



SUPPLEMENTARY GUIDANCE: FOOD AND DRINK AND OTHER NON-RETAIL USES IN TOWN CENTRES

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek agreement to the adoption of the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance.

2 BACKGROUND

- 2.1 At its meeting of 7 November 2017 the Council adopted the Midlothian Local Development Plan 2017 (MLDP). The MLDP included a commitment to prepare Supplementary Guidance and Planning Guidance on a number of topic areas (Section 7.2, pages 81 and 82 of the MLDP). Additional guidance is required to provide further detail and interpretation of the policies and strategy set out in its development plan. One of the topic areas which needs further clarification is with regard to food and drink uses and other non-retail uses in Midlothian's Town Centres.
- 2.2 At its meeting of 19 June 2018 the Committee approved the draft Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance for consultation and agreed to consider a further report on the Guidance following the proposed consultation.
- 2.3 The consultation period ran for six weeks from 28 August 2018 to 10 October 2018.
- 2.4 The draft Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance was published on the Council's website and available for inspection at Fairfield House and in all Midlothian Council libraries. All Midlothian Community Councils were consulted, as were a variety of other Midlothian community groups, those who had commented on the town centres sections of the Proposed Midlothian Local Development Plan and other known parties considered to have an interest in the document, including third sector organisations.

3 REPRESENTATIONS

- 3.1 As part of the consultation process responses from six external parties were received. Responses were received from two Community Councils, two individual members of the public, a private business and Scotland's Town Partnerships.
- 3.2 A summary of the consultation responses received with the proposed officer response (Appendix A) and a track change copy of the draft Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance document showing proposed deletions and additions to the document arising from the consultation is attached to this report. New text within the Guidance document is shown in red.
- 3.3 A summary of the representations are as follows:
- General support for the aims and objectives set out in the guidance with regard the future of town centres;
 - Town centres need to meet the needs of residents whilst adapting to a changing role in society and the local economy;
 - Residents without access to online shopping should not be disadvantaged by any loss of retail units or their replacement with other non-retail uses, facilities or services;
 - Concerns over litter arising from commercial uses and the suggestion for better litter management and litter picking programmes;
 - New large housing developments should be served by town centres and facilities;
 - Health impacts of hot food takeaways and alcohol sales;
 - Support for a restriction on hot food takeaways around school boundaries, along with the suggestion of expanding these areas;
 - Town Centre Health Checks should be used to inform Council policies and to provide an understanding of the health of town centres;
 - Concerns raised over the provision of drive-through facilities and their potential impact on town centres; and
 - Ensuring adequate parking and public transport is provided.

4 STRATEGIC ENVIRONMENTAL ASSESSMENT

- 4.1 All Scottish public bodies and a few private companies operating in a 'public character' (e.g. utility companies) within Scotland are required to assess, consult and monitor the likely impacts of their plans, programmes and strategies on the environment. This process is known as Strategic Environmental Assessment (SEA).
- 4.2 As required by the Environmental Assessment (Scotland) Act 2005, screening for likely significant environmental effects resulting from the draft supplementary guidance is currently underway with the

Consultation Authorities - SEPA, Scottish Natural Heritage and Historic Environment Scotland. It is expected that the Consultation Authorities agree with the Council's opinion that no such detrimental environmental effects are likely and thereby exempting the supplementary guidance from any requirement for a formal SEA. However, the supplementary guidance cannot be considered adopted until this consultation has been completed and until such a 'formal' determination has taken place. The determination requires to be advertised in a local paper within 14 days and copied to the consultation authorities.

- 4.3 The guidance has also been screened for a Habitats Regulations Appraisal (HRA) and because of the protection of sites within the MLDP a HRA is considered not to be required.

5 FOOD AND DRINK AND OTHER NON-RETAIL USES IN TOWN CENTRES SUPPLEMENTARY GUIDANCE

- 5.1 The Midlothian Local Development Plan 2017 establishes a commitment for the Council to prepare supplementary guidance on food and drink and other non-retail uses in town centres. Not adopting the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance would weaken the Council's position in ensuring that food and drink and other non-retail uses in town centres do not compromise the amenity, environment and functioning of town centres in Midlothian.
- 5.2 The supplementary guidance sets out the planning authority's aims to protect and enhance town and local centres within Midlothian, adapting to the changing needs of society and creating diverse and successful areas. The guidance provides information on what should be taken into account in the preparation and assessment of development proposals.
- 5.3 Through the consultation process and the assessment of comments submitted, the following amendments to the draft supplementary guidance have been made:
- Changes to the restrictions of hot food takeaways in town centres to protect the amenity of nearby residential properties;
 - Changes to the restrictions of hot food takeaways around schools to include both primary and secondary and clarification of the planning authority's role in such restrictions;
 - Consolidation of the section considering class 3 uses;
 - Clarification on the planning authority's position regarding non-retail high footfall uses in town centres;
 - Clarification on the planning authority's position regarding overprovision and clustering of particular uses;
 - The description of 'Drive-Through Restaurants' to 'Drive-Through Units (Restaurants and Other Services)' to better reflect these uses;

- Clarification of information which should be submitted with specific proposals;
 - Changes to enable the consideration of litter in the assessment of specific proposals;
 - Changes in terminology to better reflect the Midlothian Local Development Plan;
 - Clarification of terminology; and
 - Better links between the main text and Appendices.
- 5.4 Section 22 of the Planning etc. (Scotland) Act 2006 requires the Council to send Scottish Ministers a copy of the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance intended for adoption, together with a statement setting out the publicity measures undertaken for the consultation, the comments received and how comments submitted were taken into account. Unless Scottish Ministers have directed otherwise, after 28 days the Council may adopt the Supplementary Guidance.

6 RECOMMENDATION

- 6.1 The Committee is recommended to:
- a) agree to the adoption of the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance (as amended following the consultation process);
 - b) agree that the Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
 - c) instruct the Planning Manager to undertake the required notification/advertisement advising that the Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance will not have a significant environmental impact triggering the need for a formal Strategic Environmental Assessment;
 - d) instruct the Planning Manager to notify the Scottish Ministers of the Council's intention to adopt the Midlothian Food and Drink and Other Non-Retail Uses in Town Centres Supplementary Guidance; and
 - e) require notification of the outcome of the notification of the Scottish Ministers procedure.

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Background Papers: MLDP 2017 adopted 7 November 2017.

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Midlothian Council – 2018

Consultation on Draft Midlothian Supplementary Guidance: Food and Drink and Other Non-retail Uses in Town Centres

Respondent	Organisation	Q	Summary of Responses	Proposed Midlothian Council Response
Angela Price		1	The role of town centres and importance is clear.	Noted.
Evelyn Fleck	Dalkeith and District Community Council	1	This is a high level overview of the scope of the SG in supporting decision making of the Planning Authority in the assessment of applications.	Noted.
		2	<p>This section covers the potential issues but should include the following:</p> <p>1 - ensure shop owners/social clubs be required to take responsibility for litter outside their shops, regardless of the provision of litter bins;</p> <p>2 - schools should have programmes of litter picking outside the premises to a defined area;</p> <p>3 - enlarge the area for no hot food takeaways around schools to larger than 400m, if this distance is not statutory.</p>	<p>Noted.</p> <p>1 - not something which can be controlled by the SG; see section 10.1.17.</p> <p>2 - not something which can be controlled by this SG.</p> <p>3 - Research has shown that 400m, approximately a 10 minute walk, was the maximum distance that students could walk to and back from a lunch break. This is not a statutory figure, however this is recognised in numerous similar SGs and referred to in case law.</p>
		3	This sections covers the issues but suggest replacing the statement that development will be 'supported' to be 'considered for support'.	Noted comments but accurately reflects the position of the SG. No changes proposed.
		4	Question adequately addressed in section.	Noted.
		5	Question adequately addressed in section	Noted.
		6	Question adequately addressed in section	Noted.
		7	Would like to see a stronger statement against drive-through in town centres. Suggests a defined area around such outlets where operators are responsible for litter picking which should be carried out at a given time interval, such as every three hours.	Noted. Section 10.6.5 includes requirements for litter picking, which will be considered on a case by case basis.

