

Cabinet Committee

Council Chamber, Fife House, North Street, Glenrothes /
Blended Meeting



Thursday, 11 September 2025 - 10.00 am

AGENDA

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- | | | |
|-----|---|---------|
| 1. | APOLOGIES FOR ABSENCE | |
| 2. | DECLARATIONS OF INTEREST – In terms of Section 5 of the Code of Conduct, members of the Committee are asked to declare any interest in particular items on the agenda and the nature of the interest(s) at this stage. | |
| 3. | MINUTE – Minute of Cabinet Committee meeting of 14 August 2025. | 3 - 7 |
| 4. | REVENUE MONITORING 2025-26 – Report by the Executive Director (Finance and Corporate Services). | 8 - 23 |
| 5. | CAPITAL INVESTMENT PLAN - PROJECTED OUTTURN 2025-26 – Report by the Executive Director (Finance and Corporate Services). | 24 - 33 |
| 6. | PLANNING OBLIGATIONS AND GOOD NEIGHBOUR AGREEMENTS: DRAFT GUIDANCE CONSULTATION – Report by the Head of Planning Services. | 34 - 44 |
| 7. | SCOTTISH ILLEGAL TOBACCO OFFICERS - HOSTING WITHIN FIFE COUNCIL – Report by the Head of Protective Services. | 45 - 51 |
| 8. | ACTIVE TRAVEL STRATEGY AND ACTION PLAN – Report by the Head of Roads and Transportation Services. | 52 - 59 |
| 9. | LAND REFORM (SCOTLAND) ACT 2003 - ACCESS RIGHTS AT EAST DOCK, BURNTISLAND – Joint report by the Head of Legal and Democratic Services and the Head of Communities and Neighbourhoods Service. | 60 - 80 |
| 10. | CABINET COMMITTEE - OUTSTANDING REMITS FROM COMMITTEES | 81- 83 |

<p>Members are reminded that should they have queries on the detail of a report they should, where possible, contact the report authors in advance of the meeting to seek clarification.</p>

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4 September 2025

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BLENDED MEETING NOTICE

This is a formal meeting of the Committee and the required standards of behaviour and discussion are the same as in a face to face meeting. Unless otherwise agreed, Standing Orders will apply to the proceedings and the terms of the Councillors' Code of Conduct will apply in the normal way

For those members who have joined the meeting remotely, if they need to leave the meeting for any reason, they should use the Meeting Chat to advise of this. If a member loses their connection during the meeting, they should make every effort to rejoin the meeting but, if this is not possible, the Committee Officer will note their absence for the remainder of the meeting. If a member must leave the meeting due to a declaration of interest, they should remain out of the meeting until invited back in by the Committee Officer.

If a member wishes to ask a question, speak on any item or move a motion or amendment, they should indicate this by raising their hand at the appropriate time and will then be invited to speak. Those joining remotely should use the "Raise hand" function in Teams.

All decisions taken during this meeting, will be done so by means of a Roll Call vote.

Where items are for noting or where there has been no dissent or contrary view expressed during any debate, either verbally or by the member indicating they wish to speak, the Convener will assume the matter has been agreed.

There will be a short break in proceedings after approximately 90 minutes.

Members joining remotely are reminded to have cameras switched on during meetings and mute microphones when not speaking. During any breaks or adjournments please switch cameras off.

THE FIFE COUNCIL - CABINET COMMITTEE - BLENDED MEETING

Council Chamber, Fife House, North Street, Glenrothes

14 August 2025

10.00 am - 1.25 pm

PRESENT: Councillors David Ross (Convener), Tom Adams (substituting for Councillor Jan Wincott), David Alexander, David Barratt, John Beare, James Calder, Rod Cavanagh (substituting for Councillor Sarah Neal), Altany Craik, Linda Erskine, Derek Glen, Brian Goodall, Peter Gulline, Judy Hamilton, Cara Hilton, Stefan Hoggan, Gary Holt, Allan Knox, Kathleen Leslie, Rosemary Liewald, Carol Lindsay, Jane Ann Liston (substituting for Councillor Fiona Corps), Mary Lockhart and Craig Walker.

ATTENDING: Ken Gourlay, Chief Executive; Eileen Rowand, Executive Director (Finance and Corporate Services), Lindsay Thomson, Head of Legal and Democratic Services, Helena Couperwhite, Committee Services Manager and Michelle McDermott, Committee Officer, Legal and Democratic Services, Finance and Corporate Services; Pam Colburn, Quality Improvement Officer, Education Service; Paul Vaughan, Head of Communities and Neighbourhoods Service, John Mills, Head of Housing Services, Joan Lamie, Service Manager, Housing Services, Communities Directorate; Michael O'Gorman, Service Manager (Estates and Asset Management), Property Services; and Emma Walker, Senior Manager, Fife Sports and Leisure Trust.

APOLOGIES FOR ABSENCE: Councillors Fiona Corps, Sarah Neal and Jan Wincott; and Alastair Crockett and Ian MacAulay, Religious Representatives.

URGENT MOTION - REVIEW OF SAFEGUARDING AND WHISTLEBLOWING PROCEDURES

The Convener advised that, in terms of Standing Order No. 10.12(1), an Urgent Motion had been received by Councillor Walker. In putting forward his motion, Councillor Walker advised that, due to the recent conviction of Councillor Graham for serious sexual offences against a child, he was seeking the provision of assurances in relation to the council's safeguarding and whistleblowing procedures. Councillor Walker advised that it would not be acceptable for these matters to wait for the next Council and/or Cabinet Committee meetings. The Convener accepted the motion as urgent and it was considered after item 3 on the agenda at para. 408.

406. DECLARATIONS OF INTEREST

As a matter of transparency and with reference to paragraph 410 - Kelty Synthetic Turf Pitch Replacement - Councillor Beare declared he was a season ticket holder at East Fife Football Club. However, as this was not considered a connection under the Councillors' Code of Conduct for the purposes of this item, he remained and participated in the meeting.

407. MINUTES

- (i) Minute of the Cabinet Committee of 26 June 2025.

Decision

The committee approved the minute.

- (ii) The following minutes were submitted for noting:-

- Education Appointment Committee of 21 April, 1 May, 9 May, 4 June, 20 June and 27 June 2025
- Appeals Sub-Committee of 4 July 2025.

Decision

The minutes were noted.

408. URGENT MOTION - REVIEW OF SAFEGUARDING AND WHISTLEBLOWING PROCEDURES

Motion

Councillor Craig Walker, seconded by Councillor Carol Lindsay, moved as follows:-

1. Committee notes the recent conviction of then Labour Cllr David Graham at Kirkcaldy Sheriff Court.
2. Committee recognises the courage of the young victim who saw this case through, it being over two years since criminal charges were brought against Cllr Graham.
3. Committee notes that Cllr Graham has chosen not to resign from the Council.
4. Committee calls on him to resign as a Councillor forthwith.
5. Committee acknowledges that Fife Council has a suite of policies in place to support wellbeing and safeguarding. Committee agrees that the Chief Executive will report back to the Cabinet Committee, as soon as possible, summarising the procedures that are currently in place with particular reference to how staff members are and would be supported to raise any concerns, including through the whistleblowing process, about the behaviour of any member, or other officer. The report will cover the timescale and approach for ensuring that all policies are regularly promoted to all staff and a commitment to continuing to ensure that policies are reviewed appropriately and regularly.

Decision

The motion was unanimously agreed.

409. SWIMMING FOR CHILDREN AND YOUNG PEOPLE

The committee considered a report by the Executive Director (Education) detailing the future options for supporting swimming for children and young people across Fife based on the work of the Swimming Working Group established following the Education Scrutiny Committee on 17 September 2024.

Decision

The committee agreed that Assessment Option 2 and Swimming Programme Option 2 be worked up into a business case with a view to including proposals in the budget process for the following year and that the Swimming Programme should also take account of training young leaders and volunteers to support with the delivery of the programme.

410. KELTY SYNTHETIC TURF PITCH REPLACEMENT

The committee considered a report by the Head of Communities and Neighbourhoods Service seeking approval to provide funding to support the replacement of the synthetic pitch and upgrade floodlighting at Kelty Community Centre enabling the drawdown of a confirmed grant to Kelty Hearts Football Club from the Scottish Football Facilities Fund (SFFF).

Decision

The committee:-

- (1) approved capital funding of up to £177,769 to support the pitch replacement project at Kelty Community Centre;
- (2) delegated authority to the Head of Communities and Neighbourhoods Service, Head of Finance, Head of Legal and Democratic Services and Head of Property Services to finalise funding arrangements and oversee project delivery in partnership with Kelty Hearts Football Club; and
- (3) noted the strategic and community benefits of the project including enhanced access to sport and physical activity for under-represented groups.

The meeting adjourned at 11.50 am and reconvened at 12.30 pm.

411. PROPERTY ACQUISITIONS POLICY REVIEW

The committee considered a report by the Head of Housing Services seeking agreement on the proposed revisions to the Property Acquisitions Policy.

Decision

The committee:-

- (1) agreed the proposed revisions to the current Property Acquisitions Policy outlined in section 2 of the report and in the draft revised policy detailed in bold in Appendix 2 of the report;
- (2) noted that the Fife Housing Association Alliance would align to the revised policy as outlined in section 1.5 of the report; and
- (3) agreed that options to increase the annual target for the minimum number of council homes for rent to be delivered via acquisitions would be included within the Affordable Housing Programme 2026-29 report due to be submitted to the December Cabinet meeting.

412. TENANT PARTICIPATION STRATEGY 2025-29

The committee considered a report by the Head of Housing Services setting out Fife Council's Tenant Participation Strategy 2025-29 and Action Plan for approval.

Decision

The committee approved the Tenant Participation Strategy 2025-29 and Action Plan as detailed in the Appendix to the report.

413. CABINET COMMITTEE - OUTSTANDING REMITS FROM COMMITTEES

The committee noted the list of outstanding remits from committees.

The committee resolved, under Section 50A(4) of the Local Government (Scotland) Act 1973, as amended, to exclude the public and press from the meeting for the following item of business on the grounds that it involved the disclosure of exempt information as defined in paragraphs 8 and 9 of Part 1 of Schedule 7A of the Act.

**414. AFFORDABLE HOUSING PROGRAMME - FRASER AVENUE
INVERKEITHING (PRIVATE REPORT)**

The committee considered a joint report by the Head of Housing Services and Head of Property Services seeking authority to conclude legally binding agreements for the delivery of 44 affordable homes through a mixed tenure development of social rent (31) and mid-market rent (13) at the site known as Fraser Avenue, Inverkeithing as part of the ongoing implementation of the current Affordable Housing Programme.

Motion

Councillor David Ross, seconded by Councillor Judy Hamilton, moved the recommendations as detailed in the report.

Amendment

Councillor Brian Goodall, seconded by Councillor David Barratt, moved as follows:-

"Amend recommendation (1) to:

Approve the proposed development for the delivery of 31 affordable homes in Phase A for social rent and, given the current affordable housing emergency, for the option of the 13 Phase B homes also being for social rent, to be explored and reported back to the Cabinet Committee".

Roll Call Vote

For the Motion - 13 votes

Councillors Tom Adams, James Calder, Altany Craik, Linda Erskine, Peter Gulline, Judy Hamilton, Cara Hilton, Gary Holt, Allan Knox, Kathleen Leslie, Jane Ann Liston, Mary Lockhart and David Ross.

For the Amendment - 10 votes

Councillors David Alexander, David Barratt, John Beare, Rod Cavanagh, Derek Glen, Brian Goodall, Stefan Hoggan, Rosemary Liewald, Carol Lindsay and Craig Walker.

Having received a majority of votes, the motion was accordingly carried.

