consultation.	Not accepted. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.	Yes	The text of section 2e of the SG has been altered to provide additional clarification as follows; "The Healthcare Contribution Zones have not been defined on the basis of individual health care General Practice boundaries. This is because practice boundaries have no statutory status, are inconsistent, overlap and their extent are subject to change at any time. As a result it was not considered appropriate or pragmatic to use practice boundaries to define contribution zones. The Healthcare Contribution Zones which have been identified include relevant new housing developments anticipated to impact on existing practices with underlying capacity constraints. The zones are based on the areas of the city where there is a significant concentration of new development or where there is currently no existing General Practice provision because the development is on former green belt land. Existing local practice catchment areas and capacity were first reviewed to assess what available infrastructure capacity exists overall within each zone and then to identify what additional infrastructure provision will be required to provide health care for the resultant population increase from the developments. "
	We cannot support provision within the Guidance which states, "within Contribution Zones, any remaining contributions will be held and be put towards other actions within the contribution zone that the site lies within as and when required". The provision does not accord with the Circular 3/2012. If developer contributions have not been used for the purpose for which they have been provided, then it is incumbent upon the Council to return the contribution.	Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
		to development within that zone. No change is proposed to the finalised SG.		
	Whilst it is understood that the Council faces challenges in administering developer contributions, a phased approach to payment of contributions would support development. It would allow marginal development to commence without the burden or uncertainty of raising capital finance.	Noted.	No	
	SMH strongly object to the provision to retain monies towards education infrastructure for 30 years. This is far too long a period. The justification CEC provides is to allow any additional costs with the method of school delivery (PFI scheme). However, this is not a justified approach and is potentially legally challengeable. Developers should only be required to contribute towards the build of a school, not the operation, maintenance and other associated costs. Therefore, contributions should be spent within a 5-year period to facilitate development and if unspent, returned after this period. With respect to Education, new homes are likely to generate school pupils within 5 years of house completions. There should be no reason for any developer contributions to be held for over 10 years.	In response, the funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG.	No	
	There is very little consideration in the Guidance given to infrastructure delivery. The sections on transportation and education referring to delivery in accordance with the Action Plan. The section headed 'Delivery of Education infrastructure' goes on to caveat delivery of education infrastructure and states, "In setting the programme, the Council aims to balance the need for early provision of infrastructure with the risk of housing development stalling. Education infrastructure capacity will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The Council reserves the right to adjust the timing of the education delivery programme to take account of relevant circumstances." Where developers have made financial contributions, and require to repay capital funding, it is perfectly reasonable for them to expect the infrastructure for which they have paid to be delivered in a timeframe which will not delay development. The Guidance should acknowledge that Council's obligations and state in both the Delivery of Education Infrastructure and Delivery of Transport Infrastructure sections that; "The Council recognises that developers are required to make a substantial contribution towards the provision of infrastructure, and the Council will not unduly delay the provision of infrastructure necessary to enable development to take place."	Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development. The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself, this will help ensure that the issue of third party delays in infrastructure delivery does not normally arise. No change is proposed to the finalised SG.	No	
	As noted above, developer contributions are not the only source of funding for infrastructure. The Guidance requires to recognise that alternative sources of funding are available and identify where they can be utilised.	In response, it is the Council's opinion that the reference in section 3 is appropriate for Supplementary Guidance, as wider context of alternative funding sources is uncertain and subject to change. No change is proposed to the finalised SG. No change is proposed to the finalised SG.	No	
	We welcome a phased approach towards developer contributions. This would enhance the potential of for delivering marginal development sites and enhance improve the likelihood of development viability.	Timing and phasing of actions to be delivered by developers apart of a planning application will be considered as part of the planning application. The Action Programme sets out the timing and phasing of actions to be delivered by the Council. No change is proposed to the finalised SG. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	SMH, as with other developers, do not seek to avoid appropriate developer contributions however, as above and as set out within the Homes for Scotland response, they have to be appropriate, fair and justifiable in relation to Circular 3/2012.	Noted. No change is proposed to the finalised SG.	No	
The Trustees of the Foxhall Trust (GVA Grimley Ltd)	It is acknowledged that infrastructure provision associated with new development is often required, where reasonably and fairly related to the nature of development proposed. The policy objective of DEL1 is acknowledged. However at the LDP Hearing it was explained by the Council that it would carry the risk of the required infrastructure provision and this would not delay development (Reporters Report, page 146, paragraph 96). This is relevant in the context of the statement made by CEC (SG, section 2) that 'development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time'. This is relevant in the context of the statement made within the SG (section 2) that 'development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time'. We are concerned that this, together with other statements made within the draft SG e.g. page 5, criteria 'E' and 'F'; page 13, paragraphs 1 and 2 which contradict the position taken by the Council in the ELDP Hearing as noted above. A particular concern that emerges from the above is in relation to criterion 'E' (page 5) which suggests that development should only progress where it is demonstrated that education infrastructure can be delivered; criterion 'F' identifies phasing conditions as a potential mechanism to reflect the delivery programme of education infrastructure. Although this point is raised under 'education', we are nevertheless concerned about the principle of this. It is unreasonable for the delivery of development to be constrained particularly when developer contributions have been secured via S75 agreement(s).	Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development. No change is proposed to the finalised SG.	No	
	It will be necessary to consider application proposals on their merits in the particular circumstances at the time of their determination.	Noted. No change is proposed to the finalised SG.	No	
	It is important that existing deficiencies are not sought to be resolved via developer contributions. We therefore generally welcome the approach at section 2 insofar as it relates to 'infrastructure requirements associated with new development' (GVA emphasis).	Noted. No change is proposed to the finalised SG.	No	
	We do however have some concern in relation to the assessment of roads infrastructure in the context of the cross boundary transport impacts study which does not yet appear to have been completed. In the absence of this, it would be helpful for some clarity within the SG in respect of how this will be taken into consideration and that the grant of planning permission will not be frustrated by the fact that this study has not been completed.	Noted. Transport Scotland's cross boundary study has now been published, however, the costs and actions have yet to be established. The SG is prepared using the best available information. No change is proposed to the finalised SG.	No	
	This is also applicable in terms of public realm which is subject to an updated strategy still to be prepared.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes. No change is proposed to the finalised SG.	No	
	We do not object to the contribution zones insofar as they have been established in the current draft SG and are applicable to our client.	Noted	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	With regards to 2a. Education Infrastructure it is noted that this is required in the context of 'planned population and housing growth within the city'. The SG confirms in the second paragraph that the education appraisal (in respect of the Queensferry Contribution Zone) takes account of new housing sites allocated in the LDP and 'other land within the urban area'. In turn we confirm our understanding that additional development of approximately 100 residential units in the urban area of Kirkliston has been accounted for at this stage in the education appraisal on the basis of the ELDP Examination Report in respect of our clients' site.	Noted. The Education Appraisal assessed the impact of the following: a) housing sites specifically identified in the adopted LDP; b) sites otherwise identified in the established housing land supply; and, c) other land within the Urban Area with potential capacity for housing development. As set out in the Education Appraisal, the Council's approach allows the Council to properly plan the cumulative impact of development on educational infrastructure, whilst allowing for sites within the Urban Area come forward for development. The Education Appraisal and its urban area assumptions are reviewed on an annual basis, as part of the update to the HLADP and the Action Programme. No change is proposed to the finalised SG.	No	
	We are concerned that contributions – where these have been found to be fair and reasonable - will be held for 30 years from the date of construction of new school infrastructure. It is noted that this is to enable payments to be used for unitary charges but we do not consider that it is reasonable for developers to carry this additional burden.	In response, the funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG. No change is proposed to the finalised SG.	No	
	With regards to 2b. Transport Infrastructure, the site does not fall within a contribution zone. There are no site specific or other actions emerging for Kirkliston in the SG (or Action Programme). Whilst we would understand that applications will require to be fully tested on their merits, we would note some concern with the approach set out under 'Other Transport Contributions' (page 8, Part B) should the consideration of our clients' site fall to be assessed in accordance with Part 'B' on page 8. In particular, the circumstances within which development proposals will be affected by Part 'B', the requirements appear to be particularly onerous. This is likely to affect urban area sites not already appraised or assumed in transportation terms. Whilst cumulative transport assessments to take account of committed development is generally considered to be established practice, the requirement to take account of 'proposals' such as 'valid applications' and 'Proposal of Application Notices' is a concern. For example, the validity of an application does not offer any certainty of permission being granted. Similarly, the submission of a Proposal of Application Notice does not in all cases lead to the submission of an application for planning permission / planning permission in principle. Allocations may never be progressed. In all situations, circumstances such as the parameters of proposed development could change; it is only the ability to implement permission when there is a need to take account of the cumulative effect.	The definition of 'cumulative impact' in SPP includes development in valid applications which have not been determined. Given the scope for valid PANs to become such applications, it is reasonable to include them within scope. Doing so ensures that cumulative impacts are assessed – a particular concern identified in the LDP as adopted. No change is proposed to the finalised SG.	No	
	Finally, with regards to the 'Delivery of Transport Infrastructure', there may be circumstances where it is not possible for a developer to deliver the transport action required because of development. It would be helpful to caveat this requirement to enable the Council to deliver the action and recover contributions via legal agreements / conditions as appropriate.	P8 of the DCID SG on Delivery of transport infrastructure does allow for circumstances where the Council will deliver the action. No change is proposed to the finalised SG.	No	
	We note the position in respect of Greenspace infrastructure actions but there appears to be a lack of detail to give certainty in respect of the costs. However, we welcome the recognition of the preferred	Noted. Factual point. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	practice of factoring open spaces within developments, which is common practice by developers.			
	We note that the methodology for Public Realm is complete and a Public Realm Strategy has been updated, strategic public realm contributions will not be pursued. We would welcome the opportunity to comment on this in due course.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes. No change is proposed to the finalised SG.	No	
	In all cases, the overall combined costs of infrastructure provision on projects will need to be taken into account and full consideration given to this in the determination of planning applications and the timing and phasing of infrastructure delivery and associated contributions.	Noted. No change is proposed to the finalised SG.	No	
	Whilst the need for delivery of infrastructure is noted, where this presents an overall constraint to the ability for projects to even commence and/or imposes viability pressure, this must be recognised. We would welcome recognition that mechanisms such as City Deal, particularly as it has now been agreed, may provide helpful funding to assist the delivery of infrastructure.	In response, it is the Council's opinion that the reference in section 3 is appropriate for Supplementary Guidance, as wider context of alternative funding sources is uncertain and subject to change. No change is proposed to the finalised SG. No change is proposed to the finalised SG.	No	
	As a general comment, we do note that section 3 addresses viability and funding mechanisms. We welcome and agree with the statement that financial viability is included as a material consideration in the determination of a planning application.	Noted. No change is proposed to the finalised SG.	No	
	We would also recommend that further consideration is given to other types of front funding for the delivery of infrastructure so that it does not hold up the delivery of sites across the city.	Noted. No change is proposed to the finalised SG.	No	
	Assuming that contributions have been found to be appropriate having regards to the tests of Circular 3/2012, the phasing and timing of contribution payments is particularly important in respect of matters such as cash flow.	Noted. No change is proposed to the finalised SG.	No	
	At paragraph 5 on page 13, we would welcome clarity that the apportionment of monies does not depart from the basis upon which monies were sought in the first place. Furthermore, it is noted that 'within contribution zones, contributions will be held and be put towards actions set out within the action programme'. Again, it is important that monies are only sought where directly related to the proposed development and to offset any impacts of that development accordingly. We would welcome clarity in respect of any proposals to 'hold contributions' where these are to be put towards actions set out within the action programme.	Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed to development within that zone. No change is proposed to the finalised SG.	No	
	The release and payment of contributions can affect project implementation and delivery and it is important that contributions are only required where actions – and timescales – have been identified and/or set out.	Noted. No change is proposed to the finalised SG.	No	
	There is some concern about the intention to hold contributions towards education infrastructure for 30 years from the date of construction. It is noted that this is to enable payments to be used for unitary charges. We do not agree with this and consider it to be an unreasonable burden to impose on developers.	The funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	We would welcome the publication of a model legal agreement and note that this will be published with the finalised guidance. We have been unaware of any engagement or consultation on this model legal agreement and would request that a link to the model agreement is included within the guidance for clarity.	Model S75 not yet published as heads of terms will follow that adopted in the SG. No change is proposed to the finalised SG.	No	
	As a final comment we would reserve our position to comment further as matters progress and updated strategies such as that for public realm are developed.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes. No change is proposed to the finalised SG.	No	
West Craigs Ltd (Iceni Projects Ltd)	Following the LDP Examination, the City of Edinburgh Council (CEC) were required to put in place statutory supplementary guidance within one year of adoption of the LDP. The Scottish Government directed that the previous two iterations were not capable of adoption. The current draft is the third attempt by CEC to produce this SG, unfortunately our client continues to have concerns with this draft, including the failure to accord with the adopted Local Development Plan. The current draft fails to take proper account of consultation responses and the advice from Scottish Government. As such, comments on the previous drafts remain relevant and unresolved.	Noted. No change is proposed to the finalised SG.	No	
	The Council's approach to the advice it received from Scottish Government is not clear. The Council appears to consider the Scottish Government's position on proposals for a new secondary school in West Edinburgh to be the only issue that required to be addressed. However, it is apparent that officers have also been willing to accept some of the Scottish Ministers' other comments on the draft, whilst rejecting other, more substantive points. No explanation for this selective approach and why Scottish Government's advice has not been followed is provided in the SG or Officer's Report.	<p>The Scottish Government is a consultee in respect of the draft SG. The Council had regard to their comments on the previous SG and made certain amendments. As with the responses of any consultee the Council is not bound to agree to all points made by the Scottish Government at the consultation stage.</p> <p>The Finalised SG will be submitted to Scottish Government prior to adoption, if no response made adoption proceeds. The Scottish Government can opt to require the Council to modify certain points or direct the Council not to adopt the SG due to certain points. The Council must follow government requirements requiring adoption. The Scottish Government's directions not to adopt the previous finalised SG were followed by the Council and this new finalised SG addresses the issues raised in the directions.</p> <p>The Council has had regard to the Scottish Government consultation responses in preparing the new finalised SG.</p> <p>No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	The draft SG continues to promote a new secondary school in West Edinburgh, contrary to the LDP approach – which has no reference to a new secondary school in West Edinburgh. The LDP expressly provides for extensions to existing secondary schools. This is the position that was consulted on as part of the LDP process, promoted by the Council through the LDP examination and considered and approved by the Reporters and Scottish Ministers.	New secondary school capacity is required in West Edinburgh to accommodate the growth in pupils from new housing development. Although the Council's preferred solution is to deliver one or more new secondary school, there are currently no sites identified within the Action Programme. Therefore, contributions towards new secondary capacity will be based on the estimated cost of providing additional secondary school capacity on a per pupil basis. This is the same approach that is applied across other parts of the city where additional secondary school capacity is required which may be delivered by a replacement building or extension. The finalised SG does not therefore require contributions to be taken in West Edinburgh towards the acquisition, servicing and remediation of land for a new secondary school. The location/s for new secondary school infrastructure in West Edinburgh will be progressed through development of a West Edinburgh spatial strategy to be prepared as part of the new Local Development Plan process. No change is proposed to the finalised SG.	Yes	Page 16 Annex 1, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity - 420 pupils (to mitigate the impact of development within the catchment areas of non-denominational secondary schools within West Edinburgh)'. Page 17 Remove land cost information for west secondary school. Page 32, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity (West Edinburgh)'. Page 32, update contribution rates.
	As previously advised by our client's solicitors, Burness Paull LLP in correspondence dated 28 September 2017, "Regulation 27(2) of the Regulations is clear that supplementary 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 that those are matters which are expressly identified in the statement contained in the local development plan as matters which are to be dealt with in supplementary guidance. As there are no proposals in the LDP for a new secondary school in West Edinburgh the draft SG is contrary to Regulation 27(2)." This failing was also identified by Scottish Ministers in their response of February 2017.	Denied that this is an accurate account of the legal position on this point. The Scottish Government's directions not to adopt the previous finalised SG, due to a requirement for a new high school within the area allocated for the Business gateway, were followed by the Council and this new finalised SG addresses the issue. In formulating the current SG high school requirements for West Edinburgh the Council has had due regard of your and Scottish Government submissions on this point and the Reporters Intention Notice in the West Craigs appeal PPA-230-2207.No change is proposed to the finalised SG.	No	
	As stated in our previous representations to this draft SG given the proposed new secondary school was not a proposal in the LDP, it was not included within the Environmental Report prepared by the Council to comply with its duties under the Environmental Assessment (Scotland) Act 2005. That remains the case. This issue is dealt with in detail in the annex to this response, completed by Burness Paull LLP on 3 February 2017.	The Council acknowledges in light of the government direction and the terms of the Reporters Intention Notice in the West Craigs appeal PPA-230-2207 that further work required in respect of precise detail of new school and this will now be undertaken through the next LDP.	No	
	The draft Guidance is intended to support delivery of the Council's Local Development Plan. During the course of the Local Development Plan Examination, the Council gave a commitment to Scottish Ministers that infrastructure constraints would not be allowed to delay development. This commitment was key to Scottish Ministers' decision to allow the plan to be taken forward to adoption. The Planning Minister noted: - "In part, I am reassured by the published statement that "At the hearing the Council explained it would carry the risk of the required infrastructure provision and this would not delay development" (Examination Report page 146 paragraph 96). I expect to see this assurance carried through to future decision making". The Planning Minister's direction to the Council on future decision making applies to this draft Guidance.	Noted. Factual point. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>Given the significance of this commitment both to the Council, the LDP Examination Reporters and Scottish Ministers it is appropriate that it is reflected in the draft Guidance. However, the draft Guidance is not clear on this point. The text at "Funding Mechanisms" is vague and oblique. Section 4 (Legal Agreements and use of monies) refers to timescales for delivery of infrastructure being agreed between the Council and the applicant. The draft Guidance should be amended to include text reiterating the commitment the Council gave during the LDP process that the Council would carry the risk of required infrastructure provision, such that this will not delay delivery of development. Such a commitment does not, of course, prevent the Council from securing appropriate developer contributions.</p>	<p>In response, it the purpose of the Supplementary Guidance to</p> <ul style="list-style-type: none"> · Set out the Council's approach to infrastructure provision and improvements associated with development; · Set out how the required infrastructure has been assessed; · address community concerns about the timeous delivery of the required infrastructure; · Ensure that developers make a fair and realistic contribution to the delivery of necessary infrastructure provision and improvement associated with development; · Provide details of cumulative contribution zones relative to specific transport, education, public realm and green space actions; · Set out the arrangements for the efficient conclusion of Section 75 legal agreements; and · Set out the council's approach should the required contributions raise demonstrable commercial viability constraints, and/or where forward or gap funding may be required. <p>It is not the purpose of the SG to fund infrastructure which is directly related to growth from development. No change is proposed to the finalised SG.</p>	No	
	<p>Since the first version of the SG was issued, the Supreme Court has issued its judgment in <i>Elsick Development Company v Aberdeen City and Shire SDA</i>. The Report to Committee provided members with an analysis of the <i>Elsick</i> case and its implications for the SG.</p>	<p>Noted. Factual point. No change is proposed to the finalised SG.</p>	No	
	<p>It is said in the Report that "full regard has been had to the <i>Elsick Decision</i>" in the preparation of the Guidance. In fact, there has been no change in the wording following the Supreme Court decision, and the SG confirms that it "takes account of Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements and other relevant government advice on contributions and legal agreements".</p>	<p>The Council gave full consideration to whether changes were required to the draft SG in light of the Supreme Court <i>Elsick</i>, and concluded they were not. The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court <i>Elsick Judgment</i>. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail.</p> <p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in <i>Elsick</i> that, the Council is not bound to follow the Circular, provided it has due regard to it.</p>	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>At paragraph 3.2.3 the Report to Committee states that the Scottish Government Planning Circular 3/2012 "is only a material consideration" and that it is a matter of planning judgement for the Planning Authority "whether to follow it when requiring a Planning Obligation". It is correct that the Circular is a material consideration. However, a planning authority cannot choose to ignore or disregard the Circular. The Supreme Court was clear that a planning authority must have regard to the Circular.</p>	<p>Denied. The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elsick that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>Para 60 of decision: "The guidance in the Circular is simply a material consideration which the planning authority must take into account when deciding whether to grant planning permission. The weight which the planning authority attaches to such guidance is a matter of planning judgement."</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	No	
	<p>The draft SG refers to and incorporates the Circular by reference. By so doing it seeks to incorporate the Circular into the Development Plan. This is not properly reflected in the advice in the Report to Committee.</p>	<p>Denied. See above response The SG purely notes that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The SG does not seek to incorporate the Circular into the Development Plan.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The Report to Committee (paragraph 3.3) says that the contributions zone approach in the SG “meets the Elswick legal test for planning obligation requirements by ensuring that contributions sought have more than a trivial connection to the relevant development”. There is no evidence provided or referenced in support of this assertion, which has been found not to be the case in recent planning appeal decisions in Edinburgh.</p>	<p>The Council consider that the SG and its supporting technical appraisals provide the necessary information to demonstrate in respect of any planning application whether there is more than a trivial link between the development proposed and the infrastructure interventions required. The Council's Action Programme provides clarity on the timing of when the various infrastructure interventions require to be delivered.</p> <p>The Council deny that there is body of case law to demonstrate that the Council's SG approach does not comply with this legal test. It is presumed that this comment alludes to the Ocean Drive decision. The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elswick Supreme Court decision and therefore did not have regard to it.</p> <p>The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. The Reporters in that appeal did not conclude that the SG failed to meet this legal test. No change is proposed to the finalised SG.</p>	No	
	<p>Simply because contribution zones cover a smaller geographic area than those applied by the planning authority in the Elswick case is not a justification in itself. The SG relies on a generic geographic area approach with no assessment or consideration of site specific matters.</p>	<p>Denied. See above response</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>Whilst the draft Guidance includes text that regard has been had to the Circular, references are limited, and the draft Guidance fails to make any express reference to the five policy tests all planning obligations should meet to be valid, namely:- Necessary to make the proposed development acceptable in planning terms; Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans; Relate to the development, either as a direct consequence of the development or arising from the cumulative impact of development in the area; Fairly and reasonably relate in scale and kind to the proposed development; and Be reasonable in all other respects.</p>	<p>Denied that there is a requirement to set out the Circular tests within the SG. The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in <i>Elsick</i> that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>Para 60 of decision: "The guidance in the Circular is simply a material consideration which the planning authority must take into account when deciding whether to grant planning permission. The weight which the planning authority attaches to such guidance is a matter of planning judgement."</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	No	
	<p>The draft Guidance requires to be amended to include express reference to the five policy tests. The Guidance should include a statement confirming that planning obligations will only be required where it can be shown the five tests in the Circular have been met. Alternatively, if it is the Council's position that as a matter of policy it is not following national planning policy then a detailed explanation for that approach must be provided. References to alternative policy approaches should be deleted to avoid confusion and the risk of legal invalidity.</p>	<p>Denied that there is a requirement to set out the Circular tests within the SG. See above response</p>	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>Previous appeal decisions have highlighted the failings in the approach in the draft guidance. No reference is made to these decisions, far less any attempt to address the issues identified by the Reporters.</p>	<p>The Council deny that there is body of case law to demonstrate that the Council's SG approach does not comply with the Circular. Decisions have been mixed. The individual Reporter's conclusions in Ocean Drive are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elswick Supreme Court decision and therefore did not have regard to it.</p> <p>The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. The Reporters in that appeal did not conclude that the SG failed to meet this legal test. The Council has had due regard to Reporters decision and the Consultation response from the Scottish Government. No change is proposed to the finalised SG.</p>	No	
	<p>Our clients recognise that the contribution zone approach may be capable of being used to address cumulative infrastructure requirements. However, this approach should accord with the Circular. It is important to recognise the guidance in the Circular which provides at paragraph 21 that: "Planning obligations should 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 planning permission to be granted for the particular development".</p>	<p>View is noted. The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG</p>	No	
	<p>There is no evidence in the draft Guidance or the LDP Education Infrastructure Appraisal (January 2018), which was used to determine the actions specified in the Action Programme, that the Council has considered the extent to which education infrastructure could be delivered through other mechanisms than the provision of new schools, for example, catchment reviews of existing schools. The Education Infrastructure Appraisal did not fully consider the options promoted by the Council during the LDP process. Catchment reviews could be used to better utilise available capacity in existing schools before new schools or extensions to existing schools are needed. The education infrastructure set out in Annex 1 to the draft Guidance is presented as a strategic solution to the delivery of education infrastructure. There is no indication in the LDP Education Appraisal that any consideration has been given to the most cost-effective way of providing the education infrastructure required.</p>	<p>Matter for the Education Authority how best to deliver Education in Edinburgh, including catchment areas (not individual developers). Strategic approach informed by the Education Authorities expert advice. No change is proposed to the finalised SG.</p>	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	The draft Guidance should not require developers to make contributions to achieve the Council's wider strategic objectives, e.g. the delivery of new schools where these might not be necessary for the particular developments in question.	If through existing development schools are at capacity it is for the Education Authority to determine strategically how best to deliver further required schooling in respect of any/all new proposed development. Contributions required reasonable to deliver this. What is financially cheapest to an individual developer cannot be the sole driver in the Education Authority determining how best to deliver Education in Edinburgh. A strategic approach is critical to the proper delivery of infrastructure throughout Edinburgh. SG ensures that Developers only contribute to share of necessary infrastructure that arises through their development.	No	
	Such an approach would be contrary to the terms of the Circular. The draft Guidance should state that contributions will only be sought in line with the Contribution Zone requirements where it is demonstrated that a proposed development would have a negative impact on existing infrastructure that cannot be accommodated within existing schools or that no alternative solutions have been provided by the developer to address a capacity issue arising from the impact of a particular development in a Contribution Zone.	Denied that the cumulative approach is contrary to the Circular. SG sets out a proportionate reasonable approach.	No	
	There is a lack of information in the draft Guidance and Education Appraisal (January 2018) as to how the Council intends to make the best use of its existing education estate to serve new development proposals. The analysis in the Education Appraisal has not been subject to consultation and is partial. It appears that the Council has predetermined what additional infrastructure is required without considering the efficiencies that could be achieved through catchment reviews. There has been no independent third party examination of the Council's Education Appraisal or any analysis of the assumptions which underlie the Appraisal. It cannot be relied on as the basis for calculating education contributions.	Denied. The Council is the relevant Education Appraisal and is entitled to assess and determine how best to achieve this. No change is proposed to the finalised SG.	No	
	We previously provided an analysis of the education requirements and associated infrastructure and costings for West Edinburgh, undertaken by Geddes Consulting. That analysis identified a number of shortcomings in the approach that underpins the draft Guidance as it would be applied to HSG 19.	Noted. No change is proposed to the finalised SG.	No	
	Further analysis has also been undertaken in response to the Council's updated position with specific reference to a suggested new secondary school for West Edinburgh. The appeal proposal will generate a total of 198 secondary non-denominational pupils. At a build out rate of 210 per annum, this will be 30 pupils per year. The LDP (page 57) identifies extensions to existing schools to accommodate pupils from LDP allocated sites in West Edinburgh. This is not a level that can be said to fairly and reasonably require a new school with a capacity of 900 pupils. Indeed, the Council's own evidence is that the LDP sites will account for approximately half of the capacity of a new school. Requiring LDP sites to make financial contributions towards new infrastructure which they do not necessitate is neither fair nor proportionate.	New secondary school capacity is required in West Edinburgh to accommodate the growth in pupils from new housing development. Although the Council's preferred solution is to deliver one or more new secondary school, there are currently no sites identified within the Action Programme. Therefore, contributions towards new secondary capacity will be based on the estimated cost of providing additional secondary school capacity on a per pupil basis. This is the same approach that is applied across other parts of the city where additional secondary school capacity is required which may be delivered by a replacement building or extension. The finalised SG does not therefore require contributions to be taken in West Edinburgh towards the acquisition, servicing and remediation of land for a new secondary school. The location/s for new secondary school infrastructure in West Edinburgh will be progressed through development	Yes	Page 16 Annex 1, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity - 420 pupils (to mitigate the impact of development within the catchment areas of non-denominational secondary schools within West Edinburgh)'. Page 17 Remove land cost information for west secondary school. Page 32, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity (West Edinburgh)'. Page 32, update contribution rates.