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		8	This covers a number of issues. There should only be one separate retail unit per filling station, within which could include a small store and café.	Noted. SG considered to accurately reflect proposed guidance. No changes proposed.
		9	Section covers areas of concern. No suggested changes.	Noted.
		10	Concession stores within a garden centre should take up no more than 25% of total indoor retail space excluding cafes to prevent garden centres turning into out of town shopping centres	Noted. Consider that the restrictions in 10.9 and information needed to meet these will address concerns for garden centres to turn into retail centres. No changes proposed.
		11	Section covers areas of concern. No suggested changes.	Noted.
		12	Section covers areas of concerns.	Noted.
		13	Al fresco dining areas are good but each establishment should have a defined area and temporary barriers for each day it is in use.	Noted - amend SG to require details of area, associated furniture and barriers with applications.
		14	Very supportive of Farmers' Markets. No suggested changes.	Noted.
		15	Should this section include restrictions around schools? Should they be allowed to operate during school breaks if they are in the area? Should operators be responsible for litter beyond the provision of bins? If 400m distance is not statutory then encourage an increase in distance.	Noted. As stated, either these will be outwith the control of the Planning Authority or will be subject to the same restrictions as other hot food takeaways, including proximity to schools. No changes proposed.
		16	No suggested changes.	Noted.
		17	No suggested changes.	Noted.
		18	No suggested changes.	Noted.

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Margaret Littlewood	Roslin and Bilston Community Council	1	<p>The principles are generally thought out and supported. Town Centre Health Checks are a must and should be used to inform other action plans, including Green Networks, Core Paths and Active Travel. Publically available toilets are a necessity.</p> <p>With the amount of development proposed at Bilston and Roslin, there will effectively be two new town centres created. It is essential that some arrangement is made to support or create essential local services and developers should be required to contribute land and finance this. If this is not done, there will be two unsustainable out-of-town dormitories housing a ghost population of unhappy and unhealthy people.</p> <p>Effective public transport should be in place at the time of development, if not before.</p> <p>3.5 Wording should be tighter to ensure the outcomes that are needed.</p> <p>4.3 Wording is too passive, this should lead, guide or encourage this in this direction.</p> <p>6 - Town Centre Health Checks section excellent.</p>	<p>Noted. TCHC are available for use to inform other documents. See sections 6.1 and 6.3.</p> <p>The provision of toilets is not a matter for this SG.</p> <p>The MLDP requires developer contributions to improve leisure facilities/shops; develop local health provision and ensure community cohesion in Bilston. The MLDP states that the existing community facilities in Roslin will be safeguarded.</p> <p>The provision of public transport is not a matter for this SG.</p> <p>Noted. Amended wording to make the position more clear.</p> <p>Noted. Consider wording fulfils the requirement. No changes proposed.</p> <p>Noted.</p>
			<p>7 - Important not to lose the needs of disadvantaged people, such as those without computer access/who do online shopping. How can town centres help modify this?</p> <p>8 - Easy access to poor food should be limited and hot food takeaways and vans should be restricted. Health services are under-strain and further pressure should be reduced through limiting hot food takeaways. Consider the promotion of healthy food takeaways. Access to alcohol should be considered carefully due to the impact on</p>	<p>The SG seeks to maintain diverse town centres which include retail along with other uses.</p> <p>Noted. See section 10.1. The control of alcohol sales is not something which can be controlled in this SG - would be for Licencing to consider.</p>

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			health, public safety, noise nuisance and littering.	
		2	<p>The provisions in this section are sensible and comprehensive. The recommendations about litter and restrictions on hot food takeaways near schools are excellent.</p> <p>When granting permission for hot food takeaways, it is necessary to consider the whole area. Conditions should be attached to prevent adjoining properties to be sold separately.</p> <p>Provision of toilets is necessary.</p> <p>10.1.14 Add a note about restrictions about noise of flues and ventilation equipment.</p> <p>10.1.11 Cafes should be looked on favourably as providing essential outlets for socialising. Should the section make reference on the provision of off-licence alcohol? This needs to be considered in the context of the area and this causes health, crime and littering problems.</p> <p>10.1.16 is excellent.</p> <p>10.1.17 should include a requirement to ensure bins are not allowed to overflow.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted. Any applications would consider the wider town centre in line with this SG and the impact on neighbouring properties. Amend SG to make this position clearer.</p> <p>Not something which can be controlled by the SG.</p> <p>Noted. Covered by ventilation section.</p> <p>Noted. SG states these will generally be supported where appropriate.</p> <p>Not something which can be controlled by the SG.</p> <p>Noted.</p> <p>Noted. Wording amended to include the requirement for a litter management plan.</p>
		3	<p>Support of the provisions in this section.</p> <p>Suggestions of other high foot-fall uses such as beauticians, hairdressers, podiatrists.</p> <p>For town centres to flourish, parking provision must be adequate. Also 20mph limits would help. There needs to be collaborating between Planning, developers and roads to ensure public transport is available, walking and cycling are encouraged and through traffic is limited and organised.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted although this is outwith the control of this SG.</p>
		4	<p>It is good to know that planning permission is required for betting shops and pay day lenders. These should not be supported and if an existing unit is for sale, it should</p>	<p>Noted. The requirement for planning permission for these uses allows the Planning Authority to assess their impact on town centres on a case by case basis, rather than not</p>

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			be considered that this premises must no longer be for these uses.	supporting outright. No proposed changes.
		5	Permitted changes of use are understood.	Noted.
		6	It is not clear what a neighbourhood centre is.	Noted. Amend SG - the term 'Neighbourhood centres' to be replaced with 'Local Centre', which relates to the MLDP that has clear definitions of these areas.
		7	Drive-throughs are unsustainable and should be avoided. These put strain on health services and every attempt should be made to discourage people from using these.	Noted. The SG has to provide guidance for assessing such applications, as noted in section 10.6. No proposed changes.
		8	This section is sensible. Adequate parking is required to ensure no queuing on main roads. There must be adequate provision of electric charging points. Is consideration given to the hand car wash facilities that replace vacant petrol stations?	Noted. Noted - covered in 10.7.2. Noted. This aspect will be covered in other policy. Noted. Car washes along with filling stations are acceptable. To operate car washes only would require planning permission and would be assessed accordingly. No changes to SG proposed.
		9	Public houses should serve good food to reduce a tendency consume too much alcohol too quickly. Are miners and bowling clubs included as these perform the function of public houses and function rooms? 10.8.3 Is welcomed for replacing public houses. 10.8.4 is endorsed.	Noted - this is outwith the control of the SG. Noted. These are not included in the SG as these are generally membership led. Any application which results in their loss will be assessed on its own merits. No proposed changes. Noted. Noted.
		10	It is not clear what these units are. The conditions are unclear and hard to reinforce.	Noted. It is considered section 10.9 adequately describes these uses and relevant criteria. No proposed changes.
		11	There are concerns over the visual impact and longevity of these units and this section is endorsed.	Noted.
		12	Vacant units can be a problem however the consideration of the impact of pop up shops on the long-term viability of the area is valid. Can a checking system be in place to ensure these are to a	Noted. As planning permission is not likely to be required for pop up shops, this is outwith the control of the SG. Where planning permission is required,

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			reasonable standard? Is it possible to place limits on the numbers in any particular location?	applications will be assessed in line with policy TCR1. No proposed changes.
		13	Agreement with general principles but should make reference to buggies and children and people who use walking aids.	Noted - Bullet point 3 makes reference to disabled access and not significantly reducing the capacity of pedestrian routes. No change proposed.
		14	These are good additions but all provisions should be met as where these are not, or there is not enough room, such markets flounder.	Noted.
		15	Clarification over what is static is required. Should parking be mentioned?	Noted. No changes required. As stated, either these will be outwith the control of the Planning Authority or will be subject to the same criteria as other hot food takeaways, including parking requirements. No proposed changes.
		16	This is too vague to be meaningful, what is meant by this? Are these only acceptable on a temporary basis?	Noted. This highlights that the Council is generally supportive of community projects in such areas. Such proposals would be dealt with on a case by case basis to assess the impact on the town centre and compliance with policy. Amend SG to clarify.
		17	This is an attitude rather than a condition. More detail is required. Could this be combined with 10.15?	Noted. This highlights that the Council is generally supportive of such uses in town centres. Such proposals would be dealt with on a case by case basis to assess the impact on the town centre and compliance with policy. Amend SG to clarify.
		18	Can 'Living Streets' principles be included? Pavement widening and furniture can look good but should be done on case by case basis. 10.17.4 and 5 should be included at the building stage. 10.17.6 these may be necessary for security reasons. The recommendations for acceptable types are welcomed. 10.18.7 Temporary shopfronts seems a sensible strategy.	Noted. This is reflected in the SG. Noted. Noted. Noted.