Decision

The committee:-

- (1) approved the proposed development for the delivery of 44 affordable homes through a mixed tenure development of social rent (31) and mid-market rent (13) at the site; and
- (2) authorised the Head of Legal and Democratic Services to enter into a Design and Build Contract with the developer for the development of 44 new build affordable homes at the site at Fraser Avenue, Inverkeithing.

11 September 2025.
Agenda Item No. 4

Revenue Monitoring 2025-26

Report by: Eileen Rowand, Executive Director (Finance and Corporate Services)

Wards Affected: All

Purpose

The purpose of this report is to provide members with a strategic overview of Fife Council's finances and to report the current forecast position for financial year 2025-26.

Recommendations

It is recommended that members:-

- (1) instruct Services to continue to mitigate overspends in order to manage within overall service budgets in the current year, and ensure strong financial management;
- (2) that detailed monitoring reports will be submitted to the relevant Scrutiny Committees; and
- (3) request that Scrutiny Committees ensure appropriate level of support and challenge in relation to financial reports.

Resource Implications

Whilst the current forecast presents an underspend of £1.560m in the current year, some service underspends of £4.460m will immediately be committed to ensure certain conditions of funding are met next year. To account for the ring-fenced nature of these variances, commitments against balances have been updated accordingly. Based on the current forecast, uncommitted balances could dip below the policy minimum, however, it is too early in the year suggest decommitting resources but this will remain under review and future reports will examine the position on an ongoing basis.

The current forecast assumes that the financial impact of pay for non-teaching staff is fully funded. It is possible that the budget provision combined with any grant funding provided may be less than the eventual costs incurred. This would have a detrimental impact on the council's financial position.

As part of the 2025-26 budget, savings of over £7m were approved across Directorates. Executive Directors will need to continue to apply strong financial management so that expenditure is contained within budget. In addition, temporary funding of £14m has been agreed for the IJB (£5.5m from Fife Council and £8.5xm from NHS Fife), reducing the overspend significantly for the current financial year. A programme of savings has been identified and progress will be closely monitored across the partnership to ensure that controls are in place to avoid the level of overspend experienced in the previous financial year.

Legal & Risk Implications

There are no direct legal implications arising from this report.

The council has a strategic risk relating to the risk of financial instability. The risk is reviewed on a quarterly basis and there are effective internal controls in place. Where internal controls are partially effective, there are actions in place to strengthen those controls.

Impact Assessment

An EqIA is not required because the report does not propose a change or revision to existing policies and practices.

Consultation

None.

1.0 Background

- 1.1 The content of this report reflects the decisions taken in respect of the Revenue Budget 2025-26 and the Capital Plan Review 2025-35. The report focuses on the strategic financial position of the council and comments on significant financial issues which are relevant or impact on the overall position for the council. Detailed explanations of forecast variances and analysis by Service is detailed in Appendices 1 to 4 of this report.
- 1.2 The majority of Directorates are forecasting an underspend position at this stage, with the exception of Health and Social Care and Place who are reporting overspend respectively of £2.302m and £1.370m. High level explanations are included in section 2 of this report, with further detail included in Appendix 2. As savings were approved as part of the revenue budget for 2025-26, a high level savings tracker is also now included in this report, which outlines the expected delivery of the savings over the course of the current year.
- 1.3 More detailed financial reports will be presented to the relevant Scrutiny Committees as part of the council's wider scrutiny and performance management reporting arrangements. Detailed savings trackers will be included in these reports. It is the role of the Scrutiny Committees to carry out in-depth scrutiny of the financial performance of functions within their remit.

2.0 Financial Overview – General Fund

Pay Award

- 2.1 The level of pay award for 2025-26 for non-teaching staff has been agreed and has been implemented in August. The pay award for Teaching staff has yet to be agreed. The council has made provision for an anticipated pay award which is being held in contingencies until implementation. Once the pay has been implemented, service budgets will be increased accordingly in line with the agreed settlement. It is possible that the budget provision combined with any grant funding provided may be lower than the eventual costs incurred. If this were to happen, there would be a detrimental impact on the financial position.

Economic Outlook

- 2.2 There continues to be concern regarding the economy, with ongoing uncertainty around inflation and interest rates. This could mean that the council continues to face pressure and experience increased costs in particular areas, such as food, large contracts, etc. This could also have an impact on the cost of borrowing for capital expenditure, which is a revenue cost and is included within Additional Items on Appendix 1.

2025-26 Revenue Budget

- 2.3 The current revenue budget of £1,173m is shown in Appendix 1. Changes have been made to the budget since it was approved in February 2025 and these all relate to previous commitments made against general fund balances now being allocated to the relevant Service budgets. The table below shows all budget changes since the revenue budget was approved.

Table 1 – General Fund – Revenue Budget Movement

	Total Expenditure £m
2025-26 Budget (Financial Plans)	1,145.076
- Redetermination from SG	10.091
- Budgets Funded from/(to) Balances	18.251
Current 2025-26 Budget (June 2025)	1,173.417

2025-26 Annual Forecast

- 2.4 The current forecast suggests an underspend in the current year of £1.560m. This is a combined result of service underspends of £0.715m (0.07% of budgeted expenditure) and an underspend of £0.845m in Additional Items as shown in the Table 2 below:-

Table 2 – General Fund – 2025-26 Summarised Forecast Statement

	Annual Budget	Forecast	Variance	Variance excluding cfwd commitments
	£m	£m	£m	£m
Service Totals	1,083.921	1,083.206	(0.715)	3.745
Additional Items	89.496	88.651	(0.845)	(0.845)
Total Expenditure	1,173.417	1,171.857	(1.560)	2.900
Financing	(1,173.417)	(1,173.417)	0.000	0.000
CONTRIBUTION (TO) / FROM BALANCES	0.000	(1.560)	(1.560)	2.900

- 2.5 Whilst the forecast position for the year is an underspend of £1.560m, there are some items that will underspend but skew the reported position as these are ringfenced and the underspend must be made available in the next financial year for a specific purpose. Pupil Equity Fund (PEF) is the most significant example. To assist members in understanding the underlying position, a column has been added to Appendix 1 which aims to highlight the likely year end position and the overall impact on general fund balances. Service underspends of £4.460m will be ringfenced and carried forward as commitments to ensure the conditions of funding are met and these will be recorded as commitments against balances. This column shows that the impact on the level of general fund uncommitted balances will be a reduction of £2.900m. Section 5 of the report provides more information on the balances position.

- 2.6 The service level variances and movement are set out and explained in more detail at Appendices 1 and 2 with higher level explanation as follows:

Education is reporting an underspend of £0.715m. There is a £3.585m overspend on non-devolved budgets which is related to maternity and long-term absence cover within Nursery Education and Special Education. Devolved is reporting an underspend of £4.300m, which is in line with the levels of underspend for 2024-25 for schools' devolved budgets (DSM) and Pupil Equity Funding (PEF). Both budgets are ringfenced and will be carried forward.

Health and Social Care is reporting a net projected overspend of £2.302m which takes account of temporary funding of £14m, from combined contributions of £8.500m from NHS Fife and £5.500m from Fife Council. Adult Supported Living are reporting an underspend of £2.464m, due to staff vacancies. Other significant areas of overspend are Care at Home, £1.691m, mainly due to an increase in care packages and Fleet Charges and Older People Residential & Daycare, £0.842m due to an increase in catering and cleaning costs. Given the temporary nature of funding agreed from both the NHS and Fife Council, action will be required to ensure the agreed programme of savings are implemented prior to the start of 2026-27.

Place Directorate is reporting an overspend of £1.370m with the majority relating to Transportation costs on hires and repairs relating to transport, hires and repairs within Domestic Waste and Street Cleaning, £2.140m. This is due to both an ageing fleet which has resulted in increased repairs and external hires being required to cover shifts and increasing costs due to inflationary pressures. Within the same service there are underspends and some over recovery of income that is reducing the overspend to the reported figure. The Service plan to undertake a review to identify possible mitigating actions to manage the expenditure within budget across the Directorate.

Communities Directorate is reporting an underspend of £2.398m, which is mainly within the Children and Families Service. The service is reporting a net underspend of £2.365m. There are a high number of vacancies within the service, £2.376m and a £2m underspend on internal Foster Care and Kinship placements as a result of reduced number of packages. There are also overspends within areas of the service, £1.187m on Children affected by Disability for direct payments and respite spend and £0.911m on Continuing Care. These overspends are currently being mitigated by the underspends reported within the same service.

Finance and Corporate Services is reporting an underspend of £1.287m, which is mainly due to an underspend within Benefits and Taxation of £1.000m, which is due to the change in criteria for awarding non-domestic relief on empty properties and the level of funding received. There is also an underspend of £0.416m across the Services, which is mainly relating to staff turnover/non-filling of vacancies. The directorate is facing significant recruitment challenges which is contributing to the level of vacancies.

Within **Additional Items**, loan charges is forecasting an underspend of £0.845m due to interest rates being lower than anticipated. This is due to the timing of borrowing, with less borrowing being required early in the financial year, impacting on the level of interest charges.

3.0 Financial Overview – Housing Revenue Account

Housing Revenue Account (HRA)

- 3.1 The Housing Revenue (HRA) Account forecast position is shown in Appendix 3.
- 3.2 There is a forecasted underspend of £1.879m on repairs and maintenance. This is relating to responsive and change of tenancy repairs and is as a result of the inflationary increase on charges from Building Services being less than planned. Dwelling rents are forecasting an under recovery of rental income of £0.974m based on income received to date. Further overspends of £0.493m and £0.426m are also reported in relation to staff turnover being lower than assumed and on the Rent Support Fund due to managed migration of claimants to Universal Credit.
- 3.3 The overall overspend within the HRA has resulted in a reduction in the planned CFCR of £0.225m. This means that the HRA Capital Programme will receive less funding than anticipated which could result in an increased level of borrowing required. The service are considering mitigation measures to allow the CFCR to meet budgeted levels in year.
- 3.4 Appendices 3 and 4 provide further detailed variance analysis and commentaries on all variances that exceed +/- £500k.

4.0 2025-26 Revenue Budget Savings Progress

- 4.1 It is anticipated that the council will achieve 93% of 2025-26 budget savings. Delivery at Directorate level is shown in Appendix 5. A small number of Communities directorate savings are likely to be achieved but there is a delay in timing and, at this time, they are not anticipated to be achieved in 2025/26.
- 4.2 Directorates are working to deliver all savings as soon as possible and more detailed reports on the progress of savings will be presented to the relevant Sub-Committees as part of the council's wider scrutiny and performance management reporting arrangements.

5.0 Balances

5.1 General Fund Balances

- 5.1.1 Appendix 6 details the forecast General Fund balances position which are held to fund specific one-off expenditure, provide funding to contribute to change initiatives, accumulate funds for a specific or "earmarked" purposes and to mitigate against risk by providing a level of uncommitted reserves which can be drawn on to respond to "shocks" such as unforeseen cost increases. It is important to note balances are split into two categories – committed and uncommitted and the detail is set out in the Appendix.
- 5.1.2 Over recent years, balances have been high as a direct result of grant funding received and not used in year. The opening balance for 2025-26 is £115.110m. Budgets of £15.006m have been transferred to Services and to Capital to fund the Capital Plan in accordance with previous decisions. The current year forecast underspend of £1.560m detailed in Section 2 will increase the level of balances, with the estimated level before commitments being £101.664m.

- 5.1.3 Some of the current service underspends must be committed for use next year in order to honour guaranteed carry forward arrangements such as Devolved School Management (DSM) and Pupil Equity Funding (PEF). There is a variance of £1.560m that will increase balances and in addition, carry forward of specific underspends will reduce balances available in future years by a further £4.460m, the net effect being a reduction in uncommitted balances
- 5.1.4 During the year and in future, commitments against balances will be transferred to Service budgets on the basis of need as it arises.

