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**Response to West Lothian Local Development Plan Examination –
Further Information Request 07 – Issue 1f (Developer
Contributions, Infrastructure and Policy IF1) and Issue 1j
(Education Infrastructure)**

9 June 2017

ABOUT HOMES FOR SCOTLAND

Homes for Scotland is **the** voice of the home building industry.

With a membership of some 200 organisations together providing 95% of new homes built for sale in Scotland each year as well as a significant proportion of affordable housing, we are committed to improving the quality of living in Scotland by providing this and future generations with warm, sustainable homes in places people *want* to live.

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PROCESS

Homes for Scotland represents members on a wide range of issues affecting their ability to deliver much needed homes.

Our views are endorsed by committees and advisory groups utilising the skills and expertise of key representatives drawn from member companies.

Response to West Lothian Local Development Plan Further Information Request 07 – Issue 1f (Developer Contributions, Infrastructure & Policy IF1) and Issue 1j (Education Infrastructure)

Introduction

Homes for Scotland welcomes the opportunity to respond to West Lothian Council's comments on Further Information Request 07 on Issue 1f and 1j of the West Lothian Local Development Plan Examination on education infrastructure and developer contributions.

Given the lack of supporting information provided by the council in response to the Reporter's questions in this FIR 07, and the clearly divergent views of Homes for Scotland and its Members to the Council's views on education infrastructure, developer contributions and housing land (as set out in response to FIR 03, Issue 1A), Homes for Scotland requests that the Reporter considers the merits of holding a inquiry session(s) on Issues 1A, 1F and 1J rather than hearing sessions to allow the necessary and appropriate scrutiny of these key issues.

All documents referred to within this submission have been submitted to the Examination in response to FIR 03, and have therefore not been resubmitted here.

Question 1

Figure 5 of the proposed plan sets out the anticipated programme of delivery of new houses to 2024. For each site in the established housing land supply and for each proposed housing site allocation (including all sites of which housing forms a part):

Education

(a) What is the assumed yearly programme of completions, and is this constrained by school capacity? If so, please explain when and how?

- 1.1 Homes for Scotland acknowledges the important role that the Housing Land Audit plays in supporting the LDP and education infrastructure programming. As such, we query the use of the April 2017 draft of the 2016 Housing Land Audit by West Lothian Council in response to this Further Information Request, and would note that Homes for Scotland disputes this draft, and the final Audit prepared by the council. The Homes for Scotland position on the 2016 HLA has been clearly set out within the second response to FIR 03 on

Issue 1A on 11th May 2017. A summary is set out below for clarity. The HLA is a valuable tool, clearly setting out programmed completions based on a snapshot in time on the date of 31st March 2016 (for the 2016 HLA). It is intended to provide a factual account of an area's effective and established housing land supply.

- 1.2 Below is a summary of the Homes for Scotland position on the West Lothian 2016 Housing Land Audit. This is relevant to this FIR 07 as the Audit programming is used to provide detail on education infrastructure requirements, and the Draft 2016 (April 2017, Version 6) Audit submitted by the council in response to this FIR is highly disputed by Homes for Scotland. Homes for Scotland disputes the assumed yearly programme of completions submitted by the council in response to this question.
- Homes for Scotland was sent the draft West Lothian 2016 Housing Land Audit on 15th December 2016.
 - Homes for Scotland and its Members had been working towards finalising and agreeing the 2016 Audit, meeting with the Council on 21st February 2017 to finalise and agree comments submitted to date.;
 - Homes for Scotland sent follow up emails clarifying the agreed position and seeking to reach final agreement to the 2016 Audit on 27th March 2017, 30th March 2017 and 5th April 2017 to which there was no response;
 - The Council only issued this new Council document, as used in the spreadsheet submitted by the Council in support of its response to FIR 07, Issues 1F and 1J, for external consultation with Homes for Scotland on 7th April 2017, after the deadline for the response to FIR 03 on 4th April 2017.
 - The Draft 2016 Audit (April 2017, Version 6) is a significant departure from the Draft 2016 Audit submitted to Homes for Scotland for external consultation on 15th December 2016, and it is a significant departure from the Draft 2016 Audit reported to the SESplan Joint Committee on 13th March 2017. It is apparent that following the reporting of the Draft 2016 Audit to the SESplan Joint Committee on 13th March 2017 and the issuing of FIR 03 on 14th March 2017, the Council has sought to revisit and revise its agreed baseline housing land position solely for the purposes of this LDP Examination.
 - Homes for Scotland met again with West Lothian Council on 3rd May 2017 to seek clarification and explanation from the council as to why a large number of sites considered by the council in its December 2016 draft 2016 Audit to be constrained were then moved into the effective supply at a late stage, now