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Anon, Mayfield		16 or 17?	Is there potential for a cinema or a theatre to Dalkeith for clubs and groups to use instead of travelling elsewhere in the Lothians?	Sections 10.15 and 10.16 encourages flexible spaces in town centres which could be used in this way. It is outwith the control of the SG to state where this could be or deliver this. No changes proposed.
Phil Prentice	Scotland's Town Partnerships	SG	Supports the SG in the push for a more vibrant and sustainable approach for town centres and the Planning Authority in determining applications and for agreeing a policy in line with an analysis of market conditions, wider social and economic trends and a desire for higher quality place-making.	Noted.
Iain Hynd	Barton Willmore (for London and Scottish Investments)	All SG	The SG should ensure that guidance and practice accords with the definitions and practice in SPP in regards to sequential approach and any assessments of impact.	Noted.
		7	This section should be renamed 'Drive-Through Units' or 'Facilities' or 'Formats'. Amending the title would allow all formats of drive-through to be considered equally, without potential for debate or inconsistent application of guidance that could result from consideration if a unit is a restaurant, cafe, coffee shop, bakery/cafe or a mix of these. The removal of the requirement for a vitality and viability test for these units. Such units are of a distinct style and function from town centre units and are complementary to these, rather than in competition. The scale of drive-through are below a level that would have a material impact on the vitality and viability of town centres. If the SG retains the requirement for this test, this should only be for units of a certain scale, such as individual units of 250 square metres or over. Developments of a smaller scale are unlikely to have any material impact on town centres. Such a requirement would cause	<p>Noted. Section has been renamed to 'Drive-Through Units (Restaurants and Other Services). Drive-through are sui-generis and will be assessed as such in any application.</p> <p>Noted. The potential impact of these units on town centres needs to be assessed in line with the town centre first approach. If these comments are correct, applicants should be able to address this requirement in future applications, regardless of size.</p>

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			extra delay and expense for applicants of smaller proposals.	
			The SG indicates that drive-through uses are specific and do not conform with the town centre first approach. However Appendix 2 asks for a sequential test to show town centres have been investigated for sites. It is requested that this requirement be removed from Appendix 2 as this contradicts the text in 10.6 and is contrary to the SPP (para 68) and the MLDP (4.6.1 and 4.6.2), which set out uses subject to the sequential approach/town centre first principles. A drive-through format is a business and trading model that relies of capturing trade from existing footfall/trips/pass-by traffic rather than generating significant footfall in its own right.	The SPP provides scope to ask for a sequential test for commercial leisure uses, which drive-through are considered to be.
Internal PA comments		1	8 - Clarified the Planning Authority's role in assessing applications for hot food takeaways near schools.	Noted. Amended SG.
		2	<p>Can we hook 10.1.8 to any MLDP policies?</p> <p>Include distances of 400m around schools, town and neighbourhood plans in the Appendices?</p> <p>Include primary with secondary.</p> <p>Is it worth mapping out established HFTs in TCs to give a baseline for current situation?</p> <p>10.1.4 remove last sentence?</p> <p>10.1.8 remove second sentence - does this undermine what the policy can do/achieve?</p> <p>10.1.9 remove 'solely' - surely HFT approvals will allow some form of ancillary takeaway?</p> <p>10.1.11 should this be separate from 10.1.9? Restaurant, café and tea room all class 3.</p> <p>10.1.17 should we be asking for bins for all uses? What if apps don't own land? Who maintains this? Think of the ramifications.</p>	<p>See Section 8.</p> <p>Noted. The MLDP includes town centre boundaries. No intention to include the other plans.</p> <p>Noted. Amended SG.</p> <p>Noted. Not necessary.</p> <p>Noted. SG amended to clarify the planning requirements and scope.</p> <p>Noted. Clarifies the position rather than undermines the Planning Authority. No changes proposed.</p> <p>Noted. See point below for amendments.</p> <p>Noted. See amended SG to include all as Class 3 uses.</p> <p>Noted. SG and requirements amended.</p>

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		3	<p>10.2.3 bullet point 1 - link to Appendix.</p> <p>10.2.3 bullet point 2 - how verify, judge what's ok?</p> <p>10.2.3 bullet point 3 - how verify?</p> <p>10.2.3 bullet point 5 - include windows so can see activity? Clarify PA's position on non-retail change of uses.</p>	<p>Noted. Amend SG to include reference to Appendix 2.</p> <p>Noted. SG amended to clarify information to be submitted.</p> <p>Noted. Based on other information and assessment of the proposal. No changes proposed.</p> <p>Noted. See amended section 10.2.5.</p> <p>Noted. Amended SG 10.2</p>
		4	10.3.1 Remove the sentence beginning 'The Council...' as this may weaken our position. Focus on what we can control.	Noted. Clarifies the position rather than undermines the Planning Authority. No changes proposed.
		5	10.4.3 This be included as this may weaken our position. Focus on what we can control. Include details of uses which raise overprovision or clustering concerns.	<p>Noted. Clarifies the position rather than undermines the Planning Authority. No changes proposed.</p> <p>Noted. Section 10.4.2 amended.</p>
		7	<p>10.6.2 are we assessing the impact on existing restaurants or whole town centre?</p> <p>Need to tighten up any permission as drive-through may have permitted development rights to change use to retail.</p>	<p>Noted. Impact on all town centre.</p> <p>Noted. Potential impact of future changes of use will be assessed on a case by case basis. No changes proposed.</p>
		8	Is a separate section on this necessary, covered elsewhere?	Noted. This section provides clarity on this specific type of development which has emerged in recent times. No changes proposed.
		9	<p>Is a separate section on this necessary, covered elsewhere?</p> <p>10.8.3 final sentence - does this have to be social interaction? What if have a pub that's closed and no interest for social but have a shop interested?</p>	<p>Noted. These uses contribute to town centres, should be protect where possible. No changes proposed.</p> <p>Noted. Social interaction could involve residential uses. Still has to meet other criteria. No changes proposed.</p>
		15	Is this section necessary? Either it needs PP and is covered elsewhere or it's not development	Noted. This section provides clarity on an issue which arises on a regular basis. No changes proposed.
		SG	Clarifying terminology to match MLDP.	Noted. SG amended accordingly.
		SG	Clarifying requirements for applications for specific uses.	Noted. SG amended accordingly.

Food and drink and other non-retail uses in Town Centres Supplementary Guidance



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Draft Food & Drink Supplementary Guidance - Tracked Changed

1. Introduction

1.1 This Supplementary Guidance (SG) relates principally to policies TCR1 (*Town Centres*) and TCR2 (*Location of New Retail and Commercial Leisure Facilities*) within section 4.6 of the Midlothian Local Development Plan 2017 (MLDP). This document seeks to provide detailed guidance and clarity in relation to developments within Midlothian's town centres and developments which may affect or undermine the performance of those town centres.

1.2 The abovementioned policies seek to protect and enhance Midlothian's town centres and the amenity and range of services provided to local communities. This document aims to provide a local context to national aspirations to support town centres whilst being realistic about the role town centres play in today's society, the facilities provided and how to respond to people's needs as town centres change as people's shopping habits evolve particularly in respect of the rise of online retail.

1.3 While the main focus of this document is clarifying the aims, objectives and criteria of policies TCR1 and TCR2, applicants should be aware that all policies in the Local Development plan can apply to any proposal. This Supplementary Guidance should be read in conjunction with the Midlothian Local Development Plan and with other MLDP policies, in particular DEV2 (*Protection Amenity within the Built-Up Area*) and ENV18 (*Noise*).

2. Importance of Town Centres

2.1 The National Planning Framework (NPF) and Scottish Planning Policy (SPP) emphasise that town centres are a key element of the economic and social fabric of the country. Town centres are at the heart of their communities and, if successful, can be hubs for a range of activities. At their best they are places which encourage economic development and social interaction. At their worst they stigmatise areas. It is important that town centres are supported and allowed to thrive in order to meet the needs of residents, businesses and visitors.

2.2 Whilst the nature of the use of these areas may have changed from being predominantly retail hubs to a more holistic range of facilities, town centres remain places people visit and utilise and, therefore, their vitality and viability must be protected. They must be attractive in terms of the range of services they provide but also aesthetically pleasing, safe and welcoming places.

2.3 Planning's role in town centres should be proactive and reasonably flexible, enabling a wide and diverse range of uses which bring people into these areas and by discouraging development which would harm them. Town centres, rather than being solely retail centres, should be hubs for social interaction, where there is a confluence of a range of sustainable activities. The planning system encourages a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening. A healthy town centre

Draft Food & Drink Supplementary Guidance - Tracked Changed

will encompass a varied mix of activities, including retail, commercial, leisure and community facilities such as health centres, hospitals and schools, along with an emphasis on town centre living. The integration of residential and other uses is important as this encourages active town centres throughout the day and evening. This combination of uses encourages people into town centres, creating a high level of footfall and vibrancy.

3. Protection of Town Centres

3.1 The NPF and SPP adopt a town centres first approach which not only protects and enhances town centres but encourages local job creation. The town centres first principle applies to activities which attract significant numbers of people and footfall including shopping, commercial leisure uses, offices, community and cultural facilities, as well as the promotion of residential uses in these areas. The NPF, SPP and MLDP advocate sequential testing for developments of these uses, which ranks the preferred locations for these uses as follows:

- town centres (including local centres);
- edge of town centres;
- other commercial centres identified in the development plan; and
- out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.