Earmarked and Commitments against Balances

- 5.1.5 The earmarked balances reflect unused grants and ring-fenced income which will fund specific expenditure. Balances are also earmarked for dealing with the ongoing costs associated with the cost of living and the impacts of inflation and supply chain disruption.
- 5.1.6 Commitments represent items for which provision has been made but the costs are yet to be incurred. After taking account of all current earmarked balances and commitments, the forecast level of balances as at 31 March 2028 is expected to be uncommitted by £20.854m or 1.78%, which is slightly below the policy minimum of 2%.
- 5.1.7 The policy minimum is to maintain a level of 2% balances over a rolling three year period which means that the level can dip below 2% level provided it returns to 2% within three years. The level is slightly below the policy minimum, however, it remains early in the year to recommend decommitting any items. It should also be noted that the level of balances will change as the forecast is updated throughout the financial year. An update will be provided as part of the next monitoring report to this committee and close monitoring will continue.
- 5.1.8 There is no plan, at this stage, to budget to restore balances given the potential scope to de-commit items that have been earmarked and the ability to increase the level of underspend as the year progresses. However, the outcome of the ongoing pay negotiations for teachers is still outstanding, as well as uncertainty regarding funding for pay from Scottish Government. There is a possibility that the impact of both could have a further negative impact on the balances position. Given these uncertainties and the level of financial risk for the council, this will be kept under close scrutiny and committee will be provided with regular updates in future reports.

5.2 HRA Balances

- 5.2.1 The opening HRA balance was £2.844m detailed in Appendix 6 including a planned restoration of balances totalling £0.251m

6.0 Financial Sustainability

- 6.1 Given the ongoing pressures services are facing in the future due to continuing financial uncertainty, it is important that financial sustainability is reviewed on a regular basis. There is a strategic risk for Financial Instability which is reviewed every three months. The risk assessment reviews both the impact and likelihood of financial instability by assessing various internal controls that are in place to mitigate the risk. Examples of the internal controls are having a Medium-Term Financial Strategy in place; having a long-term budget model; regular budget monitoring; scenario planning; having a financial risk register. The current impact is set at 3 (moderate) with likelihood at 4 (likely) giving an overall score of 12.

- 6.2 A budget update report was also considered at this committee on 26 June 2025 which updated members on the financial planning assumptions and the planned approach to achieve a sustainable and balanced budget for 2026-27 onwards.
- 6.3 There are also service performance indicators that assess financial sustainability. These service indicators are formally measured on an annual basis and are also part of the (Local Government Benchmark Framework) LGBF suite of indicators. In a bid to improve assessment of financial sustainability, these performance indicators will be included within the revenue monitoring reports to this committee, based on forecasted data rather than provisional/final outturn data. The table below shows these indicators for the first quarter of 2025-26.

Indicator	23-24	24-25	25-26
Uncommitted General Fund Balance as a % of annual budgeted net revenue – Target 2%	1.32%	2.08%	1.78%
Forecast Outturn as a percentage of budgeted expenditure – Target 99%	99.13%	99.67%	99.87%

- 6.4 As noted in section 5 of this report, uncommitted balances is forecast to be slightly below the target of 2%. As noted in para. 5.1.8, the position will remain under close review and an update will be provided in the next monitoring report. The anticipated outturn is currently at 99.87% of budget which is within acceptable parameters, particularly when compared with the target and shows almost full utilisation of the resources available to the council. There are no concerns to note at this stage with regard to the financial sustainability measures that are currently in place.
- 6.5 Assessment of sustainability in terms of levels of debt, etc. are detailed in the Capital Investment Monitoring report that is also included in the agenda of this committee.

7.0 Conclusions

- 7.1 There is currently a forecast underspend of £1.560m. However, there are some Service underspends which will need to be committed next year, meaning the projected impact on balances is more significant. Executive Directors are asked to plan and implement corrective/mitigating actions to ensure costs are contained within the budgeted level.
- 7.2 The positive balances position in the current financial year is providing the council with an immediate level of protection from significant cost increases and other financial risks but, given balances are one off in nature, will only assist the council's financial sustainability in the immediate term, leaving challenges ahead for the medium and longer term. Allowing for all commitments, the uncommitted level of balances is estimated as £20.854m in future years which is slightly below the policy minimum. There are no plans at the moment to budget to restore balances. This will continue to be closely monitored over the year and, if required, a critical review of committed and earmarked balances will be undertaken.
- 7.3 The forecast position for the council's Housing Revenue Account in 2025-26 is a nil variance for 2025-26.
- 7.4 The ongoing review of financial sustainability and financial risk is critical given the uncertainty that the council faces in the future. There are various measures and controls in place to mitigate against the risk of financial instability.

List of Appendices

1. General Fund Revenue Summary 2025-26
2. General Fund Variance Analysis
3. Housing Revenue Account Summary 2025-26
4. Housing Revenue Account Variance Analysis
5. Approved Savings 2025-26
6. Summary of Balances

Background Papers

None.

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FIFE COUNCIL
GENERAL FUND REVENUE SUMMARY 2025-26

	Annual Budget £m	Forecast £m	Variance £m	Variance after funding commitments £m
EDUCATION				
Education (Devolved)	262.188	257.888	(4.300)	0.000
Education (Non Devolved)	187.199	190.784	3.585	3.585
	449.387	448.672	(0.715)	3.585
HEALTH & SOCIAL CARE				
Health & Social Care	249.932	250.342	0.410	0.410
H&SC Payment to Health per Risk Share		1.892	1.892	1.892
	249.932	252.234	2.302	2.302
PLACE				
Environment & Building Services	14.580	15.680	1.100	1.100
Facilities Management Service	46.151	46.745	0.594	0.594
Roads & Transportation	35.571	35.556	(0.015)	(0.015)
Service Management & Sustainability	22.516	22.516	0.000	0.000
Property & Bereavement	2.896	2.673	(0.223)	(0.223)
Place Executive Director	0.474	0.474	0.000	0.000
Planning	2.124	2.096	(0.028)	(0.028)
Protective Services	5.055	4.904	(0.151)	(0.151)
Business & Employability Service	6.256	6.349	0.093	0.093
Property Repairs and Maintenance	15.509	15.509	0.000	0.000
	151.132	152.502	1.370	1.370
COMMUNITIES				
Housing & Neighbourhood Services	17.043	17.083	0.040	0.040
Communities & Neighbourhood	57.820	57.911	0.091	0.091
Customer & Online Services	15.749	15.754	0.005	0.005
Children and Families	72.120	69.755	(2.365)	(2.365)
Criminal Justice Service	1.097	0.928	(0.169)	(0.169)
	163.829	161.431	(2.398)	(2.398)
FINANCE & CORPORATE SERVICES				
Assessors	2.211	2.121	(0.090)	0.070
Finance	5.774	5.695	(0.079)	(0.079)
Revenue & Commercial Services	16.620	16.358	(0.262)	(0.262)
Human Resources	7.816	7.689	(0.127)	(0.127)
Business Technology Solutions	22.143	22.170	0.027	0.027
Legal & Democratic Services	5.608	5.723	0.115	0.115
	60.172	59.756	(0.416)	(0.256)
Miscellaneous	0.095	0.095	0.000	0.000
Benefits and Taxation	5.649	4.649	(1.000)	(1.000)
Corporate and Democratic Core	3.393	3.522	0.129	0.129
	69.309	68.022	(1.287)	(1.127)
CHIEF EXECUTIVE			0.013	
Chief Executive	0.332	0.345		0.013
	0.332	0.345	0.013	0.013
SERVICE TOTALS	1,083.921	1,083.206	(0.715)	3.745
ADDITIONAL ITEMS				
Loan Charges (including interest on revenue balances)	59.402	58.557	(0.845)	(0.845)
Capital Expenditure Financed from Current Revenue	2.450	2.450	0.000	0.000
Obligations / Contingencies	27.644	27.644	0.000	0.000
	89.496	88.651	(0.845)	(0.845)
TOTAL EXPENDITURE	1,173.417	1,171.857	(1.560)	2.900
FINANCED BY:				
General Revenue Grant	(776.525)	(776.525)	0.000	0.000
Non Domestic Rates	(171.736)	(171.736)	0.000	0.000
Council Tax Income	(210.150)	(210.150)	0.000	0.000
Budgets transferred to/(from) Balances (previous years carry forwards etc)	(15.006)	(15.006)	0.000	0.000
TOTAL INCOME	(1,173.417)	(1,173.417)	0.000	0.000
CONTRIBUTION (TO)/FROM BALANCES	0.000	(1.560)	(1.560)	2.900

**FIFE COUNCIL
VARIANCE ANALYSIS**

GENERAL FUND		
Area	Provisional Outturn £m	Commentary
EDUCATION		
Education (Devolved)	(4.300)	<ul style="list-style-type: none"> Schools' devolved budgets (DSM) - (£1.642m) underspend reflects the level of carry forward from 2024-25. School budgets will be adjusted to reflect new rolls from August in due course. Pupil Equity Funding (PEF) budgets - an underspend of (£2.747m) is estimated for 2025-26 based on previous years trends in expenditure across schools.
Education (Non Devolved)	3.585	<ul style="list-style-type: none"> Maternity and long term absence cover costs across schools +£4.170m overspend. Overspends in premises related expenditure of +£1.099m mainly across the following areas - Grounds maintenance +£0.281m, waste collection +£0.506m, property related recharges +£0.155m. Nursery Education projected overspend of +£2.580m due to long term absence / maternity cover costs and required overstaffing in a small number of nursery settings. This is offset against minor underspends on employee costs across central Early Years Team. Special Education - projected overspend of +£0.980m mainly due to employee costs overspend of +£0.462m, transport costs overspend of +£0.518m in relation to transport of pupils. General Education - projected underspend of (£4.300m) due to budget setting for schools, which will be adjusted when school budgets are amended for the new session from August. Adjustments for the new teaching complement, including probationers, will be actioned and budgets updated as required per school rolls. The impact for this will be reported as part of the October monitor. This underspend includes unachieved savings of +£0.739m mainly in relation to historic income generation savings. Childcare underspend of (£0.585m) due to an estimated over recovery of income being achieved based on previous years and budget from Creche Services no longer required. Fife Music Service underspend of (£0.250m) due to an estimated forecast based on previous years trends.
HEALTH & SOCIAL CARE		
Health & Social Care	0.410	<ul style="list-style-type: none"> Adults Supported Living underspend (£2.464m) due to vacancies across the service which will not be filled until the future design of the service is established; Care at Home (CAH) overspend +£1.691m primarily due to an increase in the commissioning of older people care packages and Fleet charges; Older People Residential & Daycare overspend +£0.842m due to increased costs relating to the catering and cleaning recharge; Integrated Community Team overspend +£0.600m mainly due to purchase of equipment for the Fife Equipment Loan store and Occupational Therapy Adaptations.
H&SC Payment to Health per Risk Share	1.892	
PLACE		
Environment & Building Services	1.100	An ageing fleet and increased inflationary pressures on costs has resulted in overspends on transportation costs, mainly hires and repairs within Domestic Waste and Street Cleaning, this is partly offset by various underspends/over-recoveries in other areas of EBS.
Facilities Management Service	0.594	Facilities Management - Catering overspend of +£0.354m relates to School Catering and Commercial Catering (FSLT) primarily related to reduced Income and increased Maintenance of Equipment costs for Duct Cleaning in Schools. Also within Cleaning an overspend of +£0.280m relating to Staff Sickness and Vehicle Hire due to increased Fleet Charges and Spot Hires.
COMMUNITIES		
Children and Families	(2.365)	(£2.376m) on staffing due to a high number of vacancies, (£2m) on Internal Foster Care and Kinship placements due to a reduction in packages, (£0.372m) on Purchased Placements due to the full year effect of the reduction in packages last financial year and since the start of April this year. £0.911m Continuing Care, £1.187m on Children affected by Disability for direct payments and respite spend, in line with last years spend.
FINANCE & CORPORATE SERVICES		
Benefits and Taxation	(1.000)	Underspend (£1.000m), relates to the implementation of a new policy on Empty Property Relief that was agreed in January 2024. This has led to less relief being granted, resulting in an underspend.
ADDITIONAL ITEMS		

**FIFE COUNCIL
VARIANCE ANALYSIS**

GENERAL FUND		
Area	Provisional Outturn £m	Commentary
Loan Charges (including interest on revenue balances)	(0.845)	Underpend (£0.845) mainly relates to interest paid. This is due to the level of borrowing being required later in the year than anticipated.

