

3b Strategic Transport Fund Update

o Purpose of Report

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

o Background

The Strategic Development Planning Authority adopted the supplementary planning guidance 'Delivering Identified Projects through a Strategic Transport Fund' in December 2011. This guidance is non-statutory guidance in support of the Aberdeen City and Shire Structure Plan 2009 and was adopted with the intention that it would be reviewed and adopted as statutory guidance as part of the new Strategic Development Plan.

The Aberdeen City and Shire Strategic Development Plan was approved by Scottish Ministers in March 2014. On 25 June 2015 the SDPA adopted statutory Supplementary Guidance: Strategic Transport Fund, in connection with the Aberdeen City and Shire Strategic Development Plan (2014). This followed consultation on the revised guidance and a direction from Scottish Ministers to insert a sentence into the guidance, but otherwise proceed to adoption.

o Adoption of the STF Guidance

The adopted guidance was reported for consideration to Aberdeenshire Council's Infrastructure Services Committee on 20 August and Aberdeen City Council's Communities, Housing and Infrastructure Committee on 27 August. Both councils noted the adoption of the supplementary guidance and ratified its use.

The SDPA and Nestrans issued a joint press release on the 28 August to highlight the new statutory guidance coming into force and the value of the previous non-statutory guidance in helping to facilitate development in the area while addressing the cumulative impact of new development on the transport network.

o Legal Challenge

As previously reported, a legal challenge was lodged at the Court of Session by the Elsie Development Company against the newly adopted statutory Supplementary Guidance. The basis of the challenge is that the adoption of the supplementary guidance by the SDPA was outwith the powers conferred by the Act because it is contrary to Scottish Government guidance and the consultation process was unlawful. Another company, Goodgrun Ltd, has also entered the Action in support of Elsie Development Company Ltd as a 'co-pursuer'.

Answers have already been submitted by the SDPA to the original petition within the 21 day deadline, with a series of procedures likely to be required before the case is heard before the court. Senior Counsel has been appointed to represent the interests of the SDPA and present its case before the court when the time comes.

The SDPA will vigorously defend the case brought against the adoption of the supplementary guidance, on the basis that all procedural requirements have been complied with and the Scottish Ministers were content with the guidance at the point of adoption, it being consistent with the statement of Scottish Government policy set out in Circular 3/2012.

o **Next Steps**

Although there is no indication of the likely timescale for the case to be heard and a judgement handed down, it is likely to be towards the end of the year or early next year that a conclusion is reached to the current action. In the meantime, although the appellants have made reference to the possibility of applying for an interim order to suspend the use of the statutory guidance, this has not been pursued to date and the guidance remains in force.

Unless the adoption of the guidance is suspended or quashed, contributions to the strategic Transport Fund will continue to be sought in the normal way. To do otherwise would put a brake on the determination of planning applications in the area covered by the guidance which would not be in the interests of the development industry, the councils or the wider economy of the area.

o **Update on agreements and payments into the fund**

Since the last Board meeting in August 2015 funds totalling £9,492 have been received in relation to a site in Aberdeen and a Section 75 agreement has been signed for a site in Aberdeenshire.

To date, contributions in excess of £20,911,991 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, Nestrans currently hold £1,678,569 in the fund, 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 coming into force of the supplementary guidance on 28 August 2015;
- b) note the legal challenge raised at the Court of Session to the SDPA's adoption of the Supplementary Guidance: Strategic Transport Fund; and
- c) Note the payments made into the fund to date.