

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.

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 2016 and a subsequent application for leave to appeal was submitted to the Supreme Court. The Supreme Court granted the SDPA leave to appeal the decision in late December 2016.

At a special meeting on 25th January, the SDPA agreed to progress with an appeal to the Supreme Court subject to the support of both councils. This decision has since been ratified by Aberdeen City Council and Aberdeenshire Council with both agreeing to financial contributions towards the cost of the appeal.

The hearing at the Supreme Court took place on 13th June 2017 in Edinburgh. There is no further update regarding the outcome of the Hearing, since the last meeting of the Board.

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 as the guidance remains quashed.

o Recommendation

The Board is recommended to:

- a) Note that the Supreme Court hearing has taken place and we now await the judgement.