FIFE COUNCIL
HOUSING REVENUE ACCOUNT SUMMARY 2025-26

	Annual Budget £m	Provisional Outturn £m	Variance £m
BUDGETED EXPENDITURE			
Repairs and Maintenance	50.451	48.573	(1.879)
Supervision and Management	22.768	23.261	0.493
Funding Investment:-			
Cost of Borrowing	45.005	45.005	0.000
Revenue Contribution (incl CFCR)	20.000	19.774	(0.225)
	138.224	136.614	(1.611)
 Voids	 2.137	 2.137	 0.000
Housing Support costs	(0.482)	(0.482)	0.000
Garden Care Scheme	0.474	0.474	0.000
Bad or Doubtful Debts	3.387	3.813	0.426
Other Expenditure	13.753	13.873	0.121
	157.494	156.430	(1.064)
FINANCED BY			
Dwelling Rents (Gross)	(149.537)	(148.562)	0.974
Non Dwelling Rents (Gross)	(3.995)	(3.906)	0.090
Hostels - Accommodation charges	(2.441)	(2.441)	0.000
Other Income	(1.771)	(1.771)	0.000
Budgets transferred to/(from) Balances (previous years carry forwards etc)	0.250	0.250	0.000
	(157.494)	(156.430)	1.064
 CONTRIBUTION (TO) / FROM BALANCES	 0.000	 0.000	 0.000

FIFE COUNCIL
VARIANCE ANALYSIS

HOUSING REVENUE ACCOUNT			
Area	Current underspend / overspend	Variance £m	Commentary
Repairs and Maintenance	underspend	(1.879)	Underspend anticipated on responsive and change of tenancy repairs as assumed 5.2% inflationary increase to Building Services charging rates in the budget has not materialised.
Dwelling Rents (Gross)	overspend	0.974	Potential under recovery of rental income compared to budget forecast based on current year actuals to date.

FIFE COUNCIL
APPROVED SAVINGS FOR 2025-26
June 2025

Directorate	Savings Target £m	Actual £m	Forecast £m	(Under)/Over £m	Forecast to be Achieved %
Education	2.428	1.550	2.428	0.000	100%
Place	1.957	1.628	1.628	(0.329)	83%
Communities	2.026	1.416	1.823	(0.203)	90%
Finance & Corporate Services	0.726	0.726	0.726	0.000	100%
	7.137	5.320	6.605	(0.532)	93%

FIFE COUNCIL
BALANCE - GENERAL FUND SERVICES

	2025-26 £m	2026-27 £m	2027-28 onwards £m
Balance at 1 April	(115.110)	(53.839)	(27.379)
Budgets transferred (to)/from balances	15.006		
Add Overall budget variance (Appendix 1)	(1.560)		
Estimated General Fund Balance at 31 March	(101.664)	(53.839)	(27.379)
Earmarked Balance			
Council Tax - Second Homes	7.953		
Specific Carry Forwards			
DSM		1.557	
Pupil Equity Fund	0.000	2.743	(2.663)
Scottish Government Funding c/f	0.000	0.160	
Funding held in Balances until Required	0.495	0.050	0.053
Cost of Living Crisis Commitments:			
Community Recovery Fund	3.251		
COMIS/SWIFT delay	0.064		
Capital Investment Plan:			
CFCR	12.495		
Service Concessions	10.000	10.000	5.883
Capital Plan Review – Additional Funding	2.615		
Revenue Budget 2024-25 - Welfare Funding	0.300		
Total Earmarked	37.173	14.510	3.273
	(64.491)	(39.329)	(24.106)
Commitments against balance			
Change Programme	4.672	5.000	
Demographics/Pay/Pensions	3.266	2.608	3.252
Barclay Funding - Assessors	0.064	0.000	
Workforce Change		4.000	
Kirkcaldy Car Parks	2.500		
Lease Surrender - The Kirkcaldy Centre	0.150		
Election		0.342	
Total Commitments	10.652	11.950	3.252
Estimated uncommitted balance at 31 March	(53.839)	(27.379)	(20.854)

**FIFE COUNCIL
BALANCE - HOUSING REVENUE ACCOUNT**

	2025-26	2026-27	2027-28
	£M	£M	onwards
			£M
Balance at 1 April	(2.593)	(2.844)	(2.844)
Budgets transferred (to)/from balances	(0.251)		
Add Overall budget variance 2024-25 (Appendix 3)	0.000		
Estimated Balance at 31 March	<u>(2.844)</u>	<u>(2.844)</u>	<u>(2.844)</u>
Estimated uncommitted balance at 31 March	<u>(2.844)</u>	<u>(2.844)</u>	<u>(2.844)</u>

Capital Investment Plan - Projected Outturn 2025-26

Report by: Eileen Rowand, Executive Director (Finance and Corporate Services)

Wards Affected: All

Purpose

The purpose of this report is to provide a strategic financial overview of the Capital Investment Plan and to advise on the projected outturn for the 2025-26 financial year.

Recommendations

The Cabinet Committee is asked to:-

- i) approve the Capital Investment Plan re-profiling in Appendix 1 to deal with the carry forward budgets from 2024-25 into later years of the plan;
- ii) approve a budget transfer in the HRA capital investment plan of £5m from the component replacement budget and £0.350m from major projects to the fire risk assessment programme;
- iii) note the projected outturn position and that the level of financial risk continues to be heightened due the impact of inflation and supply chain challenges;
- iv) instruct Services to plan projects within the approved resource within the Capital Investment Plan;
- v) note that more detailed capital outturn reports for 2025-26 will be submitted to relevant Scrutiny Committees of the council;
- vi) note that budget variances will be managed by the appropriate Directorate in conjunction with the Investment Strategy Group; and
- vii) note the updated prudential indicators provided.

Resource Implications

The overall projected outturn position for 2025-26 is £354.712m and represents a record level of capital investment compared to previous financial years. At this stage, delivery of 97% of planned expenditure is expected. There is slippage of £9.338m across the plan, however, this is as a result of timing of projects straddling the end of the financial year and projects continue to be delivered into the new year.

Interest rates remain at a 16 year high which has begun to have an impact on the cost of borrowing and the affordability impact has been felt in the recent capital plan review.

Legal & Risk Implications

Current risks include continuing difficulties across supply chains, the impact of inflation on costs of construction and availability of funding streams for larger capital projects, e.g. Developers' Contributions and estimated future funding levels from Scottish Government. Further detail relating to the current risks is contained in para. 2.2.

There is also increased risk relating to the current level of interest meaning that the costs of borrowing to finance the capital investment in the plan may be higher than anticipated.

Impact Assessment

An EqIA is not required because the report does not propose a change or revision to existing policies and practices.

Consultation

The forecast positions are agreed in consultation with each Directorate and are based around the expected progress and delivery of individual projects over the lifetime of the plan.

1.0 Background

- 1.1 The purpose of this report is to advise members of the high-level projected outturn position for the council's Capital Investment Plan (the Plan) for the financial year 2025-26. The report also highlights the forecast over the life of major projects over £5.000m along with any potential risks associated with these projects. Section 2.1 highlights areas where there is deemed to be a greater level of financial risk linked to major projects. The Plan covers capital expenditure across all council Services including the Housing Revenue Account which is managed and accounted for separately from the General Fund.
- 1.2 Funding strategies including the use of CFCR from general fund balances, service concession arrangements, capital grant, receipts, developers' contributions and borrowing, all identified during the capital plan review process are being utilised to support the level of capital investment included in the plan.
- 1.3 The Capital Investment Plan 2025-35 was rephased in April 2025 to account for slippage from 2024-25. This, and future reports for 2025-26, will reflect this rephased plan.

2.0 Issues

2.1 Major Projects

- 2.1.1 Appendix 2 provides a summary of the major projects within the Plan. There are 37 projects/programmes in this category with an overall budget of £908.804m.
- 2.1.2 At this stage, cost estimates suggest that there could be an overspend of £0.041m.

2.2 Potential Risks and Issues

- 2.2.1 Across the Capital Investment Plan, budgets were increased to reflect estimated inflationary pressures. However, the timing and the costs of projects continue to be adversely affected by the current economic climate. This is creating increased risk for the sustainability of the Capital Investment Plan. The Capital Investment Plan was recently reviewed, and a revised plan was approved in February 2025. Affordability was one of the key considerations during the review, and as a result additional budget was approved as part of the revenue budget process for higher loan charges to support the Plan. Monitoring of the impact of additional costs on projects continues and any significant impact on timescales and associated risks will be reported to this committee.

2.2.2 The council's previous approved Capital Plan included £213.000m investment in respect of Secondary Schools in West Fife, incorporating the Dunfermline Learning Campus (DLC) and the Inverkeithing High School (South and West Fife) replacement. The DLC is now complete, and the 2025-35 approved Capital Plan includes the residual budget of £61.326m to complete the replacement for Inverkeithing High School, to be named Caledonia High School, and associated projects in secondary schools. The budget for Caledonia High School reflects the funding arrangements of the Scottish Government's Learning Estate Investment Programme (LEIP), which requires the Council to fund the up-front cost of construction, with government support coming in the form of a revenue contribution based on the achievement of outcomes. The school is funded under LEIP Phase 2, and is due to open in August 2026. Work is currently progressing well on site, and is being completed in accordance with the plan.

2.3 Financial Performance – 2025-26 Total Expenditure - Projected Outturn

Appendix 3 provides a summary by capital theme of projected expenditure and income for 2025-26 showing the total reprofiled expenditure budget of £364.050m and a record high projected spend of £354.712m (97%) in the 2025-26 financial year, £9.338m slippage across the plan. The term slippage relates to budgets that remain available and are carried forward into the new financial year to ensure all planned projects remain funded as they are delivered. Comparable expenditure for the previous three years was £258.096m (2024-25) £242.073m (2023-24) and £189.362m (2022-23).

This level of expenditure is significant in comparison to previous years with an increase of 37% on expenditure compared to last year's outturn position.

3.0 Budgets and Funding

3.1 Budget

The Capital Investment Plan 2025-35 was approved by Fife Council in February 2025. At the end of each financial year, any budget which has not been spent is rolled forward into the next financial year as slippage. Services are asked to re-profile their project budgets considering this slippage and the result of this can be seen in the movement from the approved budget to the current budget as detailed in Appendix 1.

Since the last report, there have been further changes to the budget, these are summarised in the table below. The changes have followed the agreed governance processes and have been endorsed by the Investment Strategy Group, chaired by the Head of Finance.

	Total Expenditure £m
Approved Capital Investment Plan	334.941
Slippage from 2024-25	67.850
Re-profiling	(44.239)
Rephased Capital Plan per Appendix 1	358.552
Increased Grant and Contribution Income	2.648
CFCR/CFCR Swap	2.850
Current Capital Investment Plan as at June 2025	364.050

The increased level of grant and contributions income, in the main, relates to £2.211m LUF grant funding against Roads and Transportation.