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
		of a West Edinburgh spatial strategy to be prepared as part of the new Local Development Plan process. No change is proposed to the finalised SG.		
	As the analysis sets out, both pupil projections and the costs of new infrastructure are overstated. Moreover, it is apparent that the infrastructure identified is required wholly or in part meet the Council's own existing requirements, and not the requirements of the LDP. The analysis also highlights the failure to properly consider windfall sites. The approach taken in the draft Guidance puts a lesser burden on windfall sites – placing a premium on not being an allocated site. Such an approach is contrary to a plan led planning system.	The Council has assessed the impact of the growth set out in the LDP through an Education Appraisal (January 2018). An assumption has been made as to the amount of new housing development which will come forward ('housing output'). This takes account of new housing sites allocated in the LDP and an assumption of the potential of other land within the urban area for housing development. This ensures that the cumulative impact of new development is considered within the guidance is mitigated. If additional greenfield land is brought forward under Policy Hou 1, this is dealt with by Clause C of the SG. No change is proposed to the finalised SG.	No	
	The Council put forward its proposed approach in the appeal at Lasswade Road (PPA-230-2152). A detailed analysis of the implications of that decision was provided previously and is attached with this submission.	Noted. No change is proposed to the finalised SG.	No	
	More recently, a Reporter rejected the Council's attempt to apply the contribution zone approach to development of a site in Leith (PPA-230-2201). In that case the Reporter considered the draft Guidance to represent an approach contrary to the Circular. During the course of hearing sessions on education infrastructure and policy convened by Scottish Ministers to consider a major residential development proposal (reference 15/04318/PPP), it was the education officer's evidence that the Council did not seek contributions towards denominational education infrastructure where a development was considered too remove from existing infrastructure. This was on the basis the Council expected denominational pupils to attend non-denominational schools that were closer to them. This evidence was put forward as representing the Council's general position based on previous experience. For clarity, detail on the Council's position should be provided, including the distances used by Council officers when deciding denominational school contributions are not required.	Case specific points that goes beyond ambit of SG. No change is proposed to the finalised SG. The education appraisal justifies what new infrastructure actions are required to mitigate the impact of new development.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	It is noted at paragraph D(ii) on page 4 that the Council will consider whether it is appropriate to revise the actions in the Action Programme and associated Contribution Zones if education infrastructure actions in the current Action Programme are not sufficient to accommodate an increase in the cumulative number of new pupils expected as a result of a development. There is, however, no recognition of the fact that some developers may pay too much if the expected increase in number of pupils across all developments anticipated in a Contribution Zone does not materialise. It is not clear how contributions will be revised downwards and repaid to developers if windfall developments come forward at a later stage and to contribute to infrastructure within a Contribution Zone, and/or excessive contributions repaid to developers.	Concern noted. The SG makes provision for the repayment of contributions where they have not been utilised within a set period. The current actions, costs, scale of development and current per unit costs will be set out in the current Action Programme and subsequent updates to the SG. The Action Programme will be updated on at least a two year programme to ensure accurate costs and levels of development are updated. S75A allows for repayment of excessive contributions paid by developers.	No	
	Circular 3/2012 requires that, "where statutory supplementary guidance is being promoted, this should include information on how standard charges have been calculated, how monies will be held, how they will be used and, if applicable, how they will be returned to the developer".	Noted.	No	
	The draft Guidance does not explain how infrastructure for which contributions are required will actually be delivered, nor how monies will be paid, how they will be used or how they will be returned to developers.	Noted. It is the Council's view that the SG fulfils its purpose as set out in Policy Del 1 of the LDP. No change is required to the SG.	No	
	The draft Guidance states on page 5 that the "education infrastructure capacity will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The Council reserves the right to adjust the timing of the education delivery programme to take account of relevant circumstances". This statement gives no certainty to developers that contributions that they have signed up to pay will actually be used to deliver the infrastructure that is required for their development. The statement at Part F that "if pupils from a new development cannot be accommodated until education actions have been delivered, conditions may be used to phase the development to reflect the delivery programme for the required infrastructure" could be used to hold up the delivery of new housing. This is contrary to the assurances given by the Council to Scottish Ministers during the LDP examination process.	Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development. The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself, this will help ensure that the issue of third party delays in infrastructure delivery does not normally arise. The SG sets out the education infrastructure will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The current programme for delivering the required education infrastructure is set out in the Action Programme. Temporary solutions will be identified if necessary. No change is proposed to the finalised SG.	No	
	It is not clear what is proposed at 2D(iii). The draft Guidance says that it may be appropriate to establish a new Contribution Zone if a development comes forward that would require a new school to be added to the Action Programme. This would seem to run contrary to the tests in the Circular that a planning obligation must be necessary to make the proposed development acceptable in planning terms. If a development is acceptable in planning terms and does not require a new school, then it cannot be necessary for it to be required to make financial contributions for a new school, that is a requirement of another development.	Denied. 2C(ii) that contains this wording is clear and proportionate. SG detail covers currently allocated sites in LDP, sites in the HLA and other urban land capacity. This point covers development brought forward under Greenbelt policies that is not allocated and therefore necessitates additional infrastructure requirements to that set down in the SG and action programme. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Following paragraph 5 on page 4 the following text should be added:- “Where a potential school site can be delivered by a landowner / developer this will be considered in conjunction with the Council. The cost of this being delivered would then be taken from any required contributions for the associated development”	This revision is not considered necessary and it appears to relate to the previous version of the SG. No change is proposed to the finalised SG.	No	
	Page 5 In the section titled, Delivery of Education Infrastructure, the following text should be added to the end of paragraph 3 as follows:- To assist in the early delivery of education infrastructure developers / landowners will be encouraged to bring forward planning applications for education facilities to assist the local authority and avoid housing sites stalling.	This revision is not considered necessary and it appears to relate to the previous version of the SG. No change is proposed to the finalised SG.	No	
	Amendments have been made (without explanation) to the text regarding the delivery of transport infrastructure. Specifically on page 8 the most recent iteration states “Where the delivery of a transport action in the Action Programme has a Contribution Zone and/or requires land outwith the control of the applicant(s), the Council will, if necessary, collect contributions towards the action and deliver the action”. The new text is shown in bold. No further explanation is given as to what is meant by “if necessary”, how this will be assessed and by whom. It creates unnecessary ambiguity and uncertainty. It would also appear to represent a departure from the Council’s to ensure infrastructure delivery will not prevent or delay delivery of new housing. The modification to the draft has been done without explanation and does not appear to have been supported during the previous consultation process. The Council were satisfied the wording was not needed in the previous draft and it should be deleted.	New Draft SG text not required to explain differences from previous drafts. The phrase ‘if necessary’ allows for circumstances where the developer can deliver the action despite not being the landowner. Examples include: <ul style="list-style-type: none"> • Council controlled land, • public sector land where the access rights can be secured, • adjacent third party land where the action is required by both parties (as in a contribution zone), first developer on-site could deliver the action as payment in kind. No change is proposed to the finalised SG. 	No	
	With regards to site HSG 19 in the LDP it is set to contribute towards £4,320,000 towards a railway bridge and extensive footpath and underpass works linking HSG 19 to The Gyle, via the now completed Edinburgh Gateway. There are a number of issues with this, namely: a) The footpaths and A8 underpass have been delivered solely to support Edinburgh Gateway and funded via EGIP. These works are in no way linked to any LDP allocation, including HSG 19. Only the cost of the bridge and footpath linkage with the existing Tram Depot road and Edinburgh Gateway can reasonably be linked to LDP allocations, including HSG 19. We would refer the Council to the expert technical analysis provided by Arup (see Document WCL 98 from appeal PPA-230-2207). b) It remains unclear why the delivery of the bridge and footpath linkage is only being attributed as a site-specific transport action for HSG 19, when CEC is suggesting that IBS development and HSG 20 development requires this bridge link to support the overall educational needs within these allocations in regard to the location and accessibility of a new primary and a new secondary school.	(a) This point relates to the detailed action in the Action Programme that relates to site specific requirements to HSG 19 and is therefore outwith the scope of this SG. It is not related to the action in the Maybury/Barnton transport contribution zone. (b) Denied. Bridge action directly related to and only required in respect of properly linking the HSG19 site to existing infrastructure. Not attributable or to the direct benefit of other new development. Primary school a requirement and High school points irrelevant to considering this issue. No change is proposed to the finalised SG.	No	