3.2 The town centre first principle promotes an approach to wider decision-making which puts the health and vibrancy of town centres at the forefront of decision making for retail, some commercial and leisure uses. As the role of town centres has changed, with less emphasis on retail and more focus on providing a range of services, including community assets, this approach works with highlighting town centres as locations for a range of uses appropriate to such areas.

3.3 The MLDP further clarifies the sequential approach by setting out a network of centres in Midlothian. The Council will apply the sequential approach with reference to the network of town centres, having regard to the expected catchment of the development. There are no regional or strategic town centres within Midlothian (as defined by the Strategic Development Plan for South East Scotland, [SESPlan]), therefore the Council's network of town centres is as follows:

Town Centre	Bonnyrigg, Dalkeith, Gorebridge, Loanhead , Mayfield, Newtongrange, Penicuik, Shawfair
Commercial centre	Straiton Commercial Centre
Potential out of centre location	Main corridor from Gorebridge/Redheugh to Newtongrange

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Local Centres	Danderhall, Bonnyrigg/Hopefield, Bonnyrigg/Poltonhall, Dalkeith/Thornycroft, Dalkeith/Wester Cowden, Dalkeith/Woodburn, Eskbank Toll, Gorebridge/Hunterfield Road, Bilston, Penicuik/Edinburgh Road, Roslin and Pathhead
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3.4 The creation of retail and commercial ~~leisure facilities development~~ outwith town centres must comply with policy TCR2 of the MLDP. As a town centre first sequential test applies, applications for such development outwith town centres must demonstrate this will not undermine the vitality and viability of town centres within the expected catchment of the proposed development. Retail Impact Assessments will be required for all proposals of more than 2,500 square metres gross floor area, and also smaller proposals where the Council is of the view these may pose a threat to existing centres.

3.5 Where new development gives rise to a need, the local development plan gives scope for the Planning Authority to secure measures which will mitigate specific adverse impacts in terms of local infrastructure. ~~Where planning applications are approved and a potential adverse impact has been identified, this will have to be mitigated through an appropriate developer contribution or such other action (possibly under a Section 75 Agreement) in order to ensure that the adverse impact is off-set.~~ Opportunities to improve town centres are set out in the settlement statements within the MLDP, however other measures may be brought forward during the lifetime of the plan and this Supplementary Guidance.

4. Identifying Town Centres

4.1 The physical extent of the town centres and the commercial centre at Straiton, set out in the network of centres, are identified on the maps attached to the MLDP, including within the settlement statements. Each town centre has its own distinct character and range of services.

4.2 The town centres serve needs arising in Midlothian, primarily. Dalkeith is Midlothian's administrative centre, and attracts shoppers from across the county. The other centres are more localised in scale.

4.3 The role of the commercial hub at Straiton is to accommodate development serving the regional catchment. It is envisaged that Straiton may acquire the characteristics of a traditional town centre through diversification of uses and local residential growth.

4.4 Local/~~neighbourhood shopping~~ centres vary in size. Should clarity be required in connection with identifying the extent of ~~neighbourhood, or local,~~ centres this can be advised by the Planning Authority.

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5. Principles

5.1 The Scottish Government's *Town Centre Action Plan*, which was its response to the *National Review of Town Centres* carried out by an External Advisory Group in 2012, sets out six key themes to support town centres:

- Town Centre Living: To encourage more people to live in town centres;
- Vibrant Local Economies: To support sustainable economic growth and promote job creation;
- Enterprising Communities: Community led regeneration supported by local people;
- Accessible Public Services: Encouraging the location of public services in town centres;
- Digital Towns: Supporting the delivery of digital towns to enhance opportunities for town centres and businesses;
- Pro-active Planning: Undertake town centre health checks which assess the strengths, weaknesses and resilience of a town centre.

6. Town Centre Health Checks

6.1 Scottish Planning Policy highlights the importance of monitoring the vitality and viability of our town centres. Regular review of the network of centres, development activity and a town centre's performance are all parts of the monitoring process, which includes Town Centre Health Checks. The purpose of these health checks is to assess the strengths, vitality, viability, weaknesses and resilience of Midlothian's town centres. These are a means of assessing the state of these areas and can provide a sound information base to identify any future actions in forthcoming local development plans. The results of these checks can also inform other action plans.

6.2 The TCHC pulls together a range of information from a wide range of sources and presents this under a list of indicators for each town centre. These are carried out every two years involving planning, transportation and economic development officers.

6.3 There is potential for these TCHCs to inform future guidance to support improvements in hard to adapt areas of town centres. The undertaking of TCHCs can contribute to a clear agenda for poorly performing town centres.

7. Trends in retailing

7.1 Fluctuations in the performance of the national economy and the rise in online retailing are changing the way town centres function. The increase in internet shopping is likely to continue and impact on retailing within town centres. Therefore, the service offered by retailers in town centres will need to diversify. The Council will support diversification which enhances the vitality and viability of town centres. The Council will also encourage the utilisation of technological advances, such as town centre wifi, to support town centres.

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8. Health

8.1 The Council is concerned regarding the impact that unhealthy lifestyles are having on the health and wellbeing of local communities. While the Council is committed to addressing the matter of protecting open space and places for exercise, through separate Supplementary Guidance, it is also necessary for the Council to consider the impact of unhealthy eating and diets on its communities. Unhealthy eating, a poor diet and being overweight has a significant impact on health. People who are overweight have a higher risk of developing type 2 diabetes, heart disease and certain cancers. Being overweight can also affect self-esteem and mental health. The Council recognises that hot food takeaways and mobile takeaway vans are a contributing factor to unhealthy diets, particularly where they are located in close proximity to schools.

8.2 In 2014 the Scottish Government's publication Beyond the School Gate recognised that the food environment around schools has an important role in promoting a healthy diet and addressed the matter of the role of the planning system in restricting particular food outlets. Where the Council can make planning decisions which positively affect the health and wellbeing of its communities it should do so. **The proximity of schools to proposed hot food takeaways is a material planning consideration in the assessment of applications. Other Local Authorities have experienced similar issues regarding hot food takeaway units near schools and have introduced Supplementary Guidance to address these concerns. The use of such guidance in assessing applications have been supported in case law.**

9. Delivery

9.1 This SG provides a detailed position statement to set out a framework for assessing applications for food and drink and other non-retail uses within and outwith town centres, neighbourhood centres and other related developments. The majority of the provisions of this SG will be delivered through the Planning Authority's assessment and determination of planning applications in compliance with the development plan.

9.2 However, that can only be a contributing factor in promoting and protecting town centres. The range and complexity of factors which influence the health of town centres also requires actions by many other public and private sector stakeholders through various economic and other levers.

Question 1

Does this section adequately explain the role and importance of successful town centres?

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10. Guidance on Topics

10.1 Food and Drinks in Town Centres

10.1.1 Food and drink uses, including hot food takeaways, and other class 3 uses generally positively contribute to the vitality and viability of town centres, adding to the vibrancy of these areas throughout the day and into the evening. Consequently there is a general presumption in favour of these operations being located within town centres. However, these types of uses can result in a number of undesirable impacts for neighbouring properties and the surrounding area in general. These problems can include increased noise levels, disturbance, smell, litter and traffic generation, particularly out with normal shopping hours. Specific requirements relating to food and drink operations are provided below:

Hot Food Takeaways

10.1.2 Hot food takeaways will not be permitted in premises where there are residential properties on the floor or floors above or immediately on either side, and on the floors above such adjacent properties. ~~; unless the affected properties are owned and occupied by the applicant or their immediate family, or by an employee working in the proposed hot food establishment. This is because there is potential for this use to have a significant detrimental impact on the amenity of neighbouring residents that would render the use unacceptable.~~ The only exception to this is where it can be demonstrated that the hot food takeaway will have no adverse impact on neighbouring residential amenity.

10.1.3 Consideration will be given to the cumulative effect of additional hot food takeaway establishments on the vitality and viability of the town centre. The dominance of any one use in town centres could have a detrimental impact on their health and character. Planning permission will not be granted if this is assessed to be seriously harmful to the surrounding town centre. Hot food takeaways in town centres will not be supported where 50% or greater of ground floor commercial units within 100 metres of the unit are in use as hot food takeaways. Applicants will be expected to provide details of the uses of all units within this catchment of the application site as a supporting statement submitted with their planning application (See Appendix 2 - Submission Requirements).

10.1.4 Planning permission will also not be granted for hot food takeaways where these would cause significant harm to residential amenity or to the general environment of the area as a result of noise, disturbance ~~or ; smell. or litter.~~ Although a number of these issues can be mitigated to an extent, however careful consideration will be given to the location and the impact that the hot food takeaway use could have on the surroundings. Careful consideration needs to be given to the impact of litter in such proposals.