considered to be effective without adequate explanation or evidence to support this substantial change. Homes for Scotland disputes a large number of sites which were not adequately evidenced for the period of 1 April 2015 – 31st March 2016 as being capable of delivering homes, and for which the Council's position has significantly changed from the December to the April draft Audits. In addition, Homes for Scotland sought to discuss the education infrastructure issues which influence and impede the delivery of homes in certain areas of West Lothian. A key example of this is the 550 unit cap on delivery at Winchburgh until such time as an education infrastructure solution for the secondary school is committed. No solution was committed at the end date of the 2016 Audit (31st March 2016), and indeed no solution is committed now, some 14 months after the end date of the Audit. Homes for Scotland and its Members are keen to see a solution for the education infrastructure issues at Winchburgh to be solved as soon as possible to allow development to come forward past the 550 unit cap in Winchburgh, and to allow for issues at Linlithgow to also be resolved. However, at the time of the 2016 Audit, no such solution was in place, therefore Homes for Scotland had no choice but to consider development beyond the 550 unit cap at Winchburgh, and also future development in Linlithgow to be constrained for this Audit, with a commitment to see this development come back into a future Audit at such time as a solution is committed to solve secondary school education infrastructure issues here.

- For avoidance of doubt, the Draft 2016 Audit (April 2017, Version 6) issued to the LDP Examination is disputed by Homes for Scotland and does not represent an agreed position.
- As a result, Homes for Scotland has prepared the Finalised Homes for Scotland 2016 Audit which was originally submitted to the LDP Examination as a supplementary document in support of the HFS response to FIR 03, Issue 1A on 12th May 2017. This 2016 Audit reflects commentary and correspondence agreed with the Council until 7th April 2017, excluding constrained sites, and also reflecting the HFS position on education infrastructure constraints at the date of 31st March 2016.
- Homes for Scotland was also sent a final 2016 Audit by West Lothian Council on 10th May 2017, however we note that the council has not submitted its final 2016 Audit to this examination as yet, but is using this final 2016 Audit in current appeals. We query the use of a draft Audit by the Council when it has a finalised Audit available, but in any event, Homes for Scotland respectfully requests that no weight is attributed to the draft 2016 Audit (April 2017, Version 6) or the Council's final 2016 Audit (should it be submitted to the examination) without prior agreement. If the Draft 2016 Audit (April 2017, Version 6) or a further update is accepted for the Examination, the ramifications are that the process of agreeing a housing land audit will be

significantly undermined across Scotland. Homes for Scotland has requested through its response to FIR 03, Issue 1A on 12th May 2017 that significant weight is only attributed to the Finalised Homes for Scotland 2016 Audit or the Draft 2016 Audit issued for external consultation.

(b) How many places, at each catchment school are expected to be required for the development, in each school year? Please outline any assumptions and/or formula used.

- 1.3 Homes for Scotland queries the 'child per house ratios' supplied by West Lothian Council in its response to FIR07. No evidence base has been provided by the council to support these figures. It is not possible to scrutinise these ratios without an evidence base to support the figures provided. This evidence base should include an explanation as to if and when these ratios have been reported to and agreed by a council Committee to demonstrate that these ratios are the settled view of the authority. To our knowledge, the West Lothian Education Executive Committee on 8th December 2015 was the last date at which child per house ratios were presented to, and agreed by Committee. The figures agreed by the Education Executive in December 2015 differ from those provided by the council in response to the Reporter's question 1b here. We would expect full evidence to be provided by the authority in response to this FIR, including relevant and up to date Committee reports, and rationale behind current ratios applied by the council in education forecasting from effective development sites.
- 1.4 The council's response does not fully answer the Reporter's question here. The council's excel spreadsheet does provide the number of places at RC/NC primary and RC/ND secondary school which will be produced each year, however Homes for Scotland has formally disputed this draft 2016 HLA as set out in the response to Question 1a, therefore we do not believe the council's projections of either primary or secondary school places required each year.

(c) Would developer contributions be required towards providing additional education capacity? If so, how would the required contribution be calculated and when would it be payable?

- 1.5 Whilst the council provides detail of developer contributions required, no evidence has been submitted by the council to support these figures. Homes for Scotland would expect to see detailed information and reporting on existing issues with education infrastructure, current school rolls, current figures of capacities of each school and what percentage of that capacity the existing school rolls meet, plus the analysis of the added pupils from new development, resulting education infrastructure interventions required to mitigate this development and provide schooling for new pupils, the full cost of

each intervention required and how this will be attributed between developers and the council. Homes for Scotland expects that the council should cover costs for existing issues, and work with the development industry to seek solutions to future issues arising as a result of new development in West Lothian. This evidence has not been provided, therefore figures in the council's spreadsheet are only substantiated where existing Section 75 agreements are in place for these costs, but are largely uncorroborated.