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	In addition, HSG 19 is identified as paying £87,200 for the design fee towards the Maybury Junctions redesign for cycling and walking. This is not justified on two grounds. Firstly, changes at Maybury Junction are identified as Action T17 within the Maybury/Barnton Contribution Zone and as such should also be attributed to allocation HSG 20. Secondly, the T17 works include design, which must reasonably include any cycle/pedestrian facilities and operation.	Distinct requirements. Further design work relates to bringing this junction up to current standards in respect of cycle/pedestrian needs. Not the focus of previous works. No change is proposed to the finalised SG.	No	
	We note the provision of health care infrastructure was considered as part of the Examination into unresolved objections to the Edinburgh Local Development Plan (adopted 2016). The Reporter(s) concluded the following:- Page 764, para 46 – 47 "The land use planning justification for the other items referenced in Del 1 relies on the work the Council has carried out on the assessment of transport, education and open space. Notably no such research or justification for seeking contributions towards health care provision has been provided in this examination. In the absence of current information or justification of the scale of any additional provision that might be required, there is no certainty, at present, on the associated need for contributions. To add this requirement now, would, I consider, be contrary to the terms of the 2012 Circular. Consequently, I am not convinced that the list of items relevant to Policy Del 1 should be expanded to cover health care infrastructure"	Not accepted. Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.	Yes	The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development."
	It is clear from these conclusions that the Examination recommended that primary healthcare should not be considered as part of policy Del 1 in the adopted LDP. Appendix 4 suggests a figure of £6m for West Edinburgh in this regard. As concluded by the Reporter this is contrary to the terms of Circular 3/2012. In this regard page 11 of the draft SPG should be removed.	LDP retains policy requirement for healthcare contributions subject to further information being provided to support this. Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for	Yes	The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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		<p>providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.</p>		<p>of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development."</p>
	<p>The primary healthcare assessment documents were not produced as part of the LDP process and have not been subject to public consultation. They are not planning policy documents. There is a lack of evidence to justify the contributions being sought through the draft Guidance.</p>	<p>Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.</p>	<p>Yes</p>	<p>The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being</p>

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				brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development."
	Policy Del 1 provides that the draft Guidance must include the Council's approach should the required contributions raise demonstrable commercial viability constraints and/or where forward or gap funding may be required. However, the text in the draft Guidance on this issue is less than clear, on page 12 it states that: "Should gap and/or forward funding be required to deliver an infrastructure action in the Action Programme, this will be reported to the appropriate committee(s). This includes Planning Committee with the relevant application. The financial impact of the Local Development Plan on capital and revenue budgets is reported annually to the Council's Finance and Resources Committee." These statements do not provide any clarity on how the Council will address the issue where forward or gap funding may be required and does not provide any certainty to developers that it will be forthcoming, or that developments will not be stalled if the Council fails to deliver the infrastructure required.	It is not the purpose of the SG to provide funding for the delivery of infrastructure associated with development or to provide a comprehensive report on the financial situations of all the capital projects it refers to. That is intended to be done in reports to the relevant committee of the Council. As stated in relevant reports on financial implications of the LDP and its Action Programme, the Council aims for full cost recovery from developments. No change is proposed to the finalised SG.	No	
	Consistent with the commitment given by the Council during the LDP Examination, and relied upon by Scottish Ministers when approving the LDP for adoption, the draft Guidance should include a clear and unequivocal statement that the Council will carry the risk of the required infrastructure provision and this would not delay development. Failure to include such a statement would represent a failure by the Council to stand by its previous commitments, and place the draft Guidance in conflict with the basis on which the LDP was approved by Scottish Ministers.	Denied that such a statement is necessary. The Action Programme adequately addresses this issue. Had the Government wished such a statement included in the LDP or the SG it was open to them to require this? No change is proposed to the finalised SG.	No	
	The Council is preparing a model legal agreement to be published with the finalised guidance. We trust that there will be an opportunity for developers to comment on the draft agreement, as other local authorities, such as Aberdeen City Council and Aberdeenshire Council have done.	View noted. There is no requirement upon the Council to consult with Developers on the terms of the Model S75. The Model S75 is a living document and due regard will be had to feedback received.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>In particular, we would hope that the Council will not include any requirement in any such model agreement for developers to cover the Council's costs for preparing and registering a planning agreement. Any requirement for developers to pay for the Council's costs of preparing and registering a planning obligation, in addition to its own legal costs, would be contrary to the decision of the English High Court in the case of Oxfordshire County Council v Secretary of State for Communities and Local Government [2015] EWHC186 (Admin). In that case, the Court held that payment of monitoring/administration fee was not necessary to make a development acceptable in planning terms and that it is part of the planning authority's function to administer, monitor and enforce planning obligations and legal agreements and that there is nothing in the legislation or government guidance which suggests that authorities could claim administration or monitoring fees. These findings apply equally to the Scottish planning system. The cost to the authority of including legal obligations is covered by the statutory application fees. The Scottish Government is clear that local authorities have no power to require the developers pay an additional fee for planning obligations as such fees are not in themselves necessary to make a development acceptable in planning terms.</p>	<p>The English position is noted. The Council refutes that the payment of fees to the Council for processing S75 Legal Agreements is unlawful in terms of Scots Law. This is not a matter covered in the Supplementary Guidance. No change is proposed to the finalised SG.</p>	No	
	<p>It should be noted that Angus Council proposed a requirement that developers pay the Council's legal fees for planning obligations in its guidance on planning obligations. The Scottish Ministers responded on 24 November 2016 with a direction advising that the guidance would not be adopted until it was amended to delete the sentence which advised that "the costs of the preparation of the legal agreement and the applicant's own legal costs must be met by the applicant". Similar directions have been issued by the Scottish Government to other local authorities who have included similar statements within their guidance.</p>	<p>This is not a matter covered in the Supplementary Guidance. No change is proposed to the finalised SG.</p>	No	
	<p>At present, the City of Edinburgh Council requires applicants to enter into a fee undertaking before starting work on the terms of any legal agreement. This undertaking requires the applicant to pay the Council's legal fees (including external legal fees, even if the agreement is not ultimately completed). We consider that this approach is illegitimate and trust that any such requirement will not form part of the Council's model legal agreement or its procedures for new legal agreements.</p>	<p>This is not a matter covered in the Supplementary Guidance. No change is proposed to the finalised SG.</p>	No	
	<p>We understand the Council would seek to retain education contributions for a period of 30 years before having to return unspent funds. This period is well in excess of any assessment the Council has undertaken as to the education requirements of new developments. We expect the basis for this timescale is linked to contracts the Council may enter into for the provision of new school infrastructure. If that is the case then contributions should only be retained for up to 30 years where the Council can demonstrate the funds are legally committed. It is not appropriate for the Council to have until at least 2048 to decide how to use contributions.</p>	<p>In response, the funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG.</p>	No	

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	<p>Section 5 states that applicants have the statutory right to apply to the Council for modification or discharge of a section 75 agreement. Given the uncertainty surrounding the Council's delivery programme, reliance on the section 75 modification process is not sufficient, and will lead to unnecessary costs for both the Council and applicants. The Council's review process must ensure variations and updates to planning obligations can be made as required, and that there is sufficient flexibility within the draft Guidance and the Council's model section 75 agreement to allow for review of contributions outwith the statutory process.</p>	<p>The Council does not agree with this statement. Legal agreements require certainty in respect of contributions, so that it is readily apparent on the titles what the requirements are. Varying or discharging the terms of S75s are only currently lawful through the S75A process. No change is proposed to the finalised SG.</p>	No	
	<p>The Council has confirmed that it will take the risk on the delivery of infrastructure needed for the LDP, and will not allow this to delay delivery of new housing. This commitment should be made clear in the draft Guidance.</p>	<p>Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development. The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself, this will help ensure that the issue of third party delays in infrastructure delivery does not normally arise. No change is proposed to the finalised SG.</p>	No	
	<p>The draft Guidance does not confirm that developer contributions will only be required where these meet the tests in Circular 3/2012. In its current form the draft Guidance would appear to be seeking contributions not in accordance with the Circular. This has been confirmed where the Council has sought to rely on the previous draft in appeals.</p>	<p>Denied. The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in <i>Elsick</i> that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p> <p>The Council deny that there is body of case law to demonstrate that the Council's SG approach does not comply with the Circular. Decisions have been mixed. The <i>Ocean Drive</i> decision was before the Reporters in the more recent <i>West Craigs</i> appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. The Reporters in that appeal did not conclude that the SG failed to comply with the Circular.</p> <p>No change is proposed to the finalised SG.</p>	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The inclusion of Primary Healthcare is contrary to the Reporters' recommendations and the LDP. As such, it requires to be deleted.</p>	<p>Not accepted. LDP retains policy requirement for healthcare contributions subject to further information being provided to support this. Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.</p>	<p>Yes</p>	<p>The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development."</p>
	<p>There are opportunities for significant efficiencies to be made in the delivery of education infrastructure, both through the more efficient use of existing infrastructure and optimising how new infrastructure is provided. This represents an opportunity for more sustainable development, and will allow for significant cost savings, reducing the cost and risk burden for applicants and the Council.</p>	<p>Noted. View of consultee. No change is proposed to the finalised SG.</p>	<p>No</p>	
	<p>The draft Guidance would benefit from a more focussed approach at a more local level. This is illustrated by the outcomes of the Council's more detailed assessment of the Liberton/Gracemount Education Contribution Zone. Likewise, the Reporter's decision in the Lasswade Road appeal (PPA-230-2152) highlight that the draft Guidance overestimates both the education infrastructure requirement, and associated costs.</p>	<p>Noted. View of consultee. No change is proposed to the finalised SG.</p>	<p>No</p>	