10.1.5 Planning permission will not be supported where it would present a threat to road safety, for example by encouraging illegal or inconsiderate parking or on-street parking at a dangerous location. These types of uses can generate considerable levels of traffic and so

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road safety is a significant issue. It is likely that in town centres there will be sufficient on and off-street car parking nearby, particularly since the busiest times for such uses tend to be in the evenings when other businesses may be closed.

10.1.6 Hot food takeaways are generally expected to open late into the evening and play a part in the mix of uses to support town centre vitality throughout the day and into the evening. In general terms, where hot food takeaways are considered acceptable they will be restricted to opening hours of no later than 10pm on Sundays and midnight on other days.

10.1.7 Any external alterations for hot food takeaway shops, including any external flues or other ventilation equipment, must not be detrimental to the character and appearance of the building and the surrounding area (see section 10.1.13).

Hot Food Takeaways in Proximity to School Premises

10.1.8 The Council is concerned that the proximity of hot food takeaways to secondary schools encourages school pupils to eat unhealthy food. It is recognised that the planning system is limited in restricting access to unhealthy foods, as it is not possible to restrict the sale, from shops, of unhealthy foods to school pupils. However, it is reasonable and appropriate for the Council to prevent provision of new premises (including temporary vehicles/structures) and the change of use of premises to hot food takeaways on account of the adverse impact that they have on the diets of young people and the health of communities. Hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a primary or secondary school. ~~For the avoidance of doubt, this specific provision applies across the whole of Midlothian including town centres. It may also be applied in relation to primary schools and other premises predominantly used by children.~~

Class 3 Uses (Restaurants, Café, Snack Bars, etc) Restaurants

10.1.9 Planning applications for class 3 uses, (food and drink as defined in the Town and Country Planning (Use Classes)(Scotland) Order 1997), ~~restaurants solely~~ for the consumption of food and drink on the premises will be considered on their individual merits, taking the following factors into account: the size of the proposed establishment; the relationship to adjoining uses particularly residential properties; its likely traffic generation and parking provision; and, its acceptability in terms of other relevant planning policies of the MLDP.

~~Where planning permission is granted for a restaurant solely for the consumption of food and drink on the premises, a condition will likely be imposed preventing its subsequent change of use to, or inclusion of, a hot food takeaway facility without the submission of a further planning application. This approach is a reasonable way for the Planning Authority to fully assess any potential impact on the surrounding area, in line with the above criteria on hot food takeaways and related MLDP policies. There may be some instances where the use of a site as a restaurant only is acceptable but that an associated takeaway element would not be appropriate.~~

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Cafes, Tea Rooms, Coffee Shops

10.1.10 ~~Applications for cafes, tea rooms and coffee shops will generally be supported subject to a number of criteria. Cooking facilities at these uses will be limited to a domestic scale, e.g. domestic cooker, microwave oven etc. where there may be an adverse impact on neighbouring properties as a result of noise and smell from more traditional commercial kitchen equipment.~~ In order to encourage vibrant town centres and encourage use by the public throughout the daytime and evenings, the opening hours of these uses can match those recommended for hot food takeaways, unless there are particular amenity reasons to restrict the hours (Refer to Appendix 2 for Submission Requirements for such applications).

10.1.11 Conditions will be imposed, as appropriate, restricting the hours of opening of the premises; requiring the provision of adequate ventilation equipment; or otherwise as necessary to ensure that the use does not have an adverse environmental impact on its neighbourhood.

10.1.12 Such Pproposals ~~within this category~~ may include an element of takeaway trade provided that it remains clearly ancillary to the principal use of the premises for the consumption of food and drink on the premises. This is unless they fall within the 400m 'no hot food takeaway buffer' around primary and secondary schools or there are other material planning concerns which require there to be no takeaway element, such as road safety.

Guidance for all Food and Drink Uses**Ventilation**

10.1.13 An effective system for the extraction and disposal of cooking odours will be required for all such uses where the method of cooking is likely to cause smell or fumes. Details of the proposed system will be expected to be submitted with the planning application so that both its effectiveness and any external visual impact can be considered. Extract ventilation systems must:

- Be located in order to minimise the visual impact on the streetscene;
- Be of a colour, finish, design and material to be in keeping with the building it is attached to;
- Terminate at a level to permit the free disposal of exhaust fumes;
- Provide adequate ventilation to the cooking area to eliminate the need to leave doors and windows open; and
- Prevent the emission of cooking odours likely to cause nuisance to neighbouring properties.

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10.1.14 Where ventilation systems are required, they will be implemented before the use commences on site. Particular consideration should be given to ventilation systems where the site is within a conservation area or **comprises** a listed building (refer to MLDP policies ENV19 and ENV22).

Noise

10.1.15 Food and drink uses have the potential to create noise and disturbance in their immediate vicinity, either from equipment or hours of operation. Effective noise management must be undertaken to ensure these uses do not have a detrimental impact on the surrounding area (see MLDP policy ENV18), which will include the following:

- No amplified music or sound reproduction equipment used will be audible either within or at the boundary of any nearby residential or noise-sensitive properties, depending on the site;
- The design and installation of any ventilation system, plant or equipment will be such that any associated noise complies with specified noise ratings as required for the individual site; and
- The design and installation of any ventilation system, plant or equipment will be such that there will be no structure borne vibration within any living apartment of adjoining property, depending on the site.

Litter/Refuse

10.1.16 Food provision uses, particularly hot food takeaways, can result in littering and issues over refuse storage. In order to ensure a satisfactory standard of amenity and to safeguard the appearance of the Town Centre, **the Planning Authority may require the provision of a litter bin any such uses approved shall require a litter bin** located at the front of any premises with a takeaway element. **The applicant will be required to demonstrate through the submission of a litter management plan that negotiation has taken place with the Council regarding the positioning, maintenance and provision of a bin to the satisfaction of the Council for all food and drink premises hereby approved.**

10.1.17 Details of the location and type of refuse storage facilities are required to ensure there will not be a detrimental impact on the character or amenity of the area or neighbouring uses.

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Parking

10.1.18 Food provision units must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be allowed where this would present a threat to road safety.

10.1.19 Details of the submission requirements for Food and Drink Uses can be found in Appendix 2.

Question 2

Does this section adequately explain potential issues over food and drink uses in town centres?

10.2 Other Non-Retail Uses in Town Centres

10.2.1 It is clear that retail uses play an integral part of successful town centres. However, as shopping habits evolve the role of the town centre has also changed, as have people's expectations of their town centres. Town centres must now focus on a variety of uses and services, attracting footfall, in order to remain relevant.

10.2.2 The town centre first principle encourages activities which attract significant numbers of people including shopping, commercial leisure uses, offices, community and cultural facilities. The promotion of residential properties in town centres can add to the variety which improves the vitality of the centres, including in the evenings. This combination of uses would attract and maintain visitors whilst complementing a constant retail element. Town centres should promote diversity through the range and quality of facilities provided, although a retail core should be retained.

10.2.3 The Council seeks to maintain a sustainable level of retail within town centres whilst also supporting other appropriate uses in order to enhance the vitality of these areas. The change of use of shops to non-retail uses in town centres will be supported provided the proposal:

- demonstrates to the satisfaction of the Council that there is no realistic prospect of a site continuing in retail use (see Appendix 2 Submission Requirements);

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- protects or enhances the level of footfall through the submission of information detailing the likely number of customers per day, **such as through the submission of existing and projected footfall to the site;**
- will lead to an improvement of the image and vitality of the town centre;
- will not result in 50% or greater of ground floor commercial units within 100 metres of the site being in low footfall level use; and,
- retains an active street frontage.

10.2.4 The Council will generally expect a retail unit to have been vacant and marketed for no less than 12 months (or 18 months if the unit is a significant Class 1 unit, such as a large supermarket) before it can be demonstrated that there is no realistic prospect of it continuing in retail use and be considered for a low level footfall use. This level of information is not necessary where retail units are proposed to be changed to other high footfall uses.

10.2.5 Acceptable high footfall uses in town centres could include: class 2 including financial, professional or other services which are provided principally to visiting members of the public; food and drink provision uses; pubs; hot food takeaways; hotels; non-residential institutions; leisure; and community uses. **Where such change of uses are acceptable, the street frontage must remain active through the use of windows.**

10.2.6 Residential accommodation within town centres is also encouraged as this will help the vitality and viability throughout the day and into the evening. The Council welcomes residential properties above commercial units and within town centres, but not at the expense of commercial uses. The conversion of ground level retail space to residential uses will not be supported as this would detract from the range of services offered within the town centre. **It is also the case that the Planning Authority will resist the change of use of high footfall commercial uses to residential at ground level unless it can be demonstrated that there will be no adverse impact on the vitality and viability of the town centre.** Careful consideration must be given to the amenity of proposed occupants to ensure that this would not be detrimentally affected by neighbouring uses. **The creation of flatted dwellings, in premises immediately adjacent to, but unrelated to, operational hot food takeaways are unlikely to be supported as these are likely to be detrimentally affected by smell, noise and disturbance from the established use.** Applicants must demonstrate that upper floors or basements are not required for storage or offices in terms of retaining viable commercial operations in town centres.

