

## **3e Strategic Transport Fund Update**

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### **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 29<sup>th</sup> 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 now sought leave to appeal to the Supreme Court and is currently awaiting a decision on whether this will be granted.

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

There have been no further contributions into the STF or agreements signed relating to the STF since the last Board meeting in August 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, £1,816,978<sup>1</sup> is held by Nestrans in the fund at the end of August 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.

## • **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 that permission for leave to appeal has now been sought from the Supreme Court; and
- b) Note the payments made into the fund to date.

KC / 19 September 2016

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<sup>1</sup> This figure differs slightly from that reported in August as STF payments relating to two developments that had initially been paid to Aberdeenshire Council and two to Aberdeen City Council have now been transferred to Nestrans.