Cabinet Committee agreed the Fife Council response to the Grenfell Inquiry part 2 on 26 June 2026. The costs of the response will be met from existing resource within the HRA Capital Investment Plan and a budget of £2.850m in 2025-26 and £2.5m in 2026/27 and create a budget for the fire risk assessment programme to continue to enhance the fire safety of the Council's housing stock. The component replacement budget can be reduced due to a review of unit costs for heating and kitchen replacement. There should be no material impact on the number of jobs completed and this will be kept under review.

3.2 Expenditure

Variances are projected across all themes within the plan, the most significant being:

3.2.1 Thriving Places

Roads & Transportation – (£1.597m)

Strategic Transport Intervention Programme slippage of (£1.597m) mainly due to Northern Road Link East End delay with completion of the design and postponement of Kings Road/Admiralty due to uncertainty about the impact of an adjacent development.

3.2.2 Maintaining Our Assets – Specific Programmes

Roads & Transportation – (£0.836m)

Structures Infrastructure slippage of (£0.673m) is mainly due to the Leven Prom Sea Wall, where phase 1 is presently being progressed and consists of the car park repairs and promenade feasibility study. Phase 2 will progress in future years and consist of concept designs and investigations. The remaining slippage is attributed to staff shortages and difficulties in recruiting specialist staff across various other projects.

3.2.3 Other Items – (£6.737m)

This slippage mainly represents a contingency budget of £6.737m which was included in the Capital Investment Plan in 2023 and has remained unallocated. This has slipped forward into the current year and as yet there are no plans to spend this budget.

3.3 Total Income

3.3.1 Capital expenditure is funded from several income sources, some of which contribute specifically to individual projects in the plan. These income sources are Capital Financed from Current Revenue (CFCR), Scottish Government Specific Capital Grant and other grants and contributions (e.g. lottery funding).

3.3.2 Appendix 3 shows that there is a total income budget of £89.868m against a forecast of £88.527m giving a variance of £1.341m, which mainly relates to slippage in grant income in relation to the Strategic Transportation Intervention Programme and which reflects the slippage in expenditure noted in para 3.2.1 above.

3.4 Total Funding

Within the total funding section of Appendix 3, there is an underspend on borrowing of £7.983m. The other income such as General Capital Grant and Capital Receipts are not specifically related to any capital project but provide funding for the plan overall. The underspend on borrowing reflects the slippage in the overall capital plan.

4.0 Prudential Indicators

- 4.1 The council operates within the CIPFA Prudential Code framework. The Prudential Code is designed to support local authorities in taking their decisions in capital finance and expenditure. There is a statutory requirement to operate within the code.
- 4.2 As outlined in the previous Capital Investment Plan report presented to this committee, the Prudential Code requires the monitoring and reporting of performance against prudential indicators to be reported quarterly. The introduction of quarterly monitoring facilitates increased reporting to ensure that the council continues to operate within the indicators and boundaries approved.
- 4.3 Appendix 4 provides details of Fife Council's Prudential Indicators based on the Provisional Outturn figures. The information includes the outturn position for the previous two years, the indicators approved within the Treasury Strategy 2023-26 and the estimates for the current and following two years based on most recent estimated expenditure and income profiles.
- 4.4 A detailed description of each indicator is included in the Appendix. Commentary on movements is provided below:

4.4.1 Capital Expenditure

This reflects the capital expenditure for 2024-25 along with the estimates for the next two financial years. The total expenditure has reduced by £4.244m from that reported to last committee.

4.4.2 Financing Costs

These are the costs to the council of borrowing money to pay for capital projects and include principal repayment and interest charges, known as Loan Charges. The council has two types of borrowing, short term for cash flow purposes and long term for capital purposes. The council also uses its own internal balances to meet cash flow demands and interest is paid to the General Fund and the HRA from the Loans Fund for the use of this cash.

4.4.3 External Debt

The external debt remains the same to that previously reported. Long term borrowing should only be undertaken for capital purposes. The cash position of the council is continually changing and, as a result, short term borrowing may be required to ensure that the council has sufficient funds to meet its ongoing obligations. The total debt position, for both short and long term borrowing is within the operational boundary and the authorised limits approved in the Treasury Strategy for 2024-27.

5.0 Conclusions

- 5.1 The current total expenditure budget for the financial year 2025-26 is £364.050m and the council is estimated to deliver £354.712m (97%) investment in the year, with slippage of £9.338m.
- 5.2 This level of expenditure represents continued progress on the delivery of a wide range of capital projects. Major capital investment by Fife Council continues, however, there is a level of uncertainty associated with speed of delivery and future costs.

- 5.3 There are 37 projects/programmes within the Plan which have a value of £5.000m or greater. The overall budget for these projects is £908.804m, with anticipated expenditure of £908.845m.
- 5.4 Where significant variances arise, these are reviewed by the appropriate Directorate in conjunction with the Investment Strategy Group and would be reflected in future capital plan reports to committee.
- 5.5 There is a requirement to report quarterly on the council's Prudential Indicators and to monitor these over the course of the year. These can be seen in Appendix 4.

List of Appendices

- 1. Capital Investment Plan 2025-35 Report Re-Profiling
- 2. Major Capital Projects total Cost Monitor
- 3. Monitoring Report by Capital Theme
- 4. Prudential Indicators

Report Contact

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REPROFIED	Budget 2025-26	Budget 2026-27	Budget 2027-28	Budget 2028-29	Budget 2029-30	Budget 2030-31	Budget 2031-32	Budget 2032-33	Budget 2033-34	Budget 2034-35	TOTAL BUDGET
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m
Opportunities for All	66.225	42.289	52.167	61.819	39.874	37.128	7.188	16.185	7.245	0.541	330.661
Thriving Places	56.811	20.008	24.895	18.555	6.385	3.601	5.777	2.460	-	1.850	140.342
Inclusive Growth and Jobs	8.115	11.046	8.502	2.534	1.866	-	-	-	-	0.275	32.338
Maintaining Our Assets - Rolling Programmes	41.560	37.470	34.290	31.646	31.857	29.907	30.567	30.317	30.602	31.161	329.377
Maintaining Our Assets - Specific Programmes	23.584	13.186	17.733	15.927	7.640	6.474	3.300	3.319	3.230	3.212	97.606
Housing Revenue Account	161.017	118.909	84.725	94.703	49.096	49.951	51.355	52.759	54.078	55.430	772.024
Corporate Items	6.737	-	-	-	-	-	-	-	-	-	6.737
TOTAL EXPENDITURE	364.050	242.908	222.312	225.184	136.718	127.061	98.187	105.039	95.154	92.470	1,709.085
Scottish Government Specific Capital Grants	(8.503)	-	-	-	-	-	-	-	-	-	(8.503)
Other Grants and Contributions	(40.623)	(21.824)	(17.618)	(17.403)	(0.050)	-	-	-	-	-	(97.518)
Developers Contributions	(1.923)	(13.450)	(17.522)	(44.489)	(34.640)	(41.125)	(13.798)	(22.243)	(13.161)	(9.029)	(211.380)
Capital Financed from Current Revenue (CFCR)	(36.368)	(30.114)	(21.942)	(24.831)	(23.588)	(27.160)	(31.271)	(35.084)	(35.084)	(35.084)	(300.527)
TOTAL INCOME	(87.418)	(65.388)	(57.082)	(86.723)	(58.278)	(68.285)	(45.069)	(57.327)	(48.245)	(44.113)	(617.928)
TOTAL NET EXPENDITURE	276.632	177.520	165.230	138.461	78.440	58.776	53.118	47.713	46.910	48.356	1,091.157
Scottish Government General Capital Grant	(31.154)	(23.500)	(23.500)	(23.500)	(23.500)	(23.500)	(23.500)	(23.500)	(23.500)	(23.500)	(242.654)
Capital Receipts	(2.325)	(4.480)	(8.566)	(6.655)	(0.878)	(1.087)	(0.353)	(0.587)	(0.543)	(0.875)	(26.347)
NHT Loan Repayments	-	-	-	-	-	-	-	-	-	-	-
Borrowing from Loans Fund - General Fund	(120.638)	(66.033)	(86.659)	(52.763)	(28.554)	(11.398)	(9.181)	(5.951)	(3.873)	(3.636)	(388.686)
Borrowing from Loans Fund - HRA	(122.515)	(83.507)	(46.505)	(55.543)	(25.508)	(22.791)	(20.085)	(17.675)	(18.994)	(20.346)	(433.470)
TOTAL FUNDING	(276.632)	(177.520)	(165.230)	(138.461)	(78.440)	(58.776)	(53.118)	(47.713)	(46.910)	(48.356)	(1,091.157)

MOVEMENT	Budget 2025-26	Budget 2026-27	Budget 2027-28	Budget 2028-29	Budget 2029-30	Budget 2030-31	Budget 2031-32	Budget 2032-33	Budget 2033-34	Budget 2034-35	TOTAL BUDGET
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m
Opportunities for All	0.080	(11.481)	17.705	5.047	(12.729)	17.534	0.078	-	-	-	16.233
Thriving Places	11.746	(0.579)	0.204	1.724	6.135	(0.100)	-	-	-	(0.050)	19.081
Inclusive Growth and Jobs	(8.166)	3.703	1.409	0.602	1.866	-	-	-	-	0.275	(0.310)
Maintaining Our Assets - Rolling Programmes	10.018	3.319	(0.982)	3.092	2.615	(0.044)	(0.106)	(1.100)	(1.575)	(1.794)	13.445
Maintaining Our Assets - Specific Programmes	0.930	1.719	0.420	2.921	2.283	-	-	-	-	-	8.274
Housing Revenue Account	4.716	(0.115)	(0.134)	(0.076)	-	-	-	-	-	-	4.391
Corporate Items	6.737	-	-	-	-	-	-	-	-	-	6.737
TOTAL EXPENDITURE	26.061	(3.433)	18.623	13.309	0.171	17.390	(0.028)	(1.100)	(1.575)	(1.568)	67.850
Scottish Government Specific Capital Grants	(3.984)	0.200	-	-	-	-	-	-	-	-	(3.784)
Other Grants and Contributions	(10.669)	(1.432)	-	-	-	-	-	-	-	-	(12.101)
Developers Contributions	6.658	(0.060)	(0.804)	(0.039)	1.060	(1.309)	(0.007)	(0.204)	-	(4.274)	1.020
Capital Financed from Current Revenue (CFCR)	(1.344)	2.000	(1.000)	(2.950)	-	-	-	-	-	-	(3.294)
TOTAL INCOME	(9.339)	0.708	(1.804)	(2.989)	1.060	(1.309)	(0.007)	(0.204)	-	(4.274)	(18.160)
TOTAL NET EXPENDITURE	16.722	(2.725)	16.819	10.320	1.231	16.081	(0.035)	(1.304)	(1.575)	(5.843)	49.691
Scottish Government General Capital Grant	-	-	-	-	-	-	-	-	-	-	-
Capital Receipts	0.121	(2.014)	(1.185)	(6.245)	0.217	(0.257)	0.168	0.528	(0.229)	(0.336)	(9.232)
NHT Loan Repayments	-	-	-	-	-	-	-	-	-	-	-
Borrowing from Loans Fund - General Fund	(12.349)	4.624	(15.768)	(4.151)	(1.447)	(15.823)	(0.133)	0.775	1.805	6.178	(36.290)
Borrowing from Loans Fund - HRA	(4.494)	0.115	0.134	0.076	-	-	-	-	-	-	(4.169)
TOTAL FUNDING	(16.722)	2.725	(16.819)	(10.320)	(1.231)	(16.081)	0.035	1.304	1.576	5.843	(49.691)