10.2.7 The impact that non-retail uses would have on the surrounding town centre must be assessed and considered to be acceptable otherwise such uses may not be supported. A number of specific uses are addressed elsewhere in this SG, however in general terms any proposed use will be required not to have a detrimental impact on the amenity or

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environment of surrounding properties and occupants in terms of noise, smell or disturbance. These uses must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where there would be a threat to road safety.

Question 3

Does this section adequately explain potential issues over non-retail uses within town centres?

10.3 Changes of Use and Permitted Development Class 1 and 2

10.3.1 The Town and Country Planning (Use Classes)(Scotland) Order 1997 allows for the change of specific uses to others without the requirement for planning consent, **unless conditions restricting the change of use have been attached to any permission**. Class 2 uses (e.g. banks, estate agents and beauty salons) and class 3 uses (e.g. cafes) can generally change to class 1 uses (retail) as permitted development. However, all other changes of uses generally require planning permission. The Council, as Planning Authority, is restricted in the control it can exercise over some operations, e.g. there is little that can be done by the planning authority where there is a perceived oversupply of one particular type of shop (such as charity shops) as these fall within the same planning use class as other retail operations.

10.3.2 Over recent years, concerns have been expressed by the Scottish Government and the Council about the number of pay day lending and betting shops in town centres. The impact that these uses would have on the character and amenity of the town centres and the wellbeing of communities have been cited as the main reasons for concern.

10.3.3 The Scottish Government amended the abovementioned Use Classes Order to remove betting shops and pay day lenders from Class 2 and created a new Class (13A) for these. Planning permission is now required for such change of use which allows the Council the opportunity to assess the impact these would have on the vitality and viability of town centres, as well as preventing clustering which may affect the range of services in the town centre.

10.3.4 Any applications will be assessed in accordance with the criteria previously stated, including: if the proposed use would significantly reduce the range of services offered in the town centre; would lead to the concentration of a particular use to the detriment of the town centre's vitality and viability; assess the contribution the proposed use would make to the vibrancy of the town centre by increasing footfall; and if the unit affected by the proposal has

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been vacant and suitably marketed for retail or other appropriate use. Details of marketing should be submitted in line with the details required in relation to Appendix 2 for 'Applications for the change of use from retail to other uses'.

Question 4

Does this section adequately explain the change of uses which require or do not require planning permission and the impact this may have on the success of town centres?

10.4 Prevention of Overprovision and Clustering of Particular Uses in Town Centres

10.4.1 Successful town centres are those which provide a variety of services and attract a high amount of footfall. A balance must be struck in order to ensure that a healthy mix of uses ~~are is~~ provided rather than the over provision of particular services and the weakening of the town centre. It is important that the variety of uses provided within town centres does not detract from the primary retail function, the loss in shops to the detriment of local residents or the vitality or viability of town centres.

10.4.2 Applications for ~~hot food takeaway, betting shops and pay day lender non-retail~~ uses will be refused where they would result in a significant over-concentration which would have a detrimental impact on the vitality and viability of town centres. ~~Such instances include where there would be a proliferation of hot food takeaways where these may only be open in evenings and not promote a vibrant town centre through the day.~~ Retail uses form part of healthy town centres and it is expected that there be one retail unit for every 100 metres of commercial units in a town centre area.

10.4.3 As detailed in the previous section the Council, as Planning Authority, is restricted in the control it can exercise over some operations and the overprovision concerns these create. For example, there is little that can be done by the planning authority where there is a perceived oversupply of one particular type of shop, as these fall within the same planning class as other retail operations and do not require planning permission to change occupants provided these remain retail units.

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Question 5

Does this section adequately explain potential concerns about overprovision of uses in town centres?

10.5 Food and Drink Provision Outwith Town Centres

10.5.1 Not all food and drink uses are provided within town centres. Some food and drink uses aim to serve more local communities. It is appropriate to locate some element of food and drink provision in ~~local neighbourhood~~-centres in the interests of sustainability and convenience and to encourage small scale business. ~~Local Neighbourhood~~-centres form a legitimate part of the network of centres and, therefore, it is appropriate to site food and drink uses in these areas. However, food and drink uses will not be permitted outwith the areas identified in the ~~local centres as defined in the MLDP network-of-centres~~ unless it has been demonstrated that there will be no adverse impact on the viability of ~~nearby local~~ town centres or where the development is required in order to support an existing business, e.g. a café supporting a farm shop or a tourist destination. ~~Such applications should be accompanied by a Town Centre Impact Assessment. However, the local planning authority can exercise its discretion not to request such an assessment where an application is submitted for the change of use of a high footfall use to a food and drink use, where there is no reasonable prospect of the original use being retained.~~

10.5.2 Despite there being general support for food and drink uses in ~~local neighbourhood~~ centres the Council is concerned that the overprovision of some uses will adversely affect the range of services in these areas and, in turn, also impact on their vitality. Therefore, development proposals will not be permitted for food and drink uses (including hot food takeaways) in ~~local neighbourhood~~-centres where they will result in 50% or more of the units in the ~~local neighbourhood~~ centre being in a food or drink use (including hot food takeaway). These uses will be permitted in ~~local centres neighbourhood-shopping-areas~~ where the applicant provides details to show the change of use will not result in 50% or more of ground floor commercial units within 100 metres of the site being in food and drink use, as well as compliance with the above criteria.

10.5.3 As with the section on hot food takeaways in town centres the Council is concerned that the proximity of hot food takeaways to secondary schools encourages pupils to eat unhealthy food. It is recognised that the planning system is limited in restricting access to unhealthy foods, as it is not possible to restrict the sale of unhealthy foods to school pupils from shops. However, it is reasonable for the Council to prevent the change of use of premises

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to hot food takeaways on account of the adverse impact that they have on the diets of young people and the health of communities. Hot food takeaways will not be permitted where they fall within 400metres of the curtilage of a primary or secondary school.

10.5.4 Food provision units must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where the development would present a threat to road safety.

10.5.5 The Council does not support major retail development (e.g. proposals of more than 2,500 square metres gross floor area) anywhere other than in town centres, the Straiton commercial centre or the potential out of centre location on the A7 between Gorebridge and Newtongrange.

10.5.6 Guidance for all food and drink uses can be found in sections 10.1.14 to 10.1.20 of this Supplementary Guidance and submission requirements in Appendix 2.

Question 6

Does this section adequately explain potential issues over food and drink and retail uses outwith town centres?

10.6 Drive-Through Units (Restaurants and Other Services)

10.6.1 By their nature drive-through ~~restaurants-units~~ are unlikely to be located within Midlothian's town centres, which are relatively small and intimate with little opportunity to accommodate the scale of these developments without significant land clearance and disruption. Town centre locations are unlikely to fit with the business models of drive-through ~~restaurant-unit~~ operators, who seek to maximise on convenient accessibility for vehicles. Therefore, planning applications for drive-through ~~restaurants units~~ are likely to fail to satisfy the town centre first approach. ~~However,~~ Drive-through ~~restaurants-units~~ represent a valid and important part of the provision of food and drink and other facilities in the contemporary landscape of our towns and cities.

10.6.2 ~~However,~~ There is potential for drive-through ~~restaurants units~~ to have an adverse impact on other ~~restaurants-commercial units~~ within nearby town centres. Planning applications must be accompanied by a sequential assessment in accordance with the 'town centre first approach' and information to demonstrate that proposed drive-through ~~restaurants units~~ will not undermine the vitality and viability of nearby town centres.

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10.6.3 Where drive-through **restaurants units** have been demonstrated to not undermine the vitality and viability of nearby town centres there will be scope to support their development in the built-up area adjacent to the strategic road network. Drive-through **restaurants-units** will not be permitted on established or committed economic development land unless specifically supported by the policies of the MLDP.

10.6.4 Proposed drive-through **restaurants units** must comply with the terms of policy ENV17 (Air Quality) of the MLDP, which states that further assessment to identify air quality impacts would be required where the Council's Environmental Health service and the Scottish Environment Protection Agency considers it requisite. The Council's statutory duties in relation to monitoring air quality are undertaken by the Council's Environmental Health service who would be consulted as part of any planning application for drive-through **restaurants units**.

10.6.5 Planning applications for drive-through **restaurants units** must demonstrate that the matter of littering has been fully considered by the applicant. Planning permissions for these uses are likely to include a planning condition which will require details of the extent of the area around the site where litter is to be picked.