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Duncan Tait J. Smart & Co. (Contractors) PLC	The draft consultation document states "A Model Legal Agreement is available" in relation to Section 75 Agreements at Section "4. Legal Agreements and use of monies" .Whilst we were able to find "Model S.75 Agreement – City of Edinburgh Council 2010" on the Council's website, we were unable to find a copy of the proposed draft model Legal Agreement on the Council's Consultation Hub. Despite asking for a copy of this document from the Council on more than one occasion we were not provided with a copy and simply informed that it is under review. It is not therefore possible to properly comment on a consultation document when a key component is not available for review and we would therefore again ask that the draft model Legal Agreement is made available with an appropriate time extension to enable proper review and comment on the consultation. If this is still not available then we would deem the consultation to be flawed.	The model S75 is not part of the SG and does not form part of what is being consulted upon. It is being prepared and it is hoped it will be available prior to the SG being finalised. If this is not possible the wording will be updated. No change is proposed to the finalised SG.	No	
Murray Estates (Holder Planning)	At no point does the SG set out Policy DEL 1 of the LDP2. It is important that the principle policy together with the accompanying policy objectives and background, are set out within the document so the context of the SG is clearly understood. Only page 2 of the document makes partial mention of the Policy's requirements. It would also be appropriate to set out the provisions of Policy TR8.	Noted. Denied this is required. No change is proposed to the finalised SG.	No	
	We are concerned that detailed wording within the SG has the potential to delay or prevent development taking place. The Examination into the ELDP2 confirmed the Council's position on infrastructure delivery. The Council explained that it would carry the risk of the required infrastructure provision and this would not delay development (Reporters Report, page 146, paragraph 96).	Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development. The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself, this will help ensure that the issue of third party delays in infrastructure delivery does not normally arise. No change is proposed to the finalised SG.	No	
	Wording within the SG suggests that the delivery of development may be constrained even when developer contributions have been secured via S75 agreement(s). In particular criterion E and F of the Developer Contributions for Education Infrastructure (page 5) states that development should only progress where it is demonstrated that required education infrastructure can be delivered, and at the appropriate time and; identifies phasing conditions as a potential mechanism to reflect the delivery programme of education infrastructure. It is also noted that in section 4, Legal Agreements and Use of Moneys paragraph 2 states that, "The Council needs to ensure that contributions are received in good time to allow the necessary infrastructure to be delivered in step with new development."	Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development.	No	

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	It is unreasonable for development to be constrained particularly where contributions have been paid. Such an approach will have significant implications for a development's viability. As noted in Murray Estates' submission in 2017 they have concerns regarding the growing level of contributions required by Planning Authorities, including the City of Edinburgh's proposed approach, which increasingly undermines the financial viability of development. There are very real challenges in bringing much needed development forward.	Noted. No change is proposed to the finalised SG.	No	
	The Council's developer contributions position on Tram contributions has been long established with a greater level of contribution being sought the closer the development is to a tram stop. The Council does however not take the converse approach to other transport contributions. It does not take the proximity of tram stops into account. The Council should recognise that the closer development is to a tram stop the lower its impact on the road network will be. Accordingly, a development's relative proximity to a tram stop should be reflected in the transport contribution sought.	In response, junction improvements are important for supporting public transport accessibility and active travel connectivity as well as mitigating increases in private motorised vehicular traffic. Such sustainable modes will also be used by some occupants of development adjacent to tram stops, and so it is reasonable that such developments contribute to non-tram actions. No change is proposed to the finalised SG.	No	
	Overall WETA contributions are noted as £86,162,550, which is considerable. As noted in Murray Estates' submission of 2017 other funding mechanisms are available including City Deal and the Council must utilise alternative funding options to support the inevitable growth of West Edinburgh. Following consideration of such options, WETA contribution levels must be reviewed.	Additional text has been provided in the text on the West Edinburgh Transport Contribution Zone to explain that the spreadsheet tool can be updated to reflect any decisions made under City Region Deal governance.	Yes	Text box for West Edinburgh Transport Contribution Zone- add following sentence after sentence on spreadsheet tool: 'The spreadsheet can be updated to reflect any decisions made under City Region Deal governance.'
	WETA contributions refer to a spreadsheet has been devised to calculate appropriate contributions within the zone, however this has not been made publicly available to our knowledge. Until such time as the spreadsheet has been made available and has been subject to independent assessment, it is not appropriate for the Council to seek contributions on this basis.	Noted. The spreadsheet is not part of the supplementary guidance itself but a tool to aid calculations of the contributions. However, it is intended to be published alongside when the SG is formally published. No change is proposed to the finalised SG.	No	
	Murray Estates welcome the opportunity to respond to the Council's Consultation on the Developer Contributions and Infrastructure Delivery Guidance. In addition to the comments set out in this response, they endorse and support the response submitted by the Scottish Property Federation.	Noted. No change is proposed to the finalised SG.	No	
	Murray Estates has concerns regarding the growing level of contributions required by Planning Authorities, including the City of Edinburgh's proposed approach, which increasingly undermine the financial viability of development. The increasing level of funding sought, coupled with an increasing competition for and a reliance upon overseas capital, makes the raising of capital more challenging. There are very real challenges in bringing much needed development forward.	Noted. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	The Guidance does not refer to any alternative sources of funding. City Deal, for example has the potential to fund new infrastructure which could potentially unlock significant economic growth. Reference in the Guidance should be made to alternative funding sources and set out the circumstances in which these can be utilised. The provision of this information will enhance transparency, helping to ensure that developer contributions are sought only where clearly required to enable development to be acceptable in planning terms and that they will be proportionate and relevant to the scale and nature of development proposed.	In response, it is the Council's opinion that the reference in section 3 is appropriate for Supplementary Guidance, as wider context of alternative funding sources is uncertain and subject to change. No change is proposed to the finalised SG.	No	
	A wide range of contributions are sought including primary healthcare facilities. It is not for developers to provide such facilities or contribute to the cost of facilities where the responsibility for their provision lies with the Health Authority and central Government.	Denied. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. No change is proposed to the finalised SG.	No	
	The infrastructure has been assessed taking into account the allocations within the Local Development Plan. As the Council is aware, there is a shortfall in the Housing Land Supply amounting to some 7,000 new homes and we are concerned that the Council's assessments do not recognise the full extent of the new infrastructure which will be required, particularly in relation to education and transportation.	The figure of 7,000 referenced by Consultees was the shortfall in delivery in the period 2009-2019. It arose because delivery rates on the established land supply were too low in the early part of that period. The land capacity and associated infrastructure requirements, have already been identified. The Action Programme (December 2016) includes infrastructure actions identified to support the housing sites identified in the adopted LDP; sites otherwise identified in the established housing land supply; and, for education infrastructure, other land within the Urban Area with potential capacity for housing development. No change is proposed to the finalised SG.	No	
	As development proposals, which have not been identified in the Local Development Plan, come forward, we are concerned that the Council will resist these proposals on the basis that there is no infrastructure programmed to accommodate them or that their development would undermine infrastructure provision made for allocated sites.	This capacity of housing is more than sufficient for what is required (as evidenced in the 2016 HLADP). Accordingly, there is not a need for the Council to identify further infrastructure actions to support further Green Belt housing sites. No change is proposed to the finalised SG.	No	
	We note that there is provision for the Supplementary Guidance to be reviewed and that the Action Plan will be reviewed on a yearly basis. It is essential that these documents are kept actively under review to ensure that the necessary infrastructure keeps pace with development.	Noted. No change is proposed to the finalised SG.	No	
	The transport contributions do not appear to be fully finalised and these are pending the publication of Transport Scotland's cross boundary study. The associated costs and actions are therefore absent from this consultation. Arguably the consultation is incomplete and the will not be subject to a full consultation.	Noted. Transport Scotland's cross boundary study has now been published, however, the costs and actions have yet to be established. The SG is prepared using the best available information. No change is proposed to the finalised SG.	No	
	Provision is made for developer contributions both within and outside of contribution zones. We note that where development sites have not been subject to the Council's transport assessments, applicants will require to undertake a transport assessment. The Guidance sets out the developments which transport assessments will require to take into account. In our view, it is only appropriate to include what is known as 'committed' development i.e. that which already has the support of the Council. Item (iii) and (iv) above should therefore be deleted.	The definition of 'cumulative impact' in SPP includes development in valid applications which have not been determined. Given the scope for valid PANs to become such applications, it is reasonable to include them within scope. Doing so ensures that cumulative impacts are assessed – a particular concern identified in the LDP as adopted. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	We recommend that the wording in item E under the heading of 'Developer Contributions for Education Infrastructure' is amended. Item E states: "Where a development proposal is likely to give rise to an impact on education infrastructure which cannot be appropriately mitigated in line with the Council's cumulative approach, it should be noted that planning permission may be refused." We are not clear what the phrase "in line with the Council's cumulative approach" means and are concerned that it may be interpreted to mean that a proposal will not be permitted simply because it does not accord with a pre-conceived education strategy. We therefore suggest the following rewording: "Where a development proposal is likely to give rise to an impact, including cumulative impacts, on education infrastructure which cannot be appropriately mitigated, planning permission may be refused."	The Council takes a cumulative approach to the mitigation of new development on infrastructure. Under the approach proposed, sites could be considered in isolation and or/ on a standalone basis, therefore the wording proposed is rejected. No change is proposed to the finalised SG.	No	
	Health Care - As stated above we do not agree that it is appropriate for developer contributions to be sought where the responsibility for their provision and funding lies with the Health Authority and central Government.	Not accepted. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. No change is proposed to the finalised SG.	No	
	Public Realm and Open Space - In response to Question 1 we have stated that the level of developer contributions being sought is excessive and has the potential to prevent development. Accordingly, contributions should be sought only where clearly required to enable development to be acceptable in planning terms and that they will be proportionate and relevant to the scale and nature of development proposed.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes.	No	
	Education- We note that in a number of catchment areas the Education Contribution Zones identify the provision of multiple primary schools within individual sub-areas and identify developer contributions for these sub areas. In our view, it is only reasonable to require contributions towards schools which are directly affected by a development. To require contributions towards schools which are not affected by a proposed development is contrary to Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The sub-areas should therefore be divided into individual primary school catchment areas.	The Council's cumulative approach in the SG and appraisals set out the link is between the development and necessary actions within the zones. The actions required are directly required as the result of the cumulative impact of development. No change is proposed to the finalised SG.	No	
	The costs attributed to the delivery of education infrastructure is excessive. Developers who contribute land for an infrastructure item (e.g. school) will be contributed in kind for further contributions. The price for land required for schools is set (£2 million for a 3ha site - Primary) but this does not have any recognition of the actual site value if delivered for some other use (e.g. housing).	The Council has commissioned an independent valuation of the costs which could be applied to the school sites in Action Programme. The SG reflects the costs set out in this valuation. This land value is used to ensure that proportionate shares of the land value is collected from other developments that require the infrastructure. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	Murray Estates are concerned that the proposed school within New Ingliston's land has a huge (and unjustified) price tag. Further investigation is required.	New West Edinburgh High School - new secondary school capacity is required in West Edinburgh to accommodate the growth in pupils from new housing development. Although the Council's preferred solution is to deliver one or more new secondary school, there are currently no sites identified within the Action Programme. Therefore, contributions towards new secondary capacity will be based on the estimated cost of providing additional secondary school capacity on a per pupil basis. This is the same approach that is applied across other parts of the city where additional secondary school capacity is required which may be delivered by a replacement building or extension. The finalised SG does not therefore require contributions to be taken in West Edinburgh towards the acquisition, servicing and remediation of land for a new secondary school. The location/s for new secondary school infrastructure in West Edinburgh will be progressed through development of a West Edinburgh spatial strategy to be prepared as part of the new Local Development Plan process.	Yes	Page 16 Annex 1, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity - 420 pupils (to mitigate the impact of development within the catchment areas of non-denominational secondary schools within West Edinburgh)'. Page 17 Remove land cost information for west secondary school. Page 32, Remove 'New Secondary School (West Edinburgh)', replace with 'Additional secondary school capacity (West Edinburgh)'. Page 32, update contribution rates.
	Site remediation and servicing costs are identified for a number of the proposed new schools including new Ingliston. The costs are based on 'high level' assessment and are so excessively high that they act as an impediment to new residential development. It is appreciated that these costs may be initially set prior to any site investigations having taken place, however, they should be updated as soon as possible, as the allowance made would render a site non-viable from a residential development stance. These costs therefore need to be considered in greater detail or if shown to be correct, the Council should consider, in discussion with developers and land owners, alternative locations for the proposed schools where remediation and servicing costs may be lower. In addition, it would be beneficial for the Council to provide greater clarity of what is included in the costs they have identified.	Noted. The costs attributed to 'Servicing and Remediation' in the draft guidance came from an external consultant's report that identified potential site abnormal costs. The figures are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for deep piling. The finalised SG will use the description 'remediation and other abnormal costs'.	Yes.	Page 4, paragraph 5, delete 'the costs of the land, and its servicing and remediation is included' replace with 'the value of the land, as well as potential abnormal site costs are included'. Page 15 + 16, replace all 'S+R' with 'Abnormals', Page 17 Replace 'Q4 2017 Servicing and Remediation' with 'Q4 2017 remediation and other abnormal costs'.
	With cross-boundary transport assessment works still on-going, transport costs remain incomplete. There is no evidence that transport costs will be consulted upon. It is arguably the Guidance is incomplete and will not be subject to full consultation.	Noted. Transport Scotland's cross boundary study has now been published, however, the costs and actions have yet to be established. The SG is prepared using the best available information. No change is proposed to the finalised SG.	No	
	Public Realm - Public realm contributions will be required in future, but there is no completed strategy in place for this at present. Murray Estates agree that contributions should not be sought at this time.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes.	No	
	Public Health - As note in response to questions 1 and 2 it is not appropriate for developer contributions to be sought where the responsibility for their provision and funding lies with the Health Authority and central Government. Notwithstanding this, final costs have not been calculated and the contribution zones have not been finalised/established. There is no evidence that these matters will be consulted upon and therefore the Supplementary Guidance is arguably incomplete and will not be subject to full consultation.	Not accepted. The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those	Yes	The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
		actions and the proportionate distribution of costs to new developments. No change is proposed to the finalised SG.		come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development."
	We cannot support provision within the Guidance which states, "within Contribution Zones, any remaining contributions will be held and be put towards other actions within the contribution zone that the site lies within as and when required". The provision does not accord with the Circular 2/2012. If developer contributions have not been used for the purpose for which they have been provided, then it is incumbent upon the Council to return the contribution.	Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed to development within that zone.	No	
	Whilst it is understood that the Council faces challenges in administering developer contributions, a phased approach to payment of contributions would support development. It would allow marginal development to commence without the burden or uncertainty of raising capital finance.	Timing and phasing of actions to be delivered by developers apart of a planning application will be considered as part of the planning application. The Action Programme sets out the timing and phasing of actions to be delivered by the Council. No change is proposed to the finalised SG.	No	
	The draft Guidance proposes that any contributions for education not used within 30 years would be returned to a developer. This is too long a time period. The justification CEC provide is to allow any additional costs with the method of school delivery (PFI scheme). It is not a justified approach and a developer should only have to contribute towards the build of a school, not the operation, maintenance and other associated costs. It would be better to see any contributions made, spent within a 5 year period as they are to facilitate development With respect to Education, new homes are likely to generate school pupils, within 5 years of house completions. There should be no reason for other contributions to be held for over 10 years.	In response, the funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	There is very little consideration in the Guidance given to infrastructure delivery. The sections on transportation and education referring to delivery in accordance with the Action Plan. The section headed 'Delivery of Education infrastructure' goes on to caveat delivery of education infrastructure and states, "In setting the programme, the Council aims to balance the need for early provision of infrastructure with the risk of housing development stalling. Education infrastructure capacity will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The Council reserves the right to adjust the timing of the education delivery programme to take account of relevant circumstances." Where developers have made financial contributions, and require to repay capital funding, it is perfectly reasonable for them to expect the infrastructure for which they have paid to be delivered in a timeframe which will not delay development. The Guidance should acknowledge that Council's obligations and state in both the Delivery of Education Infrastructure and Delivery of Transport Infrastructure sections that, "The Council recognises that developers are required to make a substantial contribution towards the provision of infrastructure, and the Council will not unduly delay the provision of infrastructure necessary to enable development to take place."	Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development. The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself, this will help ensure that the issue of third party delays in infrastructure delivery does not normally arise. The SG sets out the education infrastructure will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The current programme for delivering the required education infrastructure is set out in the Action Programme. Temporary solutions will be identified if necessary. No change is proposed to the finalised SG.	No	
	As noted above, developer contributions are not the only source of funding for infrastructure. The Guidance requires to recognise that alternative sources of funding are available and identify where they can be utilised.	It is the Council's opinion that the reference in section 3 is appropriate for Supplementary Guidance, as wider context of alternative funding sources is uncertain and subject to change. No change is proposed to the finalised SG.	No	
	We welcome a phased approach towards developer contributions. This would enhance the potential of for delivering marginal development sites and enhance improve the likelihood of development viability.	Noted. No change is proposed to the finalised SG.	No	
Forth Ports	Further development of Western Harbour is dependent upon significant and costly land remediation and infrastructure works. The application of the developer contribution requirements identified within the SG would render any development, beyond the scope of the extant permission unviable and effectively extinguishing the opportunity to bring forward residential development and community infrastructure in this highly sustainable location. Developer contributions should not be sought for the residential led development of Western Harbour.	Noted. Views on specific development. No change is proposed to the finalised SG.	No	
	Forth Ports welcome the clear provision made in the SG for the consideration of viability. Forth Ports are pleased that the Council recognises that where site preparation costs are so high that developer contributions would threaten the overall viability of the project, developer contributions can be waived or varied.	Noted. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	The SG now breaks down the NETAP contribution zones into smaller contribution zones. This decision reflects the 'Elsick' decision. There is however no explanation provided in the background papers which justifies the extent of the new zones or the proportion of contribution to be allocated to the individual use types. This point is demonstrated in appeal decision PPA-230-2201, where the Reporter allowed the Port of Leith Housing Association's appeal against refusal of planning permission for residential development at land 96 Metres South of 2 Ocean Drive, Edinburgh (ref: 14/05127/FUL) which states, "The council has clearly established a strategic basis for cumulative contributions in the local development plan, its supplementary guidance (subject to the point I make in paragraph 42 above about weight) and its action programme, but that basis does not explain the connection between the individual development proposed in this case and the totality of transport actions in the contribution zone. Circular 3/2012 requires a connection to be established with the individual development. I agree with the appellant that the council has not demonstrated compliance on this aspect with the circular. The £76,716 requirement should therefore form no part of a section 75 agreement in this case."	The North Edinburgh Transport Contribution Zones have been removed from the Guidance because, unlike the zones for actions identified in the LDP Transport Appraisals or the West Edinburgh Transport Appraisal (WETA), they do not arise directly from an appraisal of the development as set out in the adopted LDP. Instead, individual applications will be assessed using LDP Policy Tra 8.	Yes	Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG
	Until such time as the extent of the contribution zones and the apportionment of costs between different use types can be justified in accordance with Circular 3/2012, the contribution zone approach does not provide an appropriate mechanism for transport related infrastructure contributions.	View noted. The North Edinburgh Transport Contribution Zones have been removed from the guidance	Yes	Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG
	The Leith Salamander Street Contribution Zone identifies 2 costs, one with the cost of the Ocean Drive road extension (£24,699,566) and one without out (£12,020,816). It is understood that the Council will seek contributions on the basis of the inclusion of the Ocean Drive Road however this is not clear in the SG. The difference in cost is substantial and a significant additional development cost. The Council must confirm if it intends to progress with development but until such time as it does so and provides a timescale for its construction, it is not appropriate to seek developer contributions for a proposal which may not take place.	Issues with the appraisal documentation to support this zone are acknowledged... The Finalised SG has been updated to remove this zone.	Yes	Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG
	Health Care - The SG now sets out updated developer contribution requirements for healthcare provision and this is supported by the requirements of the Action Programme and the 'Local Development Plan Primary Care Appraisal.'	Noted. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	The Primary Health Care Appraisal sets out the relationship between the Edinburgh Integration Joint Board and Edinburgh Health and Social Care Partnership. Notwithstanding this, primary healthcare is not a council-provided service and developer contributions cannot legitimately be sought on this basis. This point is noted in appeal decision PPA-230-2201, where the Reporter allowed the Port of Leith Housing Association's appeal against refusal of planning permission for residential development at land 96 Metres South of 2 Ocean Drive, Edinburgh (ref: 14/05127/FUL) and removed the requirement for developer contributions for health care. He stated that, "the fact that primary healthcare is not a council-provided service results in difficulty in demonstrating compliance with circular 3/2012." Accordingly, health care contributions for medical practice expansion and new facilities cannot legitimately be sought.	The Reporters in the recent appeal case PPA-230-2208 confirmed they were satisfied the tests of Circular 3/2012 were met in respect of a Healthcare Contribution. More recently a Notice of Intention (Ref PPA-230-2208) was issued where the Reporter accepted the Council's case for a contribution towards an increased capacity at Polwarth Medical Practice. No change is proposed to the finalised SG.	No	
	Whilst Forth Ports do not support developer contributions for medical practices, the following observations have been made: Contributions are set out on a per dwelling basis assuming 2.1 patients from every new home. This basis does not take account of 1 bed houses and studio flats where households of under 2 persons would be reasonably expected.	Council remains responsible in respect of this to the developer, if they are not contributions require to be repaid. Securing this with NHS a separate matter between Council and them. It is not pragmatic to vary contribution based on size of property, hence average size household. No change is proposed to the finalised SG.	No	
	The Action Programme identifies a requirement for a new health care facility for 10,000 patients to service development taking place within the Leith Waterfront area. The Primary Health Care Appraisal sets out the developments which expects to utilise the 10,000 patient facility. It should be noted that some of these developments already have consent and would not pay developer contributions towards a new facility. It would not be for developers to pay for existing/consented development in accordance with the provisions of Circular 3/2012.	Where developments have already been granted consent it will not fall to other developments to make up any potential shortfall. No change is proposed to the finalised SG.	No	
	It is also noted that the Council commits itself to transferring contributions to the NHS but provides no mechanism for ensuring that the sums will be set aside against the specified action or the timescale in which the medical centres should be developed before monies are returned to developers.	The mechanism for administering contributions with the NHS is a separate matter between the Council and the NHS. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