	Service	Original Approved Budget £m	Current Project Budget £m	Total Projected Outturn £m	Variance £m	Variance %	Current Project Status	Expected Project Completion Date
Opportunities for All								
Madras College Extension	Education		5.713	5.713	0.000	0.00	Future Project	2029-30
Dunfermline Learning Campus	Education		121.261	121.261	0.000	0.00	Completed Project	2024-25
Extension Secondary School - Viewforth	Education	5.989	6.335	6.335	0.000	0.00	Future Project	2031-32
Refurb - Glenrothes /Glenwood Secondary Schools	Education	27.532	16.000	16.000	0.000	0.00	Future Project	2030-31
Queen Anne High School Extension	Education		6.626	6.626	0.000	0.00	Future Project	2030-31
Inverkeithing High School	Education		88.000	88.000	0.000	0.00	Current Project	2026-27
Primary School Development Future Projects	Education		154.398	154.398	0.000	0.00	Future Project	2034-35
Methil Care Home	H&SC	6.620	9.392	9.433	0.041	0.00	Current Project	2025-26
Cupar Care Home	H&SC	5.580	10.254	10.254	0.000	0.00	Current Project	2026-27
Glenrothes Respite Provision	H&SC		5.503	5.503	0.000	0.00	Feasibility	2027-28
Glenmar - West Mill - Kirkcaldy Phas 2	H&SC	5.600	5.600	5.600	0.000	0.00	Future Project	2028-29
Anstruther Care Home	H&SC	6.145	12.490	12.490	0.000	0.00	Feasibility	2027-28
		57.466	441.572	441.613	0.041	0.00		
Thriving Places								
Northern Road Link East End	ATE		14.805	14.805	0.000	0.00	Current Project	2026-27
Western Distributer Road	ATE		9.249	9.249	0.000	0.00	Future Project	2031-32
Northern Road A823	ATE		14.596	14.596	0.000	0.00	Preparatory Works	2028-29
Levenmouth Reconnected	ATE	2.000	7.363	7.363	0.000	0.00	Current Project	2027-28
Mountfleurie Bridge	ATE		7.205	7.205	0.000	0.00	Current Project	2025-26
River Park Routes	ATE		6.429	6.429	0.000	0.00	Current Project	2025-26
Glenrothes - Riverside Park	Bus & Employ	4.980	5.258	5.258	0.000	0.00	Completed Project	2025-26
Abbeyview Integrated Hub	Communities	1.500	8.006	8.006	0.000	0.00	Current Project	2025-26
Templehall Community Hub	Communities	1.500	15.304	15.304	0.000	0.00	Current Project	2026-27
Cowdenbeath LC Phase 2	Communities	1.600	7.767	7.767	(0.000)	0.00	Current Project	2025-26
West Fife Swimming Pool	Communities	1.000	13.200	13.200	0.000	0.00	Future Project	2028-29
Carnegie Hall	Communities	10.000	10.000	10.000	0.000	0.00	Preparatory Works	2028-29
East Sands LC Redevelopment Project	Communities	6.000	6.000	6.000	0.000	0.00	Future Project	2029-30
		28.580	125.183	125.183	0.000	0.00		
Inclusive Growth and Jobs								
Fife Interchange Business Units - Phase 1 & 2	Bus & Employ	8.130	11.642	11.642	0.000	0.00	Current Project	2025-26
Fife Interchange South Site Servicing	Bus & Employ	1.138	5.057	5.057	0.000	0.00	Future Project	2030-31
John Smith Business Park Business Units	Bus & Employ	3.644	5.525	5.525	0.000	0.00	Current Project	2026-27
		12.912	22.225	22.225	0.000	0.00		
Housing Revenue Account								
Affordable Housing over £5m	HRA		211.856	211.856	0.000	0.00	Future Project	2027-28
Swan and Memorial High Rise	HRA		7.002	7.002	0.000	0.00	Current Project	2025-26
		0.000	218.858	218.858	0.000	0.00		
Maintaining Our Assets								
Lochgelly Primary School	Education	9.000	8.759	8.759	0.000	0.00	Current Project	2025-26
Balwearie High School	Education	8.300	17.008	17.008	0.000	0.00	Current Project	2028-29
Leven Railway Bridge & Bawbee Bridge	ATE	2.279	10.110	10.110	0.000	0.00	Current Project	2025-26
Den Burn Bridge	ATE	2.120	10.710	10.710	0.000	0.00	Preparatory Work	2028-29
Broad Street Bridge Cowdenbeath	ATE	3.678	13.619	13.619	0.000	0.00	Preparatory Work	2029-30
Local Area Network	BTS	7.200	7.314	7.314	0.000	0.00	Current Project	2028-29
One to One Devices - IPADS	BTS	33.447	33.447	33.447	0.000	0.00	Current Project	2034-35
		66.024	100.966	100.966	0.000	0.00		
Grand Total		164.982	908.804	908.845	0.041	0.00		

**FIFE COUNCIL
CAPITAL INVESTMENT PLAN 2025-35
MONITORING REPORT**

Appendix 3

Capital Theme	Approved Budget £m	Current Budget £m	Actual to Date £m	Projected Outturn £m	Projected Variance £m	Projected Outturn as % of Plan
Opportunities for All	66.146	66.225	5.845	66.316	0.091	100%
Thriving Places	39.431	56.811	4.004	55.654	(1.157)	98%
Inclusive Growth and Jobs	16.057	8.115	1.045	8.115	(0.000)	100%
Maintaining Our Assets - Rolling Programmes	33.473	41.560	7.235	40.873	(0.686)	98%
Maintaining Our Assets - Specific Programmes	23.534	23.584	2.143	22.749	(0.836)	96%
Housing Revenue Account	156.300	161.017	25.817	161.003	(0.013)	100%
Corporate Items	0.000	6.737	0.000	0.000	(6.737)	0%
TOTAL EXPENDITURE	334.941	364.050	46.089	354.712	(9.338)	97%
Scottish Government Specific Capital Grants	(3.994)	(8.503)	0.272	(7.300)	1.203	86%
Other Grants and Contributions	(36.805)	(42.547)	(6.327)	(42.636)	(0.090)	100%
Capital Financed from Current Revenue (CFCR)	(34.625)	(38.818)	(2.450)	(38.590)	0.228	99%
TOTAL INCOME	(75.424)	(89.868)	(8.506)	(88.527)	1.341	99%
TOTAL NET EXPENDITURE	259.517	274.182	37.583	266.185	(7.997)	97%
Scottish Government General Capital Grant	(31.327)	(31.154)	(7.985)	(31.154)	0.000	100%
Capital Receipts	(2.446)	(2.325)	(0.092)	(2.311)	0.014	99%
NHT Loan Repayments	0.000	0.000	0.000	0.000	0.000	0%
Borrowing from Loans Fund - General Fund	(107.723)	(120.638)	0.000	(112.886)	7.752	94%
Borrowing from Loans Fund - HRA	(118.021)	(120.065)	0.000	(119.834)	0.231	100%
TOTAL FUNDING	(259.517)	(274.182)	(8.077)	(266.185)	7.997	97%



FIFE COUNCIL PRUDENTIAL INDICATORS 2025 28

ACTUAL 2023 24	ACTUAL 2024 25
£m	£m
153.167	135.802
88.906	122.294
242.073	258.096
£m	£m
49.791	56.741
32.665	38.991
82.455	95.733
£m	£m
968.749	1,087.429
135.327	143.014
1,104.077	1,230.443
£m	£m
5.14%	5.22%
24.14%	27.26%
£m	£m
831.339	858.255
437.174	487.614
1,268.513	1,345.869
1,173.131	1,315.515
1,528.856	1,691.865
1,456.053	1,611.300
£m	£m
1,173.131	1,315.515
1,268.513	1,345.869
(95.383)	(30.354)
100%	100%
75%	75%
0%	0%

Affordability Indicators

Capital Expenditure

General Fund
Housing Revenue Account

Financing Costs

General Fund
Housing Revenue Account

Net Revenue Stream

General Fund
Housing Revenue Account

Ratio of Financing Costs to Net Revenue Stream

General Fund
Housing Revenue Account

The Capital Financing Requirement

General Fund
Housing Revenue Account

External Debt
Authorised Limit for Total External Debt
Operational Boundary for Total External Debt

Prudence Indicators

External Debt and the Capital Financing Requirement

Forecast External Debt
Forecast Capital Financing Requirement

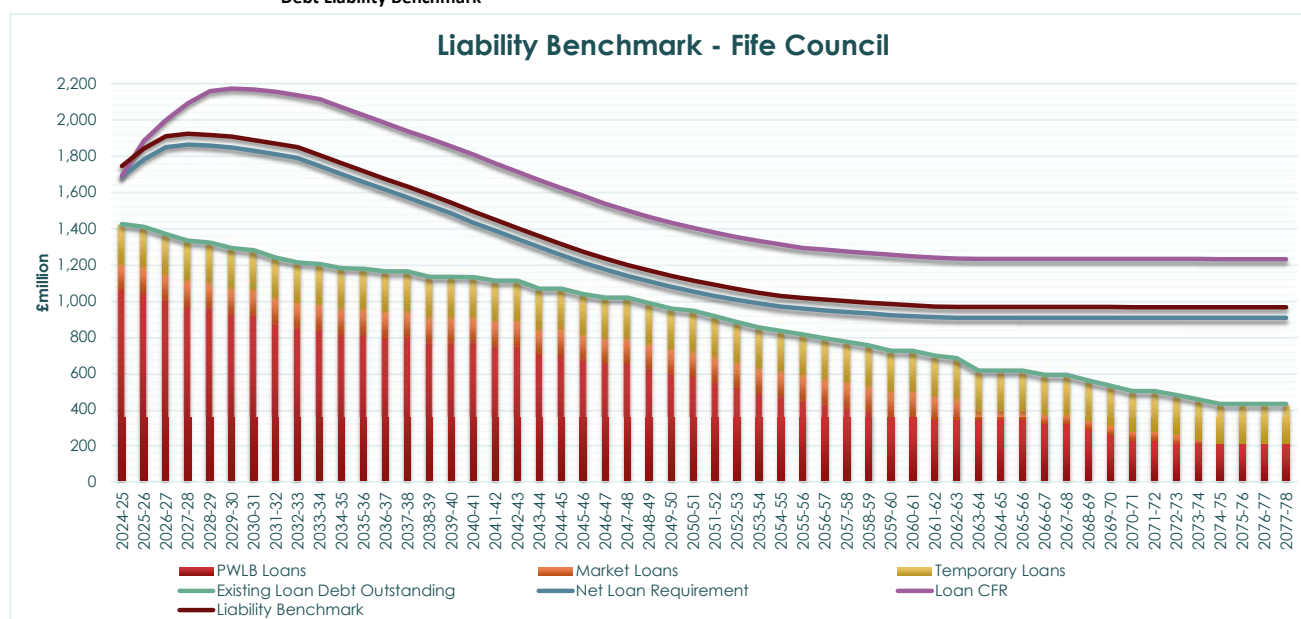
Adoption of the CIPFA Code on Treasury Management

Code adopted in 1996 and compliance maintained through the Treasury Management Strategy

Fixed Interest Rate Exposure Upper Limit
Variable Interest Rate Exposure Upper Limit
Total Principal Sums Invested Beyond 364 days Upper Limit

ESTIMATE 2025 26	ESTIMATE 2026 27	ESTIMATE 2027 28
£m	£m	£m
193.708	123.999	137.587
161.003	118.909	84.725
354.712	242.908	222.312
£m	£m	£m
57.500	63.689	65.094
44.543	51.452	55.050
102.043	115.141	120.144
£m	£m	£m
1,158.396	1,149.740	1,162.484
152.372	159.443	167.052
1,310.768	1,309.183	1,329.536
£m	£m	£m
4.96%	5.54%	5.60%
29.23%	32.27%	32.95%
£m	£m	£m
948.212	989.835	1,052.405
583.892	641.406	660.056
1,532.104	1,631.241	1,712.461
1,499.842	1,616.960	1,715.243
1,866.346	1,942.386	1,940.774
1,777.473	1,849.892	1,848.356
£m	£m	£m
1,499.842	1,616.960	1,715.243
1,532.104	1,631.241	1,712.461
(32.262)	(14.280)	2.782
100%	100%	100%
75%	75%	75%
0%	0%	0%

Debt Liability Benchmark



11 September 2025
Agenda Item No. 6

Planning Obligations and Good Neighbour Agreements: Draft Guidance Consultation

Report by: Pam Ewen, Head of Planning

Wards Affected: All

Purpose

To seek approval of a proposed response to the Scottish Government consultation paper on an updated guidance on Planning Obligations and Good Neighbour Agreements.