10.6.6 Drive-through **restaurants units** must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be allowed where the development would present a threat to road safety. **Submission requirements in connection with drive-through units can be found in Appendix 2.**

Question 7

Do you have any suggestions for changes to this section?

10.7 Petrol Filling Stations

10.7.1 Petrol filling stations could be acceptable depending on their location. Ancillary retail units may also be acceptable, however this would depend on the scale of the retail unit proposed. If these retail operations are large and not ancillary to the petrol filling station they are likely to have an adverse impact on nearby town centres. Therefore any retail units associated with proposed petrol stations must not have a gross floor area larger than 100 square metres. The Planning Authority would have to assess any larger shops to assess the impact of these and if this is considered detrimental to nearby town centres they will not be permitted.

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10.7.2 Petrol filling stations, with an acceptable ancillary retail element, must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where the development would present a threat to road safety.

Question 8

Do you have any suggestions for changes to this section?

10.8 Public Houses

10.8.1 Public houses can have an important role to play in town centres and can positively contribute to the range of uses, including community space and generally contribute to a more vibrant evening economy.

10.8.2 Applications for new public houses will only be permitted where it is demonstrated that these would not have a detrimental impact on the character or amenity of the surrounding area and residents, as per policy DEV2 of the MLDP. Particular care must be taken where there are residential properties in the surrounding area.

10.8.3 Planning applications which would lead to the loss of a public house from a town centre must demonstrate that the premises are no longer viable as a public house and that the replacement use will either protect or enhance the vitality and viability of the town centre by providing a facility with similar opportunities for social interaction.

10.8.4 Over recent years the Council has been asked to consider planning proposals which relate to the consumption of alcohol in industrial units, ancillary to established breweries. Whilst the breweries themselves are generally acceptable in industrial estates, the creation of public houses or events space in these areas raises a number of concerns, including the compatibility of an increased number of pedestrians and members of the public within active and successful industrial estates. In addition, the scale of some of these operations are such that they could undermine the viability of public houses within town centres and elsewhere. Development will not be permitted where it will have an adverse impact on town centres, or where there is a risk to pedestrian safety.

10.8.5 Public houses must be provided with adequate parking provision as detailed in the adopted Midlothian Council Parking Standards. Planning permission will not be permitted where the development would present a threat to road safety.

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Question 9

Does this section adequately explain potential issues over the creation and retention of public houses both within and outwith town centres?

10.9 Concession Shops and Units

10.9.1 The Council has previously supported concession stores selling non-garden related items within the grounds of garden centres. Future applications may be supported where evidence demonstrates they would not undermine the success and vitality of nearby town centres and the proposal is in compliance with policy TCR2 of MLDP. If these retail operations are large and not ancillary to the garden centre they are likely to have an adverse impact on nearby town centres. Therefore any concession shops and units associated with garden centres must not have a gross floor area larger than 100 square metres. Planning applications should be accompanied by: information to demonstrate that the applicant has investigated sites within town centres and why these have been discounted; information to demonstrate that the proposed use would not undermine the vitality and viability of nearby town centres; and details of parking provision and likely traffic generation.

10.9.2 Concession units within large retail units, e.g. superstores, are becoming more common. These operations generally do not require planning permission, provided the units are ancillary to the store within which they are sited. The Council expects that these concessions will only be accessed from within the host store and will operate wholly within the larger store. Where planning permission is required, these should comply with policy TCR2 of MLDP.

Question 10

Do you have any suggestions for changes to this section?

10.10 Pod/Container Retail Units

10.10.1 There has been a proliferation of applications across the country for individual pod/container retail units within retail parks or adjacent to superstores. These units are generally for class 1 uses, such as barbers, key cutters and watch and shoe repairs, and are essentially temporary structures or containers with improved finishing materials.

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10.10.2 These proposals are generally of a size which would be expected and appropriate within town centres and are therefore contrary to the town centre first approach. These also could have an adverse impact on the related retail park/unit.

10.10.3 The Council considers concession stores units within larger retail units an appropriate alternative to the provision of standalone retail pods or containers. **Thesey** would be within retail units which have been assessed in terms of related policy with the impact on town centres addressed.

10.10.4 Any applications for pod or container retail units should be accompanied by a sequential test and details to demonstrate that all options within nearby town centres are exhausted before proposing such uses at Straiton Commercial Hub or superstores. A report must be submitted with applications to demonstrate there are no vacant or available commercial units of a size, or indeed other sizes, appropriate for the proposed retailer within nearby town centres. Any other supporting information will be considered, including the applicant's business strategy or operations. The cumulative impact of such proposals on retail parks or superstores will be assessed to ensure that there is no detrimental impact on these areas which are designated and defined to contain larger retail units or town centres.

10.10.5 The Council also has concerns over the visual impact these units would have as **thesey** are generally structures which would not be acceptable on a long term basis. Where the principle of siting a pod/container is acceptable it is likely that the Council will restrict the approval of these pods/units for a period of three years in order to allow the applicant **the sufficient** opportunity to prepare a more suitable permanent solution which respects the amenity and character of the surrounding area.

Question 11

Does this section adequately explain potential issues over small pod/container units within retail parks and superstores and the potential impact of these on town centres?

10.11 Pop Up shops and other temporary commercial activities

10.11.1 Pop up shops can be an effective way of bringing vacant units within town centres into use for short term periods. Such uses are becoming more common in town centres and are examples of how the role and function of these have changed, encouraging more flexibility for these areas as well as support for smaller businesses.

10.11.2 Planning permission for these is not required where no change of use takes place. Where permission is required, these will generally be supported provided they are not to the detriment of other uses in town centres or are outwith town centres or undermine the town

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centre first approach. Although this will encourage flexibility of town centres, it should be ensured that these do not detrimentally affect the long term use of units which may improve the vitality and viability of the town centre.

Question 12

Does this section adequately explain potential issues over pop up shops in town centres?

10.12 Alfresco Eating

10.12.1 Outdoor eating and drinking areas can create an active and lively atmosphere in town centres. Planning permission is not always required for such areas but there are occasions where developers will need to submit planning applications for change of use. **Applications shall include details: of the extent of the outdoor eating area; any proposed furniture; any proposed barriers; the hours of operation; and confirmation if furniture and barriers are to be removed on a daily basis.** The Council will support alfresco eating areas in the following circumstances:

- Where they are associated with, and immediately adjacent to, established food and drink premises;
- Where there will be no significant adverse impact on the amenity of neighbouring residents or businesses as a result of noise and disturbance; and
- The proposal does not impede disabled access or significantly reduce the capacity of pedestrian routes.

Question 13

Do you have any suggestions for changes to this section?

10.13 Farmers' Markets

10.13.1 Open air markets are a popular way of diversifying town centres and creating a vibrant shopping experience. Proposals for open air markets and farmers' markets will be permitted provided that:

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- They are located within a town centre;
- They contribute to the viability and vitality of the town centre;
- The amenity of any property, especially dwellings, is not adversely affected to a significant degree; and
- The site can be easily accessed by both vehicles and pedestrians, and parking provision for traders and customers is adequate.

Question 14

Do you have any suggestions for changes to this section?

10.14 Mobile hot food takeaways

10.14.1 The casual or temporary parking of a mobile hot food takeaway vehicle is not likely to be development and, as such, will unlikely require planning permission. Where a mobile unit becomes 'static' planning permission may be required and in these cases they will be subject to the same restrictions as other hot food takeaway proposals.

Question 15

Do you have any suggestions for changes to this section?

10.15 Community Projects, Stalled Spaces and Vacant Land

10.15.1 The Council will encourage community projects in town centres. Town centres are generally easily accessible by different members of the community and are well placed to provide services and facilities to people in need.

10.15.2 There are relatively few vacant spaces within Midlothian's town centres. However, the Council encourages the early development and use of these places in order that they contribute fully to the health and wellbeing of the towns. **Such proposals would be considered on a case by case basis to assess the impact on town centres and compliance with policy.**

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Question 16

Do you have any suggestions for changes to this section?

10.16 Events and cultural activities

10.16.1 The Council will encourage flexible spaces within town centres. These spaces could be utilised for different cultural events and exhibitions, thereby enhancing the vitality of Midlothian's towns. **Such proposals would be considered on a case by case basis to assess the impact on town centres and compliance with policy.**

Question 17

Do you have any suggestions for changes to this section?

10.17 Urban Realm

10.17.1 While other Supplementary Guidance is focused on creating quality of place and good placemaking it is also relevant to provide some general guidance in this document regarding the Council's support for improvements of the urban realm of Midlothian's towns.

10.17.2 Where opportunities arise, pavement areas within town centres should be widened in order to create safe and pleasant pedestrian areas. This will also allow flexibility with regards to the use of areas for different purposes in the interests of encouraging a vibrant atmosphere.