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	<p>The SG now sets out updated developer contribution requirements for education provision at Western Harbour, noting the requirement for a new 14/15 class primary school and 80 space nursery. The proposal will incorporate the relocation of the existing Victoria Primary School. In establishing the relevant developer contribution costs, no explanation is given regarding the capital cost to be borne by the Council in relation to relocating an existing education facility or the developer contributions which have been collected principally from development at Western Harbour or other sites within the catchment area. The Council should outline and justify the capital contribution it will make for relocating the existing school and identify the developer contributions already received in respect of education provision.</p>	<p>A new non-denominational double stream school is required at Leith Western Harbour to accommodate the pupil growth from new housing developments identified within the Council's Education Appraisal as well as existing pupils from within the Western Harbour. It is estimated that the new school would have to accommodate 395 pupils.</p> <p>There has been a long-standing proposal to provide an additional primary school within as a result of new housing development within the Western Harbour. There are already 120 non-denominational primary school pupils from the first phases of development at Western Harbour, most of which attend the nearby Victoria Primary School. 275 new pupils are expected to come from new housing in the area.</p> <p>A new school is therefore now required to alleviate accommodation pressures as a result of the new development. The Council's Action programme identifies a requirement for the school to be delivered by August 2020.</p> <p>New housing developments are expected to cover approx. 70% of the costs of this new double stream school (275/395). The Council will seek alternative funding mechanisms for the 30% of costs which can be attributed to the 120 existing non-denominational pupils from the Western Harbour. This split applies to the estimated infrastructure and land costs and is reflected in the required contributions set out in the supplementary guidance.</p> <p>The Council has carried out a statutory consultation proposing the relocation of Victoria Primary School to the new school. Although a new double stream primary school is required to accommodate pupils from new development as well as recent developments within the Western Harbour, additional capacity would be required to relocate Victoria Primary School to the new building.</p> <p>A 'phase 2' expansion strategy will therefore be put in place to enable the building to accommodate a relocated Victoria Primary School. This additional capacity is unlikely to be required for 2020 as the anticipated new housing will not have fully progressed and therefore there is likely to be spare capacity in the first few years.</p> <p>As the 'phase 2' expansion would provide education infrastructure over and above what is required to accommodate the number of pupils expected to be cumulatively generated from new development sites and the Western Harbour, the Council will therefore not seek developer contributions to deliver this part of the new infrastructure. No change is proposed to the finalised SG.</p>	Yes	<p>Add to page 26: The housing output for Sub-Area LT-2 is only expected to cover part of the total cost of delivering the New Primary School and Nursery (70%). The remaining part has been attributed to existing housing at the Western Harbour.</p>
	<p>In addition, the Education Infrastructure Appraisal is based upon information in the Housing Land Supply Study 2014. As the Council is aware, the nature and extent of residential development at Leith's waterfront has changed. Accordingly, school roll projections, the requirement for a two stream school to accommodate new development and the appropriate level of developer contributions needs to be reviewed to establish the appropriate scale of education infrastructure required in the Leith/Trinity contribution zone.</p>	<p>The Education Appraisal sets out how costs have been apportioned against development within each contribution zone. The Education Appraisal assessed the impact of the following: housing sites specifically identified in the adopted LDP; sites otherwise identified in the established housing land supply; and, for education infrastructure, other land within the Urban Area with potential capacity for housing development. The background housing information is updated on an annual basis. No change is proposed to the finalised SG.</p>	No	

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	<p>The SG states that, "Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme." This does not accord with the Government's policy set out in Circular 3/2012. If developer contributions have not been used for the purpose for which they have been provided, then the Council should return the contribution. Otherwise the link between the requirement and the development is broken. Where contributions are made, they should be for an identified need and spent to remedy that need. This should be clear and transparent on an open book basis and any contributions not required for the stated purpose should be returned within and agreed timeframe.</p>	<p>Where contributions are required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed to development within that zone. No change is proposed to the finalised SG.</p>	No	
Scott Hobbs Planning	<p>The draft SPG states that the consultative draft "applies to all development in Edinburgh" and "will be used as a material consideration until it is adopted following finalisation and statutory submission to Scottish Ministers". Whilst we accept that the draft SPG is a material consideration, it is a material consideration of very little weight. It is premature to give any significant weight to this document as it is only at consultation stage and has now been examined, or approved for adoption, by the Scottish Ministers. The current SPG, adopted in September 2017, has been consulted on, assessed by Scottish Ministers and subsequently amended prior to being adopted by CEC. Therefore, the existing SPG should carry significantly more weight than the draft SPG (until adopted). We do not agree that this draft guidance should supersede earlier, finalised statutory guidance on developer contributions until it has been formally adopted.</p>	<p>Denied. The Scottish Government directed the previous finalised SG September 2017 not to be adopted and that the Council must prepare and consult on a new SG. In these circumstances the Council did not consider it to be appropriate to ascribe more weight to the previous finalised SG September 2017, than the new draft SG. The Reporters in their intention notice on the recent West Craigs appeal PPA-230-2207 accepted the new draft SG to be the relevant material consideration for assessing these matters. No change is proposed to the finalised SG.</p>		
	<p>The draft SPG proposes changes to the current Transport Contribution Zone covering Leith. This is currently covered by the North East Transport Zone only. The draft SPG now proposes 4 transport contribution zones to cover Leith. Some of these areas overlap. The guidance is not clear on what should happen if a proposal falls within multiple transport contribution zones. Our understanding of how this draft SPG is currently being applied would suggest that projects within an area covered by multiple zones are being charged for each zone which they fall within. This is resulting in projects being charged for up to 3 / 4 transport contribution zones. This is compared to the current situation, where they are charged for the north east Edinburgh transport zone only. Our experience would suggest that this is likely to stall future development and investment in the Leith area as charging up to 4 transport contribution zone fees, as opposed to one, is likely to result in development becoming unviable. For example, a residential development falling within the current north east Edinburgh transport zone would be expected to make contributions of £1,345.90 per residential unit. Under the draft SPG a residential development could be required to pay up to £3,177.90 per residential unit (excluding</p>	<p>The North Edinburgh Transport Contribution Zones have been removed from the Guidance because, unlike the zones for actions identified in the LDP Transport Appraisals or the West Edinburgh Transport Appraisal (WETA), they do not arise directly from an appraisal of the development as set out in the adopted LDP. Instead, individual applications will be assessed using LDP Policy Tra 8.</p>	Yes	Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG

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	<p>"Ocean Drive Component"). This is more than double the current transport contribution required.</p>			
	<p>Transport contributions are required for major development and other development on a case by case basis. For a major development with a minimum of 50 residential units this could mean up to £158,895 is required for transport contributions (not including tram contributions and education, primary healthcare or open space contributions) as opposed to the current levels of £67,295 for a residential development of 50 units. This is a potential increase of up to £1,832 per residential unit and it is likely that an increase of this scale will significantly deter investment in residential development in the Leith area and therefore impact on the ability to deliver both private and affordable housing in the area. This is contrary to the aim of the LDP which seeks to increase the quality and number of new homes built in Edinburgh.</p>	<p>The North Edinburgh Transport Contribution Zones have been removed from the Guidance because, unlike the zones for actions identified in the LDP Transport Appraisals or the West Edinburgh Transport Appraisal (WETA), they do not arise directly from an appraisal of the development as set out in the adopted LDP. Instead, individual applications will be assessed using LDP Policy Tra 8.</p>	<p>Yes</p>	<p>Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG</p>
	<p>Further, we have concerns about adding a fee for industrial use being brought in for the four contribution zones in Leith. Fees ranging from £10.20 to £69.70 per sqm are proposed within these areas despite two of the zones having no anticipated industrial development. A fee of £23.70 per sqm of industrial space is proposed for the Granton contribution zone and £27.20 per sqm of industrial space for the Ferry Road contribution zone despite the draft SPG noting that industrial development is expected to contribute 0% of the transport costs in these areas as no industrial development is anticipated. There is therefore no necessity to include this within the Granton and Ferry Road transport contribution zones. The Leith to city centre and Leith/Salamander Street contribution zones anticipate 15-21% of transport contributions in these areas to come from industrial development ranging from £10.20 per sqm to £33.90 per sqm (£69.70 per sqm if the Ocean Drive component is included). As the current SPG has no contribution requirements for industrial development this would appear to constrain industrial development in these areas, with the Leith to City Centre Transport Contribution Zone requiring an equal fee for business and industrial uses, despite industrial development having a lesser impact on the transport network.</p>	<p>The North Edinburgh Transport Contribution Zones have been removed from the Guidance because, unlike the zones for actions identified in the LDP Transport Appraisals or the West Edinburgh Transport Appraisal (WETA), they do not arise directly from an appraisal of the development as set out in the adopted LDP. Instead, individual applications will be assessed using LDP Policy Tra 8.</p>	<p>Yes</p>	<p>Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG</p>