Recommendations

Members are requested to:

1. review and approve the proposed consultation response as set out in Appendix 1 to this report;
2. authorise officers to submit the consultation response to the Scottish Government; and
3. delegate to the Head of Planning, in conjunction with the Convener, to include additional comments agreed by this committee and respond to the consultation.

Resource Implications

No resource implications.

Legal & Risk Implications

There are no legal or risk implications in responding to this consultation because it is in response to an invitation to comment on a Scottish Government consultation.

Impact Assessment

An equality and/or other impact assessment is not required because this is a consultation response to proposed planning guidance. The Scottish Government will undertake the relevant impact assessments in relation to any changes which follow on from the consultation.

Consultation

The Head of Legal and Democratic Services and Head of Finance Services have been consulted in the preparation of this report.

1.0 Background

- 1.1 The Scottish Government published the consultation seeking views and comments on the draft guidance for Planning Obligations and Good Neighbour Guidance in July 2025. The consultation period closes on 30 September 2025.
- 1.2 The purpose of the consultation is to seek comments on a new guidance document on Planning Obligations and Good Neighbour Agreements which are both instruments used in the planning system. This guidance will replace Circular 3/2012 which has been used as an important guiding document for planning decisions across Scotland. The guidance needs to be updated to reflect the new development planning system and developments in law and practice since the publication of that Circular and to address issues that have arisen in that time. This includes the implementation of the Planning (Scotland) Act 2019 which has changed the development planning system which relates directly to use of planning obligations in particular.
- 1.3 The Scottish Government states that their ambition is for the new guidance to provide greater certainty for all parties. Through the development planning system, planning authorities should set out clear policies for the use of planning obligations and methods for calculating developer contributions. This more front-loaded approach will provide developers with earlier certainty around what will be required of them and clear justification will help give local authorities and other infrastructure providers confidence in receiving the contributions set out. This will support the plan-led and delivery-focused system we want to see.
- 1.4 To assist in the reading of this report the definition of a planning obligation and a Good Neighbour Agreement is provided.
 - A planning obligation is an obligation which restricts a development or use of land in a way that requires specific operations or activities to be carried out or requires land to be used in a specified way. A planning obligation can also require the payment of a contribution. The purpose of the planning obligation is to overcome obstacles to the grant of planning permission and ensure development is acceptable by complying with policies. Most commonly they are used to collect contributions to deliver infrastructure improvements in order to mitigate the impact of development. Planning obligations are usually secured via legal agreement and the most common legal instrument is set out under section 75 of the Town and Country Planning (Scotland) Act 1997 and it is this section of the Planning Act which is referred to in the draft guidance. Legal agreements and planning obligations should be used as a last resort, with design mitigation or planning conditions to be favoured first. Legal agreements are attached to the title of the land so are seen as more secure for matters such as financial payments and they are either entered into by the applicant, landowner or developer themselves or with the planning authority.
 - A Good Neighbour Agreement broadly follows the same principles, however, they are agreements of landowners/applicants/developers which are entered into with a community body. A Good Neighbour Agreement may govern operations or activities relating to the development or use of land, either permanently or during such period as may be specified in the agreement. These can be used by communities to agree specific controls of the developer during construction, for example, or ensure of a flow of information from the developer to the community during the construction works. These are not an alternative to a Planning Obligation.

2.0 Discussion

2.1 The purpose of the new guidance is largely to reflect on the change to legislation brought through by the Planning (Scotland) Act 2019. These are largely procedural changes and more broadly the way that planning obligations and Good Neighbour Agreements can be used remains the same. As a consequence, much of the previous guidance has been pulled through to this guidance. The following sections of this report will raise areas of change or points of note which have helped formulate the response to the Scottish Government.

2.2 The draft guidance reiterates policy tests for when a Planning Obligation can be used. These policy tests were implemented through the previous guidance and have also been enshrined in the national policy through the National Policy Framework (NPF) 4. Compliance with these tests are essential and the tests are as follows:

- necessary to make the proposed development acceptable in planning terms
- serve a planning purpose
- relate to the impacts of the proposed development
- fairly and reasonably relate in scale and kind to the proposed development
- be reasonable in all other respects

The guidance reiterates these policy tests that planning obligations should not be taken as a form of general payment for planning permission and there must be specific reasons associated with the development and policy to justify taking planning obligations. For example, a planning obligation cannot be taken for general use by the Education Service, however, if a development renders the need for an extension of a school then a planning obligation can be used. Helpfully, additional text has been added in this guidance to provide greater clarity on these tests and some of this relates to case law from appeals and the courts.

2.3 An area of potential confusion still exists with regards to planning obligations and benefits. Parts of the guidance reinforces the point that planning obligations cannot be taken for public benefit but also recognises that some public benefit may arise from improvements from infrastructure. Some of the statements in the guidance appear contradictory and make this point unclear. Much of the case law in this area has established that planning obligations should be taken to mitigate the impact of development so there has to be an evident development effect. Some planning obligations have been taken due to an established need and are supported by policy such as the provision of affordable housing. These potential contradictions will be raised in the response to ensure there is clarity on the ability to take planning obligations which may be seen as a 'benefit' if there is an established need rather than as mitigation. Examples of this would be affordable housing, public art or biodiversity enhancement (for clarification this would be biodiversity improvements beyond that required as mitigation).

2.4 Related to this point, in one area of the guidance it clarifies that public benefit may arise from the provision of infrastructure as it would provide additional infrastructure for the public to use. This has always been taken to also refer to the fact that new infrastructure is likely to incorporate additional capacity beyond that provided for the development alone. It is very difficult to deliver infrastructure that is fully constrained in size or scale to only incorporate the amount of additional capacity needed for the development. This is mentioned in paragraph 28:

‘if a facility needs to be replaced and expanded, planning obligations should only be expected to fund the additional capacity attributable to the new development; other funding would need to be identified to remedy the existing problem.’

And then in paragraph 59:

‘Where the need for new or improved infrastructure is only partly created by new development, the costs should be apportioned between developers and the body that would otherwise be responsible for funding its delivery.’

While this is in reference to ensuring that developers are not asked to remedy existing deficiencies, the terminology in these paragraphs are problematic and can be interpreted more widely. This could be taken to mean that the council can only take planning obligations for the proportion of infrastructure specifically needed by the development. As noted, it is very difficult to increase capacity to a level that only accommodates the development and this would lead to the council having to contribute the rest. For example, if a development caused a school to exceed capacity by 15 pupils, then a classroom cannot be built for those 15 pupils alone and the terminology in this section indicates the council would need to contribute a share for the rest of the space in the classroom. This would place unreasonable burden on the council. A comment has been added to the consultation to ensure clarification is provided in the final document.

- 2.5 The draft guidance now specifies that where a development has a *de minimis* (too small to be significant) impact, then a planning obligation is unlikely to be required. In general, this is supported, however, where there are cumulative impacts then what is *de minimis* needs clarification. The draft guidance has helpfully clarified that planning obligations can be taken for development that will have effect on infrastructure in advance of when the infrastructure mitigation may be required. For example, where multiple developments may cause the need for new infrastructure, the guidance now clarifies that the earliest of the developments still need to pay towards the new infrastructure even if that is a number of years in advance. This clarification is useful as Fife Council have a number of infrastructure projects as a consequence of a large number of development sites coming forward and have been challenged historically by the early sites that they should not need to pay for the infrastructure. It is Fife Council's view that the early development, no matter how small, incrementally reduces capacity of existing infrastructure and therefore needs to pay their fair share. This does cause some conflict with the inclusion of the sentence on *de minimis* development. Experience in Fife Council has shown that even low levels of development contribute towards the cumulative impact and need for infrastructure and it could be a small development that pushes the infrastructure over the threshold of need. For this reason, Policy 4 of the FIFEplan (2017) has set minimum thresholds as to when a development will contribute or not. Many assessments submitted with planning applications will suggest that the impact of that development (individually) is *de minimis* and has no impact. Greater clarification is needed in the draft guidance on this point to clarify that when cumulative impact is involved, greater consideration is needed on what is *de minimis* and even smaller developments may need contribute where their impact when considered cumulatively adds to the need for infrastructure. If this is not clarified then other development or the council will need to pay their share which would not be in accordance with the tests in the guidance.
- 2.6 Under the previous Planning Act, planning obligations were addressed locally through Local Development Plan policy and supported by Supplementary Guidance which contained the detail, methodology and specific contribution levels for development. The Planning (Scotland) Act 2019 removed the need for Supplementary Guidance and the draft Guidance proposes a new process for addressing planning obligations. The draft guidance states that the Evidence Report (an initial area of work submitted to the

Scottish Government in advance of formulating a new Local Development Plan) must set out any infrastructure constraints across the council area. The Proposed Local Development Plan (LDP) or Proposed Plan must then identify any locations where infrastructure constraints exist which would require mitigation for the development being proposed in the plan and must state how that would be addressed (i.e. developers or other funding sources). At the same time, a Delivery Programme would be created which would confirm the calculations for sites and level of contributions for each infrastructure measure and attribute costs to specific developments. Both the Proposed Plan and Delivery Programme would be subject to examination and public scrutiny. Once the Local Development Plan is adopted, the costs and need for the infrastructure must be kept under review and the Delivery Programme updated at least every two years with any changes, as required.

2.7 In principle, the new process appears logical given the legislation change. The following are points to note or concerns that will be raised in the response:

- It is acknowledged that setting out the infrastructure needs within the Proposed Local Development Plan helps create certainty with developers in that they have an understanding of what the development costs of their site might be but there are risks to the council in having to set out this level of detail at this stage. The Local Development Plan will be in place for 10 years and legislation and requirements may change over time which may substantially alter the infrastructure needs or how they are delivered. The requirements set out in the plan will quickly be out of date. Providing there is scope for the Delivery Programmes to identify new infrastructure needs and set these out, then this concern should be lessened.
- The guidance is not fully clear what is expected at the Proposed Local Development Plan stage. It is indicated that it might only need to include what mitigation will be required and the methodology around calculating the contributions for each site. To be able to create a methodology for these, it is likely that a baseline cost for the infrastructure will need to be identified. This creates risk for the council in identifying a cost very early in the process, many years before delivery as construction costs can significantly increase. Further clarity on the expectations of information in the Proposed Local Development Plan is required.
- The ability to capture an increase in infrastructure costs more generally is required. If the costs are only within the Delivery Programme then there is scope for increases in cost to be captured and reflected. This would be supported as it would reduce risk to the council. The issue with this approach is that the draft Guidance expects the Delivery Programme to be updated at least every two years with the need and cost of infrastructure reviewed. This could be quite an onerous process and will likely lead to a generic percentage uplift being added to reflect inflation rather than a full costing exercise every few years as a full cost review will be too staff intensive for Services.
- It is not clear what status the Delivery Programme will have in the suite of decision making documents. Under the previous act, planning obligations policy was within the Local Development Plan and supported by Supplementary Guidance which also formed part of the Development Plan which is the primary decision making document in planning. The Delivery Programme will not have this status. In addition, after the first Delivery Programme has been agreed through the adoption of the Local Development Plan, the subsequent Delivery Programmes are not subject of examination or the same level of public scrutiny. It is not clear how developer concerns with any uplift in costs or additional infrastructure could be held to scrutiny. The concern is that there will continue to be debate over infrastructure needs and costs between local authorities and developers which will continue to the planning

application stage. This will either prolong planning application determination periods or lead to further planning by appeal whereby the developers will appeal against infrastructure costs. As it is not clear what weight a Delivery Programme will have, there is risk to the local authority that appeal decisions will be inconsistent or require significant input and work.