10.17.3 Signage, barriers and other street furniture **can** result in excessive clutter in town centres. They can impede pedestrian routes and restrict disabled access. The proliferation of street clutter does not contribute positively to the physical environment of town centres and the Council will support measures to reduce unnecessary street furniture.

10.17.4 While some street furniture negatively impacts on the character and appearance of an area other features can be positive and encourage people to come to town centres. Features such as benches, street trees and planting contribute positively to the town centre environment.

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10.17.5 Scotland is expected to experience more extreme weather conditions as a result of global warming. It is important that town centres are welcoming places, serving the needs of their communities, whatever the weather conditions may be. There is scope for development proposals to incorporate features to accommodate different conditions, such as the installation of canopies, recessed doorways and surface water management.

10.17.6 Roller shutters can create an unattractive and intimidating atmosphere in some commercial areas. The Council will not support the installation of external box-housed roller shutters within town centres or neighbourhood centres. If it has been demonstrated that roller shutters are essential these must be internally installed in a stretcher bond design, to allow some visibility through the shutter to maintain an active street frontage.

10.17.7 Where there are numerous empty units within a town centre these can have a significant adverse impact on the character and appearance of an area. A common solution to this issue is to install temporary shopfronts within the premises. These temporary shopfronts can act as an advertisement, showing what businesses could achieve by moving in to the unit.

10.17.8 In an effort to encourage people to come in to town centres and stay for a while, contributing the vibrancy of the area the Council will encourage the installation of town centre wifi.

Question 18

Do you have any suggestions for changes to this section?

Appendix 1 - MLDP Policies

Policy TCR 1

Town Centres

Proposals for retail, commercial leisure development or other uses which will attract significant numbers of people, will be supported in Midlothian's town centres, provided their scale and function is consistent with the town centre's role, as set out in the network of centres and subject to the amenity of neighbouring uses being preserved.

Change of use from retail will only be permitted if the subsequent use is one which contributes positively to footfall in, and the vitality of, the town centre* and subject to the Council being satisfied that the proposals are acceptable in terms of the amenity, environment, traffic and parking arrangements of the town centre, with reference to the relevant Supplementary Guidance (paragraph 4.6.4).

Conversion of ground level retail space to residential uses will not be permitted. The conversion of upper floors to housing and the formation of new residential space above ground-level structures in town centres is supported.

Proposals for open air markets will be supported in Midlothian's town centres provided the amenity of neighbouring uses and the functioning of the road network is not adversely affected.

* Acceptable uses in this regard would be: financial, professional or other services which are provided principally to visiting members of the public; premises where food and drink is consumed; pubs; hot food takeaways; hotels; non-residential institutions; premises for assembly and leisure; or other 'one of a kind' uses which contribute to the objective.

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Policy TCR 2**Location of New Retail and Commercial Leisure Facilities**

The Council will apply the sequential approach set out in this policy with reference to the network of centres, as described in Table 4.1, insofar as it relates to locations within Midlothian and having regard to the expected catchment of the development.

Development in town centres

Proposals must accord with policy TCR1 above.

Development at Straiton Commercial Hub

Within Straiton Commercial Hub, as identified on the Proposals Map (and including site Ec3, where proposals are in accordance with a site masterplan to be agreed with the Council), proposals for new retail and commercial leisure development, or extensions to existing facilities, will be supported in principle provided that:

- A. there are no alternative sites in or on the edge of Edinburgh City Centre (where the proposed development has an anticipated catchment from across the city region); OR there are no alternative sites in, or on the edge of, Dalkeith town centre (where the proposed development has an anticipated catchment wholly or predominantly within Midlothian);
- B. they address a quantitative or qualitative deficiency within the catchment;
- C. they do not, either individually or cumulatively with other developments, undermine the vitality and viability of regional, strategic or other town centres, within the expected catchment of the proposed development; and
- D. they are accompanied by measures to improve the environmental quality of the commercial hub and its accessibility by public transport, walking or cycling.

Out of centre location for retail development

The Council will support retail development at an out of centre location in the corridor from Gorebridge/ Redheugh to Newtongrange as indicated on the settlement statement maps. This should be of a primarily convenience nature, and may be in the form of a new town centre for Redheugh. It should be demonstrated that any specific proposals do not (either individually or cumulatively with other developments) undermine the vitality and viability of town centres within the expected catchment of the proposed development.

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The Council does not support major retail development at any other out of centre locations.

Local centres and neighbourhoods

Proposals to change the use or redevelop existing shopping facilities within local centres and neighbourhoods will only be supported where their loss can be justified. New shopping facilities (up to a scale of 1,000 square metres gross floor area) will be permitted within local centres, provided they do not undermine the vitality and viability of any of Midlothian's town centres. Elsewhere within the built-up area, such facilities will be supported where new housing developments are not adequately served by existing centres. Any such development should not have a negative effect on the amenity of the adjoining residential area, including traffic and parking considerations.

Policy DEV2

Protecting Amenity within the Built-Up Area

Development will be permitted within existing and future built-up areas, and in particular within residential areas, unless it is likely to detract materially from the existing character or amenity of the area.

Policy ENV18

Noise

The Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or require to be modified so that no unacceptable impact at sensitive receptors is generated. Applicants may be required to carry out a noise impact assessment either as part of an Environmental Impact Assessment or separately. Where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.

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Appendix 2 - Submission Requirements

Applications for hot food takeaways should be accompanied by the following:

- Details of the proposed hours and days of operation;
- Details of the proposed ventilation system;
- A litter management plan, including details of areas of refuse storage; ~~Details of areas of refuse storage; and~~
- ~~Details of a litter bin to be positioned at the front of the site.~~
- Details of the uses of all ground floor commercial units within 100 metres of the application site; and
- Confirmation if the applicant or their immediate family or an employee working at the proposed hot food takeaway owns and occupies any residential properties on the floor or floors above the application site, and on the floors above such adjacent properties.

Applications for ~~Class 3 Uses restaurants~~ should be accompanied by the following:

- Details of the proposed hours and days of operation;
- Details of any proposed ventilation system;
- ~~Details of the types of foods to be sold from the unit;~~
- ~~Details of the proposed cooking apparatus;~~
- If a there is to be a takeaway element to the proposal;
- If so, details of the expected percentage of customers eating the unit and taking away food;
- A litter management plan, including details of areas of refuse storage; ~~Details of areas of refuse storage; and~~
- Details of a litter bin to be positioned at the front of the site.

~~Applications for cafes, tea rooms and coffee shops should be accompanied by the following:~~

- ~~Details of the proposed hours and days of operation;~~
- ~~Details of the types of foods to be sold from the unit;~~
- ~~Details of the proposed cooking apparatus;~~
- ~~Details of any proposed ventilation system;~~
- ~~If a there is to be a takeaway element to the proposal;~~
- ~~If so, details of the expected percentage of customers eating the unit and taking away food;~~
- ~~Details of areas of refuse storage; and~~
- ~~Details of a litter bin to be positioned at the front of the site.~~

Applications for the change of use from retail to other uses should be accompanied by:

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- Details of how long the unit has been vacant;
- Details of how this has been marketed, including signage, medium, frequency and if target marketing has taken place;
- Details if there have been interested parties and for what uses/purposes; and
- Details of the hours of operation for the proposed use.

Applications for drive-through ~~restaurants-units~~ should be accompanied by:

- Information to demonstrate that sites within town centres have been investigated for the use and reasoning why these have been discounted;
- Information to demonstrate that the proposed use would not undermine the vitality and viability of nearby town centres;
- Details of parking provision and likely traffic generation, which may include a Transport Assessment; and
- Details of any proposed litter picking proposals.

Appendix 3 - Relevant Documents

National Planning Framework 2014

Scottish Planning Policy 2014

The Town and Country Planning (Use Classes)(Scotland) Order 1997

The Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016

The Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (Amended 2014)

Adopted Midlothian Council Parking Standards

COMMUNICATING CLEARLY

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如有需要我們樂意提供翻譯本，和其他版本的資訊與刊物，包括盲人點字、錄音帶或大字體。

Zapewnimy tłumaczenie na żądanie oraz dostarczymy informacje i publikacje w innych formatach, w tym Braillem, na kasecie magnetofonowej lub dużym drukiem.

ਅਸੀਂ ਮੰਗ ਕਰਨ ਤੇ ਖੁਸ਼ੀ ਨਾਲ ਅਨੁਵਾਦ ਅਤੇ ਜਾਣਕਾਰੀ ਤੇ ਹੋਰ ਰੂਪ ਵਿੱਚ ਪ੍ਰਕਾਸ਼ਨ ਪ੍ਰਦਾਨ ਕਰਾਂਗੇ, ਜਿਨ੍ਹਾਂ ਵਿੱਚ ਬਰੇਲ, ਟੇਪ ਜਾਂ ਵੱਡੀ ਛਪਾਈ ਸ਼ਾਮਲ ਹਨ।

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