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	It should be clarified, in relation to the Leith / Salamander Street Transport Contribution Zone, that developments within Ocean Drive will be subject to the "with Ocean Drive Component" and that development outside of Ocean Drive will be subject to the values in the previous table.	The North Edinburgh Transport Contribution Zones have been removed from the Guidance because, unlike the zones for actions identified in the LDP Transport Appraisals or the West Edinburgh Transport Appraisal (WETA), they do not arise directly from an appraisal of the development as set out in the adopted LDP. Instead, individual applications will be assessed using LDP Policy Tra 8.	YES	Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG
	Transport contributions are required for major applications or "other" development sites in accordance with Policy Tra 7 and this is clarified on page 8 of the draft SPG. This is no different to the existing SPG. However, we consider that clearer guidance should be provided on what constitutes "other development sites". Our operational understanding is that transport contributions are being required for other medium scale development sites as standard rather than on a case by case basis.	'Other' development sites refer to sites which are not housing. The scale of 'other development sites' will be considered on a case-by-case basis, having regard to national guidance on transport assessments. NO change is proposed to the finalised SG.	No	
	Transport contributions, like tram contributions, should also allow for deductions based on the existing lawful use of the building as this will help to establish if there will be a significant increase in traffic movements as a result of proposed development and therefore whether or not a transport contribution is required.	Noted. However it is considered that Policy Tra8 and the guidance set out in the SG in respect of transport appraisals is suitable in assessing whether or not a transport contribution is required.	No	
	This guidance applies to all new developments requiring planning permission within the defined proximity of the "existing and proposed tram lines as shown in Annex 2". Tram contributions are required to ensure that all new developments make an appropriate contribution to the cost of this system, to take account of the impacts of the new development. The current thresholds would allow for contributions to be required in relation to projects which are up to 750m from a "tramline" which is approximately an 8 to 10 minute walk. However, the tram stop is likely to be at an even greater distance. We consider that the relevant threshold for developer contributions in relation to the tram should be defined by proximity to the tram stop, rather than the tram line. It is potentially unlikely that the users of the proposed development would use the tram if the tram line is more than an 8 to 10 minute walk and the tram stop is at an even greater distance. It is likely that there will be an alternative public transport within closer proximity to the proposed development.	The Tram policy requires contributions from development up to with differing distance from the tram line and its stops. As set out in the policy, this is a) Zone 1 = Sites within 250 metres of the tram line. b) Zone 2 - Sites with 500 metres of the tram line and c) Zone 3 - sites based on the shortest walking distance between any part of the site and the nearest part of a tram stop, lying between 500 metres and 750 metres. No change is required to the SG.	No	
	Tram contributions are required, as per the existing SPG, for developments within 750m of a tram line. There is clearly some uncertainty as to whether the proposed tram line will go ahead and therefore it is unnecessary to seek costs for this at this early stage. It is unfair to charge developers for a tramline which may never proceed and would therefore not be required in connection with proposed planning applications. If the proposed tramline does go ahead, it would be appropriate to charge for this at a later stage, once it has been agreed to proceed (at the earliest), similar to the charging for Phase 1A of the tramline in the current and draft SPG. At the very least, the SPG should make provision for the recovery / reimbursement of tram contributions paid to CEC for developments where the "proposed" tram line does not go ahead.	The tramline along this route is included within the LDP. It is necessary and appropriate for the Council to seek contributions for it within the SG. There is no mechanism for the Council to retrospectively seek contributions from developers, for developments already approved, if the tram route then goes ahead without the contributions being secured via the SG. In the event that this tram route does not proceed developers can obtain repayment of the contribution from the Council and have their S75 varied to remove the requirement via the S75A process. No change is proposed to the finalised SG.	No	

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	The scale of the map provided in Annex is difficult to read due to the scale of the map and it would be beneficial if this could be provided as an interactive map, similar to the LDP. The "constraints" information provided within the property information on the planning portal does not always contain the same "zone" as the transport department consultation responses. To clearly advise developers on the required tram contributions a larger scale, or interactive, map would be welcome.	An interactive map is planned for final version	Yes	
	As the draft SPG is a planning document, it would be more appropriate for the table at Annex 2 to list the contributions required for establish use classes.	Noted. The key principle is one of impact, not use class or lawful use of the site. No change is proposed to the SG.	No	
	Where deductions are to be made for the previous lawful use of a building or site, the lawful use should be confirmed to transport by CEC so appropriate deductions are made.	Noted. The key principle is one of impact, not use class or lawful use of the site. No change is proposed to the SG.	No	
	Planning obligations made under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) requires development contributions to be sought only where they meet all of the [following] tests.	Denied. See above. The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elsick that, the Council is not bound to follow the Circular, provided it has due regard to it. The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.	No	
	Circular 3/2012 (Planning Obligations and Good Neighbour Agreements) provides further guidance on these tests. We do not consider that the current draft SPG, particularly in relation to tram and transport contributions, requires necessary or reasonable contributions. We trust our comments will be taken into consideration.	Denied. The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.	No	
Scottish Property Federation (SPF)	The Scottish Property Federation (SPF) welcomes the opportunity to respond to the Council's Consultation on the Guidance on Developer Contributions and Infrastructure Delivery. Our Members have strong concerns with the level of obligations required by planning authorities and believe that, when applied inappropriately, they could undermine the financial viability of developments in an already challenging fiscal climate.	Noted. No change is proposed to the finalised SG.	No	

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	The scope of the issues covered in this guidance is very wide ranging. It must be borne in mind by planning authorities that Scottish (and UK) property investors/developers can no longer rely on traditional lending sources to support their development proposals, or even their companies, without significant financial support from other sources, notably overseas capital. These sources of capital have significant choice in where they invest their equity and we should be mindful of this reality when establishing this guidance. Edinburgh needs to provide a level playing field where developers are not unduly penalised. Developers are also competing with each other for sites, so absolute clarity about the likely scale of contributions means developers can appraise and bid on an equal footing. There are examples of sites which have been bought without cognisance by the new owner of the level of contribution they may be expected to pay. What this leads to is either (i) no development taking place or (ii) the developer renegotiating the level of contribution. This could leave the Council out of pocket and professional developers, who approach the process correctly, unable to compete.	Noted. SG takes cognisance of this in viability section. No change is proposed to the finalised SG.	No	
	Some of our members have suggested the equivalent of a Homebuyers Report for public asset disposals where the level of contributions expected is clearly quantified so that Developers are bidding on the same set of assumptions.	This is beyond scope of Council. SG seeks to give developers as much clarity as possible in advance. No change is proposed to the finalised SG.	No	
	It is also our members' view that the question of prematurity arises in relation to the Planning (Scotland) Bill. The Bill has enabling powers and much consideration is still to take place on the question of delivery and funding of development infrastructure on a national and regional basis, which may have major implications on the viability and/or effectiveness of the Council's proposals in a national context. The SPF is clear that there cannot be any notion of a duplicate development tax and S75 must, therefore, account for only basic community amenities fairly and reasonably related to the development.	Denied SG premature. It is a necessity, in terms of the LDP, that the Council proceeds to address Infrastructure requirements via the SG and does not delay this indefinitely until such time as the Planning Act comes into force. Without the SG addressing this issue, infrastructure shortcoming deriving from development proposals may be unable to be addressed resulting in permission being refused on a range of planning applications due to noncompliance with the LDP. No change is proposed to the finalised SG.	No	
	Developer contributions and the need to fund key infrastructure should not be considered without reference to city deal initiatives for the Edinburgh/South East Scotland regions. The city deal could potentially unlock significant economic growth, with attendant improvements on tax revenue required to support additional public services.	Denied. It is the Council's opinion that the reference in section 3 is appropriate for Supplementary Guidance, as wider context of alternative funding sources is uncertain and subject to change. No change is proposed to the finalised SG.	No	

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	<p>There is the potential for a more flexible approach to the provision of infrastructure so as to reduce upfront pressures on developers to make contributions. Members therefore welcome examples of phasing of contributions to assist with the viability of developments and the flexibility to forgo or commute contributions from developers towards the provision of affordable housing. They would also welcome clear guidance that developer contributions will only be requested where clearly required to enable development to be acceptable in planning terms and will be proportionate and relevant to the scale and nature of development proposed. Planning obligations should not be used to resolve existing deficiencies in infrastructure and developers should not be required to provide such facilities or contribute to the cost of facilities where the responsibility for their provision lies within the health authority and central government. We therefore welcome the approach at section 2, insofar as it relates to 'infrastructure requirements associated with new development'.</p>	<p>Timing and phasing of actions to be delivered by developers apart of a planning application will be considered as part of the planning application. The Action Programme sets out the timing and phasing of actions to be delivered by the Council. No change is proposed to the finalised SG.</p>	No	
	<p>A landmark court judgment has been issued in the case of Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Company Limited Supreme Court [2017] UKSC 66 which is relevant to this matter and which must be taken account of in this guidance but has not. It is for the Council to demonstrate that the developer contributions sought in this intended guidance is sufficiently related to the development concerned to justify a lawful developer contribution.</p>	<p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out this matter in more detail. No change is proposed to the finalised SG.</p>	No	
	<p>The supplementary guidance also fails to take account of an appeal case where requests for contributions were not supported by the Reporter (reference PPA-230-2201). The appeal was sustained, with planning obligation requirements sought by the Council for transport, education and healthcare infrastructure, similar to the supplementary guidance quashed by the Reporter as being incompatible with the provisions set out in Circular 3/2012.</p>	<p>The Council deny that there is body of case law to demonstrate that the Council's SG approach does not comply with the Circular. Reporter's decisions in Appeal to date have been mixed. The individual Reporter's conclusions in Ocean Drive (reference PPA-230-2201) in respect of the SG are noted, but refuted by the Council. The Reporter acknowledged he would have afforded the SG significantly more weight had it been adopted. Account has however been had by the Council of the Reporter's views in updating the SG explanatory notes on Education and removing the northern transport zone from the SG. This intentions Notice setting out the reasoning for the decision predated the Elsick Supreme Court decision and therefore did not have regard to it.</p> <p>The Ocean Drive decision was before the Reporters in the more recent West Craigs appeal PPA-230-2207 and the Reporters did not reach similar conclusions in respect of the SG. The Reporters in that appeal did not conclude that the SG generally failed the tests in the Circular. No change is proposed to the finalised SG.</p>	No	

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	<p>The policy objective of DEL1 is acknowledged. Infrastructure provision associated with new development is often required, where reasonably and fairly related to the nature of development proposed. However, at the LDP Hearing it was explained by the Council that it would carry the risk of the required infrastructure provision and this would not delay development (Reporters Report, page 146, paragraph 96). This is relevant in the context of the statement made by CEC (SG, section 2) that 'development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time'. Our members have strong concerns that as development proposals, which have not been identified in the Local Development Plan, come forward the Council will feel obliged to reject these proposals on the basis that there is no infrastructure programmed to accommodate them or that their development would undermine infrastructure provision made for allocated sites.</p>	<p>Policy Del 1 of the adopted plan sets out the policy context for the SG. The policy states that "Development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time". The Council's approach set out in the guidance, and the Action Programme aims to allow development to progress, whilst mitigating the cumulative impact of development. The Council aims to ensure that the aim of timeous provision of infrastructure relative to development will not give rise to use of suspensive conditions unnecessarily. As part of this approach, the Council is taking on some of the responsibility and risk for infrastructure delivery itself, this will help ensure that the issue of third party delays in infrastructure delivery does not normally arise. No change is proposed to the finalised SG.</p>	No	
	<p>It is crucial that the key agencies are engaged positively at the regional infrastructure and local development planning stages. Agencies such as Transport Scotland, the NHS and Scottish Water have been examples of agencies of government, which have not always been aligned in the past with planning at a strategic or local level. While we appreciate that these organisations must deliver within their own budgets and agreed priorities, there also has to be mechanism to allow for a linkage to agreed planning priorities and alignment with NPF3. Attracting outside investment is going to be key to sustaining the property sector going forward. We advocate the closer alignment of private capital and government to deliver infrastructure.</p>	<p>Noted. No change is proposed to the finalised SG.</p>	No	
	<p>Members have argued for many years that the Development Plan should highlight the infrastructure needed for a development to proceed. Members find that in the current system, this is done in a very generic way i.e. may need education provision, may need health provision, may need road improvements. The SPF understands that under the revised approach to Development Plans and the introduction of Action programming, the council and statutory providers will be able to indicate what is required and when. The phased provision of the infrastructure would benefit from being clearer.</p>	<p>Noted. The SG when adopted will form part of the development plan. No change is proposed to the finalised SG.</p>	No	
	<p>It will be necessary to consider application proposals on their merits in the particular circumstances at the time of their determination. This will help to establish appropriate timing and phasing for additional infrastructure improvement / delivery.</p>	<p>Timing and phasing of actions to be delivered by developers apart of a planning application will be considered as part of the planning application. The Action Programme sets out the timing and phasing of actions to be delivered by the Council. No change is proposed to the finalised SG.</p>	No	
	<p>It is necessary to keep technical infrastructure appraisals and assessments under review in order to ensure that infrastructure actions are based on accurate and up to date information, including costs. Consequently, there is still a requirement for the detailed analysis of infrastructure developer contributions to be tested in the context of Circular 3/2012.</p>	<p>Noted. No change is proposed to the finalised SG.</p>	No	

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	The SPF does not agree with the Council's approach to education contributions where there is a cumulative impact from development sites as it fails to link the impacts of development directly to the scale and kind of the contributions being sought. Such an approach to other forms of infrastructure provision, on a cumulative basis, has been successfully challenged on legal grounds elsewhere in Scotland.	Denied. Elsick confirms cumulative contributions can be lawful and in no way rules out the use of contribution zones provided the legal tests are met. The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG, including its provisions on education, are in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG addressed this issue in more detail. No change is proposed to the finalised SG.	No	
	The guidance also appears to start from the premise that there will be no available capacity in any of the High Schools in the city and that all development will drive a need for education contributions. It therefore applies a cost per pupil generated regardless of whether there is any identified need.	Denied. Contributions towards additional secondary school capacity are only required in areas where school roll projection indicate that there is not sufficient spare capacity to accommodate the growth in pupils from new housing development. For example, no contribution towards additional secondary school capacity is required from housing developments within the catchment areas of WHEC, Drummond HS and Tynecastle HS. No change is proposed to the finalised SG.	No	
	Where contributions are made towards the extension of the relevant catchment schools for the development, these should be used for the stated purpose within an agreed time-frame or returned to the developer. Their use should also be demonstrated on request on an open book basis and any surplus contribution also returned after the required development is complete. The education sub areas identify contributions for multiple primary schools. It is only reasonable that contributions should be sought towards the primary school directly affected by a development. To require contributions towards schools, which are not affected by a proposed development is contrary to Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The sub-areas should, therefore, be divided into individual primary school catchment areas.	The Council's cumulative approach in the SG and appraisals set out the link is between the development and necessary actions within the zones. The actions required are directly required as the result of the cumulative impact of development. No change is proposed to the finalised SG.	No	
	Both the sizes of extensions required and the costs per square metre should also be the subject of a much more robust set of evidence as to how they have been calculated, as they seem to be out of kilter with recent primary school extensions and the costs per pupil published by the Scottish Government and Scottish Futures Trust.	The educational infrastructure costings table has been removed from the SG. This information will now be in the Education Appraisal along with a more detailed explanation of how the costs have been determined. The costs quoted within the Supplementary Guidance have been indexed to Q4 2017 (BCIS Forecast All-in Tender Price Index - 313) to take account of inflation. Previous versions of the supplementary guidance indexed costs to Q1 2015 (BCIS All-in Tender Price Index - 270). The estimated area for each infrastructure action is regularly reviewed in order that the actions reflect the Council's current accommodation requirements. The area estimates have been reviewed again as part of finalising the SG. The overall area for each new primary school and nursery has been reduced from what was presented in the draft SG. As a result, the estimated cost of delivering a new primary school and nursery has been reduced which has been reflected in the contribution rates set out in the finalised guidance.	Yes.	Page 15, update Capital Cost column with new primary school costs. Annex 1, Update contribution rates where required. Page 4, add 'Information about how the cost of these actions has been determined is set out in the Education Appraisal (August 2018)' at the end of the third paragraph. Page 18, remove Revised Educational Costings Action Plan Costings as at December 2017 table.
	Our members are also concerned that site remediation and servicing costs are set so high that they have the potential to act as an impediment to residential development and may need to be reviewed on that basis. If it is clear that the level is appropriate, they have suggested that the Council should discuss alternative locations for the proposed schools with developers and land owners.	Noted. The costs attributed to 'Servicing and Remediation' in the draft guidance came from an external consultant's report that identified potential site abnormal costs. The figures are based on a high-level desk top exercise which looked at the potential for required works relating to ground remediation (contamination), ground stabilisation, dealing with ground water, and other site specific matters such as the requirement for	Yes.	Page 4, paragraph 5, delete 'the costs of the land, and its servicing and remediation is included' replace with 'the value of the land, as well as potential abnormal site costs are included'. Page 15 + 16, replace all 'S+R' with 'Abnormals', Page 17 Replace 'Q4 2017 Servicing and Remediation' with 'Q4 2017 remediation and other abnormal costs'.