Other infrastructure

(d) Are there any other infrastructure constraints which affect the assumed programming, or for which particularly significant amounts of developer contributions would be required (excluding standard items like affordable housing)? If so, please explain.

- 1.6 There are a number of other infrastructure requirements currently constraining delivery of sites in West Lothian, and these are not mentioned by the council in its response to this question.
- 1.7 For example, we are aware that the site Cleugh Brae in West Calder has infrastructure issues preventing its delivery as programmed by the Council in its Draft 2016 Audit (April 2017, Version 6). This site was considered to be constrained by the Council in the Draft 2016 Audit (December 2016). This site was brought back into the effective supply by the Council at its late stage April 2017 draft Audit. The Council has not adequately demonstrated how constraints were overcome within the Audit period of 1st April 2015 – 31st March 2016 or what information has come to light since the December draft audit was prepared to suggest that that this site is now effective and is deliverable in the 5 year period. As well as education infrastructure capacity issue here preventing delivery, there is a requirement for a roundabout off the A71 to allow access to the site as the bridge cannot be widened to allow access to the site from the other access. The cost of this roundabout renders the site unviable therefore it is undeliverable.

(e) If applicable, what is the proposed solution to any such additional constraints? When would they be required, what are the anticipated costs, and how would they be funded?

- 1.8 The solution provided by the council in response to the Reporter's question here of "*phasing development until infrastructure capacity is reached and a solution to address any shortfall in infrastructure capacity can be agreed*" does not actually address the constraint itself. Homes for Scotland considers

that the council must take a more delivery focussed approach in line with national aspirations for the future of the planning system and be more proactive in seeking and implementing infrastructure solutions to promote and encourage the delivery of homes of all tenures in West Lothian.

- 1.9 We query the council's assertion that "*anticipated costs of required infrastructure solutions cannot be fully quantified at this stage*". The council has provided a spreadsheet of required developer contributions towards education infrastructure interventions as evidence for this Examination. These figures must be based on full costings of each intervention. The Council should have detailed information of costings and proposed timings for each strategic infrastructure intervention required to deliver its LDP. If not, we query the legitimacy and accuracy of the council's proposed necessary infrastructure interventions.
- 1.10 Homes for Scotland does not believe that City Deal can be relied upon to provide a solution to infrastructure constraints. The potential future investment in Edinburgh and its city region through City Deal is welcomed, however the details of the Deal are not yet known, and we therefore query the Council's mention of this in response to the Reporter's question here.
- 1.11 We query the council's use of its Infrastructure Fund as set out in paragraph 3 of its answer to question 1e of FIR 07 – "*this would enable funds received from developers to then be recycled to fund other projects*". We do not believe that the funds within the Infrastructure Fund can legitimately be "recycled", and that this assertion is contrary to the tests within Circular 3/2012 in terms of a direct relationship to the proposed development. Paragraph 18 of Circular 3/2012 states "*Planning obligations should not be used to extract advantages, benefits or payments from landowners or developers which are not directly related to the proposed development. The obligation should demonstrate that this test is met by specifying clearly the purpose for which any contribution is required, including the infrastructure to be provided.*" We therefore do not think it is legitimate for the Council to keep planning obligation payments in a fund and "recycle" that money for other projects.

Question 2

For each primary and secondary school:

(a) Does the school's capacity present a constraint to the amount and locations of housing envisaged during the plan period? If so, in which year would there be inadequate capacity (based on the assumed programme of housing completions)? Year on year what is the anticipated shortfall in school places?

- 2.1 Homes for Scotland is concerned that the council considers it "difficult to define exactly when a school has inadequate capacity". This is an important consideration and one for which the authority must provide detailed supporting evidence. No evidence has been provided by the Council to support its answer to the Reporter's question here. Despite stating that it is difficult to define when a school has inadequate capacity, it provides a spreadsheet which sets out constrained schools and the date upon which each proposed intervention will be required. We expect that this date is directly related to evidence on capacity. It is not possible to scrutinise these dates as evidence has not been provided to support the spreadsheet.
- 2.2 Despite providing a list of constrained schools, the proposed intervention for each school and its resulting extended capacity, and the date that each intervention is required, the council does not explain how constraints will be overcome.
- 2.3 Homes for Scotland does not believe that the Council has answered the Reporter's question 2a of FIR 07. It does not give information on current school rolls, and how they relate to the capacity of each school – i.e. how close to capacity is each school currently sitting, and year on year what is the impact of programmed development on this capacity. There is no answer to the question of "year on year what is the anticipated shortfall in school places"?

(b) How many additional houses could be built in the catchment (as currently drawn) before the school would be expected to be at capacity?

