

Report	Summary of key findings and recommendations	Recommendations			Status
		H	M	L	
<p>Subject: Developer Contributions</p> <p>Category: Assurance – Risk-based</p> <p>Date issued: 30 November 2023 Draft 20 December 2023 Final</p> <p>Level of Assurance: Substantial</p>	<p>Midlothian has been experiencing significant growth and investment for a number of years. The 2022 census highlighted that Midlothian’s percentage population growth has been almost six times higher than the national average over the last decade (16.1% in Midlothian compared to a Scottish national average of 2.7%). Developer Contributions are a means of mitigating against the impact of growth by providing the Council with a financial contribution towards the cost of new capital infrastructure.</p> <p>Midlothian’s development plan is comprised of National Planning Framework 4 (which superseded the Edinburgh and South East Scotland Strategic Development Plan June 2013 in February 2023) and the Midlothian Local Development Plan 2017 (MLDP), adopted in November 2017 following consultation. Policies set out within the MLDP require the developer to deliver, or contribute to, the required infrastructure or mitigate the impact of the development. The MLDP sets out the following topic areas for developer contributions: education provision; transport infrastructure (including towards Borders Rail, the A7 urbanisation scheme, Sheriffhall Roundabout upgrade and the A701 realignment and A702 spur); affordable housing provision (which could include a financial contribution); community facilities; sport and leisure facilities; town centre improvements; and open space and play provision/upgrades.</p> <p>Developer Contributions towards these areas generally only cover the capital cost of the development, not the ongoing revenue costs. However, new housing should in theory increase the ongoing revenue for the Council through additional Council tax and increases in the block grant to reflect the increase in population.</p> <p>Local Authorities are required to set out their plans in Supplementary Guidance (SG) (Circular 1/2009, Scottish Government, 2009). The purpose of this guidance is to detail the Council’s requirements in respect of planning obligations to be secured from new developments and provide further detail in support of the development plan. The Council’s Supplementary Guidance was published in 2012.</p>	0	3	4	Management have accepted the factual accuracy of the report and its findings, and agreed to implement the recommendations.

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	<p>As at 31 March 2023, the Council held £43.092m of Developer Contributions with contribution receipts in the year of £9.029m and contributions applied of £6.074m. £1.598m of planning obligations were entered into in 2022/23 and £2.139m were entered into in 2021/22.</p> <p>The Council's Planning team, as part of the planning application process, assess whether Developer Contributions are required, and the decision is logged in the Idox Uniform system. Applications are assessed against the Council's Local Development Plans and Supplementary Guidance to determine whether contributions are relevant. If the application is not covered by the Local Development Plans (windfall housing), the Planning team will engage with service areas as required to establish the necessary contributions and follow the process set out in the MLDP and SG.</p> <p>The Lead Officer Planning Obligations is responsible for the majority of negotiations with developers. Following negotiation, a Heads of Terms document is prepared setting out the contributions required for the development, and this is submitted to the Executive Director, Place, for review and approval under the Council's delegated authority. Following approval, the Legal Services team produce a legal agreement in conjunction with the developer's solicitors.</p> <p>Developer Contributions are logged on the Exacom Planning Obligations Suite system which records documentation relevant to the agreement, the financial details of each agreement, the trigger points when contributions are due (e.g. when a specific number of houses are completed), the receipt of contributions from developers, the projects contributions are to be allocated to, and the subsequent application of contributions to these projects. The majority of the update and maintenance of the system is undertaken by the Lead Officer Planning Obligations. Financial Services coordinate with the Lead Officer Planning Obligations to monitor the contributions received and their subsequent application to projects. The allocation of contributions to projects is initially on approval from Council, and this is administered by Financial Services in the financial ledger and annually updated on the Exacom system. Unused</p>				

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	<p>contributions are allocated to interest bearing accounts in line with the Council's Treasury Management Strategy.</p> <p>The Capital Plan and Asset Management Board (CP&amp;AMB) has responsibility for monitoring the Council's Developer Contributions and receives twice yearly update reports which includes reporting on the expiry dates of contributions. Additionally, an annual report is submitted to Council providing an update on planning obligations (The Planning (Scotland) Act 2019 will make this a mandatory requirement, but the Council has implemented this in advance of it coming into force).</p> <p>A previous internal audit in 2016 reported that there was not an adequate database to manage the Council's developer contributions resulting in no central repository to hold details of all agreements and modifications and a significant reliance on developers to advise the Council when contributions were due. This issue has been resolved with the implementation of the Exacom system. Similarly, reporting on expiry dates of contributions to an appropriate governance body is now in place - this was not in place in 2016.</p> <p>Internal Audit considers that the level of assurance is substantial for Developer Contributions. Since the last full audit review in 2016 there has been a significant improvement in this area. Internal Audit made the following recommendations:</p> <ul style="list-style-type: none"> <li>• Written procedures should be developed for the Developer Contributions calculation process and creation of the Heads of Term document. The service risk register should be updated to take into account the risk of contributions not utilised used in time and completeness of the MLDP. An annual declaration process should be introduced for declaring conflicts of interest for those involved in negotiating with developers. (Low)</li> <li>• Procedures should be prepared covering the invoicing, ongoing monitoring and reconciliation processes within Financial Services. (Low)</li> <li>• Sufficient resource should be in place to support the Developer Contributions process, ensure that the database is kept up to date, all relevant documents are uploaded to the system and demand notices are generated promptly.</li> </ul>				

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	<p>Additionally, an appropriate audit trail should be retained of the calculation workings supporting the Heads of Terms. (Medium)</p> <ul style="list-style-type: none"> <li>• The Supplementary Guidance for Developer Contributions should be updated and include adequate detail as to how contributions should be calculated. (Medium)</li> <li>• For the next LDP, management should liaise with NHS Lothian and other stakeholders to establish if there is a need or basis for contributions in their respective areas. (Medium)</li> <li>• The reconciliation between the Financial Ledger and the Exacom system should be undertaken annually, and any differences promptly investigated. (Low)</li> <li>• Reporting to the Capital Plan and Asset Management Board should highlight developer contributions that are due to expire but do not have an assigned project. Additionally, consideration should be given to reporting 3 times a year instead of two given the importance of this area. (Low)</li> </ul>				