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		deep piling. The finalised SG will use the description 'remediation and other abnormal costs'.		
	Some members have noted that funding is generally available on an annual basis to councils from the Scottish Government for the improvement and replacement of existing schools premises both within and outwith development growth areas. Developers do not have access to such funds directly from Government or other sources. Cognisance should be made by the Council of the receipt or the potential receipt of this form of funding in the calculation of developer contributions. Some members have suggested that it would be helpful if the guidance noted where alternative sources of funding are available and identify when they can be used.	In response, it is the Council's opinion that the reference in section 3 is appropriate for Supplementary Guidance, as wider context of alternative funding sources is uncertain and subject to change. No change is proposed to the finalised SG.	No	
	Our members are concerned at the level of contributions required for transport, particularly developments around the tram network, which taken together are likely to make projects unviable. The SPF does not agree with the Council's approach to tram contributions from major developments located outwith the Contribution Zone.	Noted. No change is proposed to the finalised SG.	No	
	The proximity of the tram route and associated infrastructure should be a key consideration in supporting ambitious sustainable mode share targets in new development. Where sites are well served the council should accept low impact on the road network and in turn the developer should pay a lower share of road contributions as a result.	In response, junction improvements are important for supporting public transport accessibility and active travel connectivity as well as mitigating increases in private motorised vehicular traffic. Such sustainable modes will also be used by some occupants of development adjacent to tram stops, and so it is reasonable that such developments contribute to non-tram actions. No change is proposed to the finalised SG.	No	
	It is noted that a spreadsheet tool has been developed to facilitate the calculation of appropriate contributions with regards to West Edinburgh Transport Contribution Zone. We understand that this is not yet available and would welcome confirmation that this will be published timeously.	Noted. The spreadsheet is not part of the supplementary guidance itself but a tool to aid calculations of the contributions. However, it is intended to be published alongside when the SG is formally published. No change is proposed to the finalised SG.	No	
	A key concern of our members is to support the Council in its proposed general approach and encourage the Council to ensure that any developer contributions required conform with the tests set out in Circular 3/2012. This requires contributions to be reasonable, proportionate, directly related to the proposed development and that they do not undermine development viability. There are also concerns that the identified transport contributions emanating from the Council's study areas go beyond what can be identified as a reasonable impact of development and seek to improve the wider transport network and address existing deficiencies. Our members are also disappointed to note that "within Contribution Zones, any remaining contributions will be held and be put towards other actions within the contribution zone that the site lies within as and when required". An example of this is the contributions made by developers within the original proposed tram network, which ultimately did not go forward.	Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed to development within that zone. No change is proposed to the finalised SG.	No	

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Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Our members also have some concern in relation to the assessment of roads infrastructure in the context of the cross boundary transport impacts study, it would be helpful for some clarity in respect of how this will be taken into consideration.	Noted. Transport Scotland's cross boundary study has now been published, however, the costs and actions have yet to be established. The SG is prepared using the best available information.	No	
	We note the Council's position in respect of greenspace infrastructure actions, but there appears to be a lack of detail to give certainty in respect of the costs. We welcome that the exact figure will depend on the specific nature of the greenspace in question, although the three examples upon which cost calculations have been made may require further scrutiny before any commitments can be made. As already stated it is important that contributions sought are directly related to the development proposed.	Noted. No change is proposed to the finalised SG.	No	
	We note that a new process is being developed to help set priorities for public realm investment. In the meantime, pending an updated public realm strategy, strategic public realm contributions will not be pursued. On this basis, we would welcome and seek the opportunity to engage with this process. It can no longer be expected that developers are simply able to pay for 'nice to have' policies such as public artworks and the Council must be aware of the cumulative cost of its requirements from developers. It is unlikely that funding institutions are likely to lend a sympathetic ear to developers faced with the prospect of funding the projects identified in the Public Realm Strategy.	Noted. The Public Realm Strategy is produced by the Council and updated periodically and is non-statutory in nature. It is expected that any updated public realm strategy will be taken account of in future documents including future LDPs and Action Programmes. No change is proposed to the finalised SG.	No	
	In relation to Healthcare Actions, the basis upon which the estimated costs have been calculated is still not clear particularly where there are multiple developers and 'exploring options'. We would welcome clarity in respect of this e.g. location, the estimated cost and how this will be delivered and funded (including apportionment of costs to relevant landowners and developers etc).	Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.	Yes	The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
				<p>requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development."</p>
	<p>Members have also noted that the requirement for Primary Health Care is the responsibility of Central Government rather than Local Authorities, notwithstanding the link to development plan policy, the requirement for contributions to GP practices cannot be fully justified. Similar to the costs identified for school buildings, there are also concerns that were such costs to be the legitimate concern of the planning obligations regime, the actual costs set out for such facilities are not justified and are out of kilter with published information sources, for example the NHS Lothian Strategic Plan 2014-2024.</p>	<p>Noted, Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments.</p>	Yes	<p>The text of section 2e of the SG has been altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. The assessment has indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients generated by new development. Where the requirement for this infrastructure arises solely from additional patients generated by new development (cumulative) being brought forward in the context of the LDP and is not related to pre-existing capacity constraints then it will be expected to be funded entirely by the new developments. In cases where the requirement arises due to a combination of new development and pre-existing capacity constraint(s) then the costs will be shared with the EHSCP. Where funding is shared between the EHSCP and Developers the detailed calculation for the split of funding can be found in the Local Development Plan Primary Care Appraisal. Developers will only be expected to fund additional capacity to accommodate new development."</p>
	<p>Our members also have strong concerns about the proposals that "planning permission for housing development will only be granted where there are associated proposals to provide any necessary health and other community facilities relative to impact and scale of development proposed." As already stated planning obligations should not be used to resolve existing deficiencies in infrastructure provision.</p>	<p>Denied that the SG fails to meet this requirement of the Circular 3/2012 on this issue. In terms of the finalised SG, in respect of this issue, on site facilities or developer contributions will only be sought to address impacts arising from new development and not to address existing deficiencies. No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Certainty would be helpful to demonstrate that 'gap funding' and/or alternative funding mechanisms are available – particularly in the early stages to enable projects to commence. As noted earlier, the cumulative effect of multiple contributions and the phasing of contributions / infrastructure delivery is important to the viability of development projects. In simple terms, if viability cannot be achieved, development is unable to progress. The SPF welcomes the provision in the guidance for the submission of evidence demonstrating that there would be viability issues if contributions were paid and that it may be possible to withdraw from paying contributions.	It is the Council's opinion that such funding/mechanisms are actually necessary because of the uncertainty associated with developer contributions and planning decisions. No change is proposed to the finalised SG.	No	
	In relation to major applications it has been suggested by some of our members that the process of determining suitable S.75 contributions could be facilitated by the developer providing a comprehensive viability assessment, provided it could be independently reviewed by an appropriate company on behalf of the Council. This already happens very effectively and successfully in some local authorities south of the border and would enable the developer to present detailed figures within an agreed scope of works and parameters to ensure, as much as possible, that the project was reviewed objectively on a financial basis. This approach could cover housing, office or retail components to consider what the remaining parts of a project could realistically support, together with the phasing of payments. The approach would likely entail a considerable amount of work but should ultimately provide a very useful tool for both the developer and the Council.	The Council already operates an adequate process for assessing viability which is in line with the Royal Institution of Chartered Surveyors Guidance Note, Financial Viability in Planning (First Edition, 2012). Contributions cannot be reduced without an open book assessment. No change is proposed to the finalised SG.	No	
	The Council indicates in the guidance that it expects developers to use an open book approach when entering into viability assessments. The same approach and level of scrutiny should be applicable to the costs of development arising from the contributions that are being sought and paid, particularly given the concerns raised about the level of contributions set out in the Guidance and their relationship with costs from other published sources.	The Council already operates an adequate process for assessing viability which is in line with the Royal Institution of Chartered Surveyors Guidance Note, Financial Viability in Planning (First Edition, 2012). Contributions cannot be reduced without an open book assessment. No change is proposed to the finalised SG.	No	
	Our members have strong concerns about the new style of s75 Agreement that the Council is currently operating and does not appear to have consulted on. There are two significant changes which have been made without consultation, which affect all developments: Previously the Council accepted that the obligations in a s75 Agreement should not be enforceable against former owners. This appears to have changed and the Council's new approach is that they should be enforceable against former owners.	Model S75 not yet published as heads of terms will follow that adopted in the SG. No change is proposed to the finalised SG.	No	
	Previously the Council accepted that in housing developments a s75 Agreement should not be enforceable against individual house owners. The Council now appears to wish to retain the right to enforce against new house owners.	This is not a matter covered in the Supplementary Guidance. No change is proposed to the finalised SG.	No	
	Our members are firmly of the view that the Council should consult formally on its change in stance on these key issues.	This is not a matter covered in the Supplementary Guidance. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	Assuming that contributions have been found to be appropriate with regard to the tests of Circular 3/2012, the phasing and timing of contribution payments is particularly important in respect of matters such as cash flow. We would also welcome clarity in respect of any proposals to 'hold contributions' where these are to be put towards actions set out within the action programme. The release and payment of contributions can affect project implementation and delivery and it is important that contributions are only required where identified actions – and timescales – have been set out.	Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed to development within that zone. No change is proposed to the finalised SG.	No	
	Our members agree that in housing developments in particular, the use of Section 75 contributions for ancillary infrastructure should be staged or calibrated with housing occupations to avoid disproportionate up-front costs which could stall development. More diverse housing types, including the Build-to-Rent sector and homes for older people could be incentivised, where requirements are more finely differentiated to reflect their different impacts. Arrangements to share resources and expertise in this specialist area should also be considered.	Noted. In planning terms, these forms of development will have an impact on services and infrastructure, and therefore is not exempt for contributions. No change is proposed to the finalised SG.	No	
	The Guidance states that “within Contribution Zones, any remaining contributions will be held and be put towards other actions within the contribution zone that the site lies within as and when required”. This does not accord with the Government’s policy set out in Circular 3/2012. If developer contributions have not been used for the purpose for which they have been provided, then the Council should return the contribution. Otherwise the link between the requirement and the development is broken. Where contributions are made, they should be for an identified need and spent to remedy that need. This should be clear and transparent on an open book basis and any contributions not required for the stated purpose should be returned within and agreed time-frame.	Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme for that zone. Contributions will only be used within the zone in which they have been collected, not city wide. All the actions within a zone have been attributed to development within that zone. No change is proposed to the finalised SG.	No	
	Problems arise under current s.75 legislation, and with the Council’s cumulative impact proposals, with respect to the timescales that Councils may intend to hold developer contributions until they are fully utilised. It is inappropriate to hold developer contributions, unused, for periods well in excess of the likely development period itself, or within a reasonable period in which development impact may occur. We note the intention to hold contributions towards education infrastructure for 30 years from the date of construction of new school infrastructure. It is noted that this is to enable payments to be used for unitary charges. Our members strongly disagree with this and consider it to be an unreasonable burden to impose on developers. Some of our members have suggested that it would be more appropriate to see any contributions made, spent within a 5 year period as they are intended to facilitate development. There should be no reason for other contributions to be held for over 10 years. This view appears to be supported by Circular 3/2012, which asks in paragraph 21 “in the case of financial payments, will these contribute to the cost of providing necessary facilities required as a consequence of or in connection with the development in the near future?”	The funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread for over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	We would welcome the publication of a model legal agreement and note that this will be published with the finalised guidance. We would, however, suggest that some engagement and consultation on the agreement is essential and we would welcome the opportunity to be involved in this.	Noted. No change is proposed to the finalised SG.	No	
Axcel Hospitality (Edinburgh) Ltd	We object on behalf of our Clients to The City of Edinburgh Council's draft Supplementary Guidance on "Developer Contribution & Infrastructure Delivery" January 2018 paragraph 2b. Transport Infrastructure and in particular, the paragraph "Edinburgh Tram Contributions". It is stated under this heading that: "Where the tram network will help to address the transport impacts of a development, a contribution will be sought towards its construction and associated public realm works. This guidance applies to all new developments requiring planning permission within the defined proximity of the existing and proposed tram lines as shown in Appendix 2, and throughout the city with regard to major developments.	Noted. No change is proposed to the finalised SG.	No	
	In relation to the completed Phase 1A of the project, the Council has constructed the tram line and its associated public realm. As part of the funding strategy money has been borrowed against future contributions from developers. Given the amount of public money that has been spent and the fact that many developers have already contributed towards the project this approach is an appropriate mechanism for 'front funding' essential infrastructure. The Council in constructing the tram network has provided a necessary piece of transport infrastructure to allow future development to proceed."	Noted. No change is proposed to the finalised SG.	No	
	"G. The construction of the tram system infrastructure (Phase 1A) was completed in 2014. The Council has borrowed £23 million to fund the construction of the tram system and intends to repay this amount through developer contributions. This guideline will continue to apply in relation to development along the tram route until the amount of borrowing, including costs, highlighted above has been repaid. This provision relates to Phase 1A of the construction of the tram route as shown in the appended plan."	Noted. No change is proposed to the finalised SG.	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The requirement for developers to contribute towards the costs of the Council's borrowing for the tram infrastructure system (Phase 1A) does not comply with Planning Circular 3/2012 "Planning Obligations and Good Neighbour Agreements" and in particular this requirement to contribute does not meet the mandatory national planning policy tests of that Circular including (1) necessity, (2) serving a planning purpose (3) reasonably relating to the proposed development, (4) fairly and reasonably relating in scale and kind to the proposed development and (5) the requirement that it is reasonable in all other respects. The fact that public money has been spent on the tram infrastructure system (Phase 1A) and that others may have contributed is not a relevant consideration. A landmark Court judgment has been issued in the case of Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Company Limited Supreme Court [2017] UKSC 66 which is relevant to this matter and which must be taken account of in this guidance but has not. It is considered that the Tram Contribution sought in this guidance is not sufficiently related to the development to justify a developer contribution.</p>	<p>Denied that the Council approach is flawed. The Council's detailed submissions on these issues have been made in respect of the ongoing appeal to the Scottish Government by Axcel Hospitality (Edinburgh) Ltd (POA-230-2005). A Hearing has taken place and the Reporters decision is awaited.</p> <p>The Council has carefully considered the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act), particularly in light of the clarity provided by the Supreme Court Elsick Judgment. The Council considers that the finalised SG is in accordance with the legal requirements of Section 75 of the Planning Act. The 18 January 2018 Report to the Housing Economy Committee in respect of the draft SG sets out these matters in more detail. The Council is satisfied that the finalised SG provides sufficient basis to demonstrate in respect of all infrastructure impacts that a more than trivial connection between the requirement and a specific development.</p> <p>The Council acknowledge that Circular 3/2012 is an important material consideration which it must have due regard to in determining planning applications. The Council notes that the Supreme Court clarified in Elsick that, the Council is not bound to follow the Circular, provided it has due regard to it.</p> <p>The Council has carefully considered the tests set out in Circular 3/2012 Planning Obligations and Good Neighbour Agreements. The Council considers that the finalised SG is in accordance with the aims and requirements of the Circular. No change is proposed to the finalised SG.</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
	<p>The tram infrastructure system (Phase 1A) has been built and is operational and the Council should not be entitled to in effect charge for its borrowing costs for that infrastructure system as that would amount to a retrospective charge for existing infrastructure that should be available to new development without the requirement to make developer contributions towards it.</p>	<p>Denied. In reaching its policy position, as set out in policy Del 1 of the Edinburgh Local Development Plan, November 2016 and in Part 2b and Annex 2 of the finalised SG, the Council complied with Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006) and paid due regard to the provisions set out in Circular 3/2012. In regard to Circular 3/2012 paragraph 23 expressly contemplates, "Planning authorities should give consideration to the possibility of infrastructure being funded, and development thus enabled, through other mechanisms, with costs being recovered through staged payments as development progresses."</p> <p>The use of 'thus enabled' and 'recovered' indicating retrospective recovery after the infrastructure is built. Assessment was carried out by the Council to ascertain the extent to which the Tram infrastructure addresses existing deficiencies in public transport infrastructure in the City and the extent to which it addresses the public transport infrastructure needs of new development along the route. The Council is accordingly only seeking to recover a small portion of the total Tram Infrastructure costs from developers, namely £23 million. Tram line 1A was built, by the Council, in order to facilitate development within parts of the city where, in its absence, there would be insufficient public transport infrastructure to permit development, of a certain scales and form. The legitimacy of the Council's approach to recovery of developer contribution towards the costs of the Tram infrastructure was examined and endorsed by Reporters both in respect of the Edinburgh City Local Plan 2010 and the current LDP. The provisions of policy Del 1 of the LDP clearly contemplate retrospective recovery of payments and that such payments are necessary to mitigate any negative impact of development (either on an individual or cumulative basis). The Tram project is expressly referred to in this regard.</p> <p>The Council would further contend that its position was endorsed and reinforced by the Reporter's consideration of the LDP Examination Report (June 2016) at Issue 21 with specific regard to the Tram project and its assessment against the policy tests of Circular 3/2012 (paragraphs 52-57 on page 766).</p> <p>Circular 3/2012 promotes a 'Plan led approach' (paragraphs 30 & 31) with the adoption of formal policies on the use of planning obligations strongly encouraged, permitting an opportunity for the community and the development industry to be involved. It also envisages cumulative impacts of a number of developments to share the costs proportionally (paragraph 20) and where formulae are applied they should reflect the actual impacts of, and be proportionate to, the development. The Supreme Court judgement in <i>Elsick</i> confirmed that in terms of Section 75 contributions for infrastructure could be sought in respect of the cumulative impacts from a number of developments, provided that there is more than a trivial connection between each development and the infrastructure.</p> <p>The Council would contend that its Tram contribution policy complies in full with these provisions. No one development would justify the provision of the tram line and so a cumulative approach has been clearly set out that directly relates to particular forms of development that fall within a narrow zone of 500 metres of the tram line and 750 metres of the tram stops within which they should contribute. This is in no way analogous with the</p>	No	

2. Summary of consultation responses on draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (January 2018) and Council's response.