- 2.4 Homes for Scotland does not consider the council to have answered the Reporter's question here. The council directs the Reporter to its excel spreadsheet on constrained schools. This spreadsheet does not detail how many additional houses could be built in the catchment for each primary and secondary school in West Lothian before each school would be expected to be at capacity. The spreadsheet to which the council refers simply states the capacity of each school, the proposed intervention required, the year in which this intervention is required, and the resulting extended capacity of each school. The council has not provided evidence in this spreadsheet or in its

response to question 2b of this FIR to detail how many houses can be built before each school will reach capacity.

- 2.5 We consider that current school roll data should have been provided by the council in response to this FIR, together with an analysis of the current remaining capacity and when each school's full capacity is expected to be met based on programmed completions in an agreed HLA. This could be set out based on no interventions, and against proposed interventions.

(c) If a shortfall is anticipated during the plan period, what specific measures are required to address this? What are these individually estimated to cost and how would these measures be funded?

- 2.6 As set out in our answer to question 1a of this FIR 07, Homes for Scotland disputes the Council's programming within its Draft 2016 Audit (April 2017, Version 6) and its final 2016 Audit. We therefore do not believe that sites will be developed as shown in the phasing within the Audit. Without further evidence to backup the Constrained Schools spreadsheet, we are unable to scrutinise the proposed interventions and when they are expected to be required.
- 2.7 The council does not provide detail of the timescales and the extent of the catchment reviews stated within paragraph 2 of the response to question 2c of this FIR 07.

(d) To what degree can there be confidence that additional capacity will be provided when and where needed?

- 2.8 Homes for Scotland does not consider that developers are solely responsible for education infrastructure interventions required. As stated above, the council must take a more proactive approach to work with the development industry to find workable solutions to delivering education infrastructure for West Lothian to unlock development and allow the delivery homes of all tenures. The council's response does not give confidence that additional capacity will be provided when and where it is needed.

Question 3

Across West Lothian as a whole, year on year across the plan period, how many primary and secondary school places (split into denominational and non-denominational) are anticipated to be needed? This should reflect the anticipated programming of developments.

- 3.1 Homes for Scotland clarifies again that it disputes the Council's programming as set out within its Draft 2016 Audit (April 2017, Version 6). This programming includes a number of sites considered by the Council to be constrained in the December 2016 draft Audit, now brought back into the effective supply and seemingly delivering within the 5 year effective period without adequate evidence to support this change. This draft Audit also assumes over 1,000 additional homes will be delivered at Winchburgh between 2016-2020 within the 5 year period. This is not possible given the current 550 unit cap at Winchburgh which will soon be met, and the lack of a committed solution to the secondary school education infrastructure issue at Winchburgh. We therefore consider this spreadsheet provided by the council to be inaccurate and consider it cannot be relied upon by the Reporter as an accurate projection of programming for delivery of homes in West Lothian.

Question 4

Across West Lothian as a whole, year on year what would be the surplus or shortfall in the number of school places required (again split by primary / secondary and denominational / non denominational)? Please take account of any committed additional education capacity from the year it would be in use (e.g. programmed school extensions).

- 4.1 Please refer to the response to question 1d above.

Question 5

When applying Policy INF1, how will the council ensure that developer contributions towards infrastructure (and in particular education capacity) "...are reasonably related to the scale and nature of the proposed development..."?

- 5.1 Homes for Scotland notes the Council's reference to Circular 3/2012 Planning Obligations and Good Neighbour Agreements, but would stress that the authority is not "guided by the requirements of Circular 3/2012" as stated in the council's response, but rather it is required to adhere to the requirements of Circular 3/2012 Planning Obligations and Good Neighbour Agreements in terms of ensuring that the five tests are met, including the test of scale and kind.

- 5.2 Again we query the lack of evidence supplied by West Lothian Council on education infrastructure in response to this FIR 07. Detail should be provided by the council to answer the Reporter’s question of how the authority will “ensure that the developer contributions towards infrastructure (and in particular education capacity) are reasonable related to the scale and nature of the proposed development”.
- 5.3 We would again highlight that it is not solely the responsibility of the development industry to find education infrastructure solutions, and that the authority should be proactively seeking solutions to enable development. Indeed Circular 3/2012 states in paragraph 23 “ *This is particularly relevant where infrastructure requires to be put in place before the development is completed, but the cost of doing so would make the development unviable. 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.*” Throughout the council’s response to this FIR 07 it states its reliance on the development industry to find solutions and make contributions, but in line with paragraph 23 of the Circular, the authority should take a share of responsibility for promoting and enabling the delivery of homes of all tenures in West Lothian.

Question 6

How does the council intend to address any funding gaps at the point at which the infrastructure deficit must be addressed, if development is to progress in line with the spatial strategy?

- 6.1 Please refer to the response to question 1e above.

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