

3b Strategic Transport Fund Update

o Purpose of Report

The purpose of this report is to update Board members on matters relating to the Strategic Transport Fund guidance and on payments received and agreements made in relation to the Strategic Transport Fund to date.

o Background

As previously reported, a legal challenge was lodged at the Court of Session by the Elsick Development Company against the newly adopted statutory Supplementary Guidance on the Strategic Transport Fund. The hearing took place on 9 and 10 March 2016 before the Inner House of the Court of Session and involved three judges.

The Inner House issued its decision on 29th April 2016 and the appeal was allowed. The question before the Court was whether any obligation on a substantial development, Elsick or a lesser one at Blackdog, to pay a contribution to a Strategic Transport Fund which is designed to pay for infrastructure upgrades on, for example, the A96 west of Aberdeen, is lawful having regard to the terms of the Scottish Government Circular (3/2012).

The Court answered that it was not lawful and the Supplementary Guidance – Strategic Transport Fund was quashed.

o Appeal

The Aberdeen City and Shire Strategic Development Planning Authority (SDPA) sought leave to appeal the decision of the Court of Session in the case brought by Elsick Development Company in relation to the Authority's Strategic Transport Fund (STF). This application was refused in early July.

The SDPA has until early August to seek leave to appeal to the Supreme Court.

Update on agreements and payments into the fund

There have been contributions of £25,645 received from developers this financial year into the STF.

No further agreements have been signed relating to the STF since the last Board meeting in June 2016.

To date, contributions of £23,686,635 have been agreed in relation to the STF. This amount excludes agreements that have yet to determine precise levels of contributions – largely consents granted in principle where there was insufficient detail to enable a detailed calculation to be made. Final figures for these applications will not be determined until detailed or 'Matters Specified in Condition' applications are determined.

Of the total agreed, £1,742,116 is held by Nestrans in the fund at the end of June 2016, having been paid by developers – either upfront or having reached the trigger points in the relevant s75 agreements.

As stated in the guidance, monies paid into the STF are held for a period of 20 years.

o **Recommendation**

The Board is recommended to:

- a) Note the decision of the Inner House of the Court of Session in refusing the application to appeal and timescales within which to seek leave to appeal from the Supreme Court; and
- b) Note the payments made into the fund to date.

KC / 25 July 2016