Respondent	Consultation Comment	CEC Response	Change	Change to be made
		<p>Elsick case scenario where transport contributions, at a standardised rate, were being sought from developers across the entirety of Aberdeen city and shire to be utilised for specified transport works somewhere within that wide area and having no identified relationship to any one development.</p> <p>The Supplementary Guidance also requires that any tram contribution be justified in its particular instance, and not a payment towards debts incurred by the Council in respect of the project but a contribution towards the project without which the cumulative impact of the development would have been unacceptable.</p> <p>The Council's position is that our policies in respect of the tram infrastructure contributions are a legitimate cumulative retrospective recovery approach for a directly related and necessary piece of infrastructure and not, a levy in any guise of that term.</p>		
	<p>Further, as the Tram project (Phase 1 A) was subject to a cost overrun of £375,000,000 and is currently being scrutinised by the Tram Inquiry due to cost overrun and delay, it is not considered reasonable that our Clients should have to pay for this on the basis that the Council has not provided value for money in its delivery of the Tram project.</p>	<p>Denied that the SG requires developers to make any contribution towards the cost overrun of the tram project (phase 1A). See above response.</p>	No	

Enclosure 3 - List of proposed changes to draft SG: Developer Contributions and Infrastructure Delivery

Page no.	Proposed Change
4	Paragraph 5, delete 'the costs of the land, and its servicing and remediation is included' replace with 'the value of the land, as well as potential abnormal site costs are included'. Add 'Information about how the cost of these actions has been determined is set out in the Education Appraisal (August 2018)' at the end of the third paragraph.
8	Replace paragraph seven on page 8 with: Where a transport action is required because of development and can be delivered directly by an applicant, this is the Council's preferred option. The Council will normally secure its delivery as part of the planning permission using conditions or non-financial legal agreements (see Section C above).
11	Text of section 2e of the SG will be altered to provide additional clarification as follows; "Edinburgh Health and Social Care Partnership has prepared the Local Development Plan Primary Care Appraisal (April 2017, updated December 2017) as part of the process of planning future health care services in light of changing demands as a result of new development. The appraisal involves an assessment of all primary care capacity in city areas affected by new development, including consideration of existing spare capacity or lack of, the impact of new development on patient numbers and capacity, potential actions for providing additional capacity to accommodate new patients generated by development, the cost of those actions and the proportionate distribution of costs to new developments. To do this, assumptions have been made as to the amount of new housing development which will come forward. This takes account of new housing sites allocated in the LDP and other land within the urban area drawing upon data from the annual Housing Land Audit. From this the number of new patients ('additional population') expected from this housing development is then identified, as set out in Appendices I to V of the appraisal document. "
13	Add reference to Section 69 agreements and option for developer to deliver. Add "If CEC confirm that they require a identified 2 hectare school site then following transfer the land value of this can be credited against the overall value of the required contribution. Future financial contributions can then be adjusted accordingly. If the developer has serviced and remediated the site then the costs of this can also be credited against the overall contribution requirement on an open book basis. If the developer wants these costs fixed within the legal agreement then they must confirm what work will be carried out and provide evidence to be agreed with the Council that demonstrates what these costs are likely to be."
15	Update Capital Cost column with new primary school costs. Replace all 'S+R' with 'Abnormals'.
16	Remove 'New Secondary School (West Edinburgh), replace with 'Additional secondary school capacity - 420 pupils (to mitigate the impact of development within the catchment areas of non-denominational secondary schools within West Edinburgh)
17	Remove land cost information for west secondary school. Update S&R costs set out in Annex 1 for Builyeon Road, South Queensferry
18	Remove Revised Educational Costings Action Plan Costings as at December 2017 table.
26	Add to page - The housing output for Sub-Area LT-2 is only expected to cover part of the total cost of delivering the New Primary School and Nursery (70%). The remaining part has been attributed to existing housing at the Western Harbour.
32	Remove 'New Secondary School (West Edinburgh), replace with 'Additional secondary school capacity (West Edinburgh)'. Update contribution rates.
46	ACTION and COST still to be established for additional car parking capacity. Additional cycle parking is costed at £4,288

Enclosure 3 - List of proposed changes to draft SG: Developer Contributions and Infrastructure Delivery

49	Text box for West Edinburgh Transport Contribution Zone- add following sentence after sentence on spreadsheet tool: 'The spreadsheet can be updated to reflect any decisions made under City Region Deal governance.'
51-54	Remove Granton, Ferry Road, Leith to City Centre and Leith/Salamander Street Transport Contribution Zones from the SG
59	The text of the table in Annex 4 will be changed to provide additional clarification as to which actions will be entirely funded by developer contributions.
all	Use of 'Appendix' in error on pages 3, 7 and 35 and will be corrected to 'Annex'.
all	Total zone costs to be added to finalised SG.

Enclosure 4

Supplementary Guidance: Developer Contributions and Infrastructure Delivery

Statement of conformity to the tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements

Introduction

The Council consider that the approach set out in the finalised Supplementary Guidance: Developer Contributions and Infrastructure Delivery, as proposed for adoption (the “SG”) provides a strong legal basis for seeking developer contributions via Section 75 Agreements. In reaching this view the Council has given detailed consideration (see Housing and Economy Committee Report 18 January 2018) to the Supreme Court “Elsick” Decision which, amongst other matters, provided legal clarification that:

- the legal test for a planning obligation requirement, including infrastructure contributions, is that it must have more than trivial connection to the development;
- Infrastructure contributions derived from cumulative effects can be lawfully sought provided legal test met;
- That the Scottish Government Planning Circular 3/2012 titled “Planning Obligations and Good Neighbour Agreements” does not form part of the legal test and is only a material consideration that the Planning Authority must have regard to in exercising its Planning Judgment;

The Council as Planning Authority recognises that Circular 3/2012 (the “Circular”) is an important material consideration that it must have regard to in seeking planning obligations. This statement sets out why the Council consider the SG complies with the Circular and in particular the five Circular tests.

Circular 3/2012

The Circular states that planning obligations made under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) should only be sought where they meet all of the following tests:

- necessary to make the proposed development acceptable in planning terms
- serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area
- fairly and reasonably relate in scale and kind to the proposed development
- be reasonable in all other respects

This statement assesses the SG against each of the five tests.

1. Necessity Test

The Circular states at paragraph 15 that:

“Planning obligations or other legal agreements should not be used to require payments to resolve issues that could equally be resolved in another way.”

The Circular goes on to state that before deciding to seek a planning obligation, the planning authority should consider the following options in sequence:

- i) The use of a planning condition;
- ii) The use of an alternative legal agreement;
- iii) The use of a planning obligation;

The SG and Action Programme recognises and applies the above sequence. Section 4. Legal Agreements and Use of Monies highlights that:

- (i) Where the infrastructure is to be delivered by the developer, a condition will be used;
- (ii) where the developer contribution are being paid up front then arrangements such as Section 69 agreements can be made, rather than a Section 75 Agreement;
- (iii) where developer contribution are required and are not being paid up front, then a Section 75 agreement will normally be used to ensure successors in title are bound by the required obligations.

The SG accordingly helps to ensure that the Planning Authority only requires a Planning Obligation (Section 75 Agreement) in respect of payments where this cannot be resolved in another way.

2. Planning Purpose Test

The Circular states at paragraph 16 that:

“Planning authorities should satisfy themselves that an obligation is related to the use and development of land. This judgement should be rooted in the development plan.”

The Circular promotes a ‘Plan led approach’ (paragraphs 30 & 31) with the adoption of formal policies on the use of planning obligations strongly encouraged. The City of Edinburgh Council’s policy on developer contributions is set out LDP Policy Del 1 (adopted November 2016). To support this policy, the Plan requires the adoption of supplementary guidance on ‘Developer Contributions and Infrastructure Delivery’.

The SG has been prepared and consulted upon, and is now submitted for adoption. The SG ensures that potential developers are aware when undertaking development appraisals and in designing their proposals of the likelihood of a planning obligation being sought, and the likely financial requirements of that planning obligation.

3. Relationship to proposed development test

The Circular sets out in paragraph 17 that:

- planning obligations must relate to the development being proposed;
- that planning obligations can be used provided it would clearly overcome or mitigate those identified barriers to the grant of planning permission; and
- there should be a clear link between the development and any mitigation offered as part of the developer's contribution.

The impact of the growth set out in the LDP on schools, roads and other transport requirements, green space and primary healthcare infrastructure, has been considered by the Council. This consideration has been carried out through cumulative appraisals of the impact of development on education and transport infrastructure. It has involved using the standards in the Open Space Strategy and partnership working with NHS Lothian. In addition, cross boundary transport impacts and actions to address them are being considered by SESplan with Transport Scotland.

The resulting infrastructure requirements from these appraisals are set out in the current Action Programme (January 2018) and development proposals are required to contribute to towards these infrastructure actions, as set out in Table 1 of the SG, where relevant and necessary to mitigate any negative additional impact, either on an individual or cumulative basis. The Council's appraisals and cumulative approach as set out in the SG ensure the clear link between development proposed and the mitigation required.

4. Scale and Kind Test

The Circular states at paragraph 20 that:

“Planning obligations must be related in scale and kind to the proposed development.”

The Council's appraisals set out how the scale of the infrastructure action relates to the type and amount of development proposed.

In paragraph 20, Circular 3/2012 envisages that cumulative impacts may require a number of developments to share the costs proportionally and where formulae are applied they should reflect the actual impacts of, and be proportionate to, the development. The SG on Page 3 sets out that where infrastructure appraisals have identified cumulative impacts i.e. arising from more than one development, a contribution zone have been established. The SG outlines that the total cost of delivering infrastructure with zones, including land requirements will be shared proportionally and fairly between all developments which fall within the zone.

The Council's Action Programme identifies where infrastructure investment will confer some wider community benefit, including replacement schools. The SG sets out how contributions are to be shared between the Council and development, and ensures that infrastructure actions remain proportionate to the scale of the proposed development within a contribution zone.

5. Reasonableness test

Circular 3/2012 states at paragraph 24 that planning obligations should be reasonable in the circumstances of the particular case and that none of four specific questions can be answered in the negative for this test to be passed. Each question is considered below.

a) *is an obligation, as opposed to conditions, necessary to enable a development to go ahead?*

In terms of the SG, as set out above under test 1, a planning obligation (S75) will only be sought in a particular case where the infrastructure requirement cannot be addressed via a condition or a Section 69 agreement. The SG (page 14) states that once Developer Contributions are agreed, a Section 75 agreement will normally be required. However, the SG recognises that other arrangements such as Section 69 agreements may be made where smaller contributions are to be delivered by the developer or paid up front.

Where infrastructure actions solely relate to the specific application, and do not need to be delivered by the Council's cumulative approach, delivery will be secured via condition .

b) *in the case of financial payments, will these contribute to the cost of providing necessary facilities required as a consequence of or in connection with the development in the near future?*

The currently necessary infrastructure actions for each of the SG development contribution zones are clearly set out in the action programme including a delivery date for each action. This provides clarity that financial contributions sought will be used in the near future to provide necessary facilities required as a consequence of the development.

The SG (page 14) states that the Council needs to ensure that contributions are received in good time to allow the necessary infrastructure to be delivered in step with new development. The timescales for payment of contributions will be agreed between the Council and the applicant. Developers will be required to demonstrate that a site can proceed in the short term prior to the delivery of other infrastructure projects that the site would be expected to contribute to. However, the Council appreciates that the timings of payments may have implications in terms of project cash flow and will take this into account in agreeing terms.

The Council will hold contributions towards education infrastructure for 30 years from the date of construction of new school infrastructure. This is in order for payments to be used for unitary charges associated with infrastructure projects which have been delivered through revenue based funding mechanisms. For all other contributions, payments will be held for 10 years to allow the Council to ensure that infrastructure is delivered at the appropriate time. The Council's Model S75 makes provision for the repayment of the contributions in the event that they are not utilised within these prescribed timescales.

c) is the requirement in the obligation so directly related to the regulation of the proposed development that it should not be permitted without it?

The Council's appraisals and the SG set out the relationship between development and the actions set out in the Action Programme. The appraisals have identified the essential infrastructure required to deliver the aims, objective and policies and proposals of the adopted Local Development Plan and ensure that new development delivers this mitigation. In terms of the cumulative approach the appraisals and the SG clearly set out the direct relationship between the form and type of development proposed.

d) will the obligation mitigate the loss of, or the impact upon, any amenity or resource present on the site prior to the development?

The SG only requires developer contributions where relevant and necessary to mitigate any negative additional impact (either on an individual or cumulative basis) and where commensurate to the scale of the proposed development.

The SG provides a clear framework to ensure that where a proposed development will result in either the loss of, or impacts upon, amenity or resource previously present on the site that this is adequately mitigated via the obligation.

In terms of the loss of amenity or resource such as greenspace, LDP Policies identify the limited circumstances in which loss of open space will be permitted (LDP Policies Env 18 and 19). The SG (page 9) outlines that Contributions towards the actions identified in the Open Space Strategy will be sought where the above requirements for new open space are not to be met fully within a development site or where development involves loss of open space and the relevant policies require off-site enhancement or provision of open space.

SG Conformity with other Circular Provisions

The Council further consider that the SG strongly accords with the Scottish Government's stated aims in the Circular in respect of:

- "Process" (paragraph 26), in particular when considered in conjunction with the Council's new Model S75;
- "The Plan led approach" (paragraph 30), for the reasons set out above at test 2;
- "Policies and Supplementary Guidance" (paragraphs 32-36);
- "Planning obligations and development management" (paragraphs 37-40);

Conclusions

The Council accordingly consider that the SG accords with the broad aims of the Circular and complies with the five Circular tests.