- 2.8 The draft guidance has included a section providing greater clarity over how cumulative development should be addressed. This is supported. This section states that where a planning application is refused due to lack of a planning obligation, then whether or not the planning authority has highlighted potential development constraints and need for planning obligation in the Development Plan will be a factor in the appeal decision. This section of the guidance lacks any consideration of windfall sites which is a site that comes forward and is not allocated in the Local Development Plan. In those cases, they quite often require a bespoke infrastructure assessment or re-assessment of an identified infrastructure requirement. As the windfall sites are not allocated, their infrastructure needs will not have been established in the Development Plan. The lack of clarity could create a loophole for developers in avoiding the need for planning obligations through the appeal process. This will be raised in the response. As noted, there is a lack of any guidance on windfall sites within the cumulative impact section. Consistent guidance on how to deal with windfall sites in cumulative impact assessment across the country would be useful.
- 2.9 The guidance note provides information on the drafting, registration, publication and monitoring of planning obligations which is largely consistent with the previous guidance. It is noted that there is a requirement for a summary of the contents of planning obligations to be recorded on the council's Register of Applications.
- 2.10 Greater guidance is provided on the process by which a planning obligation can be modified or discharged through an application under section 75A of the Planning Act. There are useful clarifications within the guidance following caselaw. A particular area of note is clarification that once a planning contribution has been spent by a local authority, this can no longer be subject of a section 75A application. When the planning contribution has been spent, it is considered that the planning obligation has been discharged of its requirements. If the developer wishes to challenge the spend of those contributions then they would need to do this in the courts through challenging the legal agreement terms directly. This is an important consideration for Fife Council when considering income and spend of planning contributions.
- 2.11 Fife Council have previously raised a concern with regards to section 75A of the Planning Act. This is weighted towards developers and landowners having the ability to modify planning obligations which creates significant risk for local authorities being challenged by developers. Unlike developers, local authorities have no way to modify section 75 agreements. Local authorities are finding that the costs agreed through legal agreements do not meet the final construction costs of infrastructure and thereby requires gap funding. This is sometimes caused by the delay between developers gaining permission and starting on site. Having no mechanism to change the agreements through s.75A creates an issue for local authorities. This matter would require a change in the primary legislation so cannot be addressed by the draft Guidance but will be raised as a general point. More relevant to this consultation relates to the status of the Delivery Programme. There are examples of applicants agreeing to planning obligations and shortly after receiving consent seeking to modify through s.75A. There could be greater risk with this given the issue raised on the status and use of the Delivery Programme.
- 2.12 There are no significant changes to the Good Neighbour Agreement guidance.

3.0 Conclusions

- 3.1 The draft guidance does not propose significant change from the previous guidance document on planning obligations however there are matters added to this guidance that require comment on. The new process proposed for addressing planning obligations through the development plan process appears logical, but some clarity is needed to ensure this works effectively. Generally, Fife Council should be supportive of the changes proposed but there are important issues to raise particularly where it could result in risk for the council.

List of Appendices

1. Fife Council proposed response to the draft guidance on Planning Obligations and Good Neighbour Agreements.

Background Papers

- Draft Guidance on Planning Obligations and Good Neighbour Agreements [Guidance on Planning Obligations and Good Neighbour Agreements - Draft for comments June 2025](#)
- Circular 3/2012 Planning Obligations and Good Neighbour Agreements [Planning Circular 3/2012: planning obligations and good neighbour agreements \(revised 2020\) - gov.scot](#)
- National Planning Framework 4 [National Planning Framework 4 - gov.scot](#)

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Fife Council proposed response to the consultation on the draft Planning Obligations and Good Neighbour Agreement Guidance

Issue 1

In paragraph 18 of the draft guidance it is stated that:

‘a planning obligation made in connection with a planning application should not seek to provide benefits which are unconnected with the development.’

It is unclear in this statement whether the issue relates to the planning obligation being unconnected with the development or that benefits are being requested or both. The document feels inconsistent on the point of benefits and planning obligations. It is made clear that public benefits should not be extracted by way of planning obligations in the sense that planning permission should not be bought by developers, however the draft guidance recognises that some inadvertent public benefit may be accrued due to the nature of new infrastructure. There also appears to be some recognition that planning obligations may not only be taken to resolve impact of development but may be needed to address need or policy requirements. Examples of this might be affordable housing or sustainable transport. These are not direct mitigation for development. The guidance on the tests at some points seem to indicate a need to link the impact to the mitigation and then on the other hand acknowledges that not all contributions will be to address impact. A clear statement on this point would be useful to provide clarity that there may be planning obligations which do result in benefits such as public art, biodiversity enhancement or sustainable transport and while these are not directly addressing impact they are in accordance with the tests.

Issue 2

The inclusion of the statement on *de minimis* in paragraph 26 could lead to issues when cumulative impact is being addressed. It is accepted that a site which has a *de minimis* effect on its own is unlikely to require infrastructure mitigation as by its very nature it will be having a negligible impact. From a cumulative perspective, that development could be contributing towards the need for infrastructure. For example, in a traffic impact scenario a Transport Assessment will likely state that a development is having a *de minimis* effect on a junction if the impact is less than 5%. The 5% impact could be a number of vehicles that when taken cumulatively with another development leads to the need for intervention. Particularly if the remaining capacity of a junction is minimal. If that is the case, then if the development is considered *de minimis* then the Council or another development would need to pay for that development's proportionate share of the costs. This would not comply with the scale and kind test in the guidance. As *de minimis* is not specifically defined across the different assessment criteria and there are different thresholds, a definitive statement as presented in paragraph 26 may cause issues in cumulative assessment. An additional statement on this point or removal of the statement would be useful. It is already accepted that a development which has no significant effect would not need any mitigation anyway.

Issue 3

Reference is made in the draft guidance under paragraph 28 that if a facility needs upgraded or expanded then a developer should only need to fund the additional capacity for their development.

And paragraph 59 states that:

‘Where the need for new or improved infrastructure is only partly created by new development, the costs should be apportioned between developers and the body that would otherwise be responsible for funding its delivery’

The principle of this is agreed however reality of infrastructure means that this would leave a gap in funding. Any infrastructure which is delivered in most instances cannot be constrained or tailored to provide only the additional capacity needed for the development. For example, where a junction improvement is needed, the improvements are likely to create additional capacity beyond that needed by the development due to the parameters of engineered designs. Similarly, if a development created an additional 15 pupils in a school year group then it would not be possible to build a new classroom for only 15 pupils as this would not be a standard class size. It should not be for each Council to fund the difference between what is needed by the development and the minimum standard set for the infrastructure. If that were the case then Councils would lack the capital to support development and would have to consider refusing applications. Other notes within the guidance accept that delivery of infrastructure is likely to result in some public benefit and it was previously interpreted that this was with reference to the additional capacity beyond that needed by the development. Clarification needs to be added to the guidance in this regard to ensure that it is acknowledged that infrastructure improvements will lead to greater capacity than that needed by the development, and this is to be paid for by the developer. This does not contradict instances of cumulative impact or the points noted on infrastructure that need to be improved or expanded by the Council regardless of development.

Issue 4

Fife Council are supportive of the clarifications which have been added in relation to planning obligations being taken for development which come in advance of others and that will incrementally reduce capacity of infrastructure. This is a particular issue in some of our settlements where a number of developments cause the need for infrastructure improvements however the improvement may not be needed for a number of years and has significant cost. Ensuring that every development pays their proportionate share rather than leaving the last development to deliver the infrastructure has been an important strategy. Similarly, Fife Council are also supportive of the clarification that contributions can be taken post delivery of infrastructure to again ensure everyone pays their fair share of the capacity created.

Issue 5

The process for setting out the need for planning obligations through the Development Plan process is noted and appears logical in principle. There are some matters which would benefit from additional clarification or that raise concerns, and these are set out below:

- It is noted that the Proposed Plan should detail which sites need to contribute to each item of infrastructure. It is presumed that this would be put in the allocation policy for each site. There is also a requirement however to set out the methodology for each contribution being taken. Methodology for different types of contributions and different infrastructure locations may differ. If there are a number of different infrastructure types and different locations this could result in quite a lengthy policy. It would not be appropriate to place the methodology in the allocation policies. If the methodologies from Fife Council's current guidance was placed in the Proposed Plan, it would be quite a lengthy policy piece particularly with the background justification informing the methodology.
- To inform the methodology it is presumed that a baseline cost for the infrastructure will be required. In addition, the first Delivery Programme will require a baseline cost for the infrastructure. As these costs will be presented in the Proposed Plan, they will be out of

date by the time the Plan is adopted given inflation and other factors. This would place significant emphasis on the costs on the Delivery Programme reviews. Councils are finding that the cost of infrastructure is increasing significantly over time not only due to construction costs but due to additional demands and requirements being added by statutory legislation. This quite often leads to gaps between the contributions required by developers and what the infrastructure cost is.

- It is noted in the guidance that the process has been chosen to give developers certainty early in the process. Given the above point, it is unlikely that this will be the case. A cost will be identified early in the process but as noted this will likely increase between the Proposed Plan and planning permission stage. Depending on wider economic or regulatory requirements, this may be above inflation making it difficult for developers to fully plan for. Agreeing costs closer to the time that the delivery of the infrastructure will take place creates greater certainty for all parties albeit it is understood that this makes forward planning for developers and landowners more difficult.
- Fife Council supports the ability to continually review costs and need this in a document that can be used for decision making. A concern of using Delivery Programmes to specify the costs of infrastructure and the split of contributions to each site is that it is unclear what status the Delivery Programme will have as a material consideration. This could lead to inconsistency particularly at appeal. As the Delivery Programme reviews will not be subject of public scrutiny or extensive consultation, any increase in costs set out in the Delivery Programme will not be subject to challenge prior to their publication. This means that the planning application stage will be the avenue for challenge resulting in either a prolonged planning application process when there is a dispute or planning by appeal. Clarification on the status of Delivery Programmes in decision making is needed as different Reporters may take different approaches in appeals. This will reduce certainty and will cause a lack of support for the process.
- Paragraph 57 requires that infrastructure remain under review following adoption of the LDP and an evidence base be maintained on its need and cost, so this is available should it be questioned at application stage or appeal. It is assumed that this information should be produced in the Delivery Programme as if not, it is not clear where this information would be kept and displayed. There is no timescale given for the review so again it would make logical sense that this is with the Delivery Programme. It would be too onerous for each planning authority to continually review the infrastructure requirements and costs on a more frequent basis. Even a two-year review will be onerous as it will require input from other Services within the Council who have their own statutory duties. A full re-costing exercise is unlikely to be achievable and it will likely need to be a high-level review taking into account inflation and regulatory changes.
- Paragraph 60 states that information should be included in the LDP on how monies will be held, used and in what circumstances they might be returned to developers. This information would need to be very high level rather than specific to each infrastructure as quite often specific clauses are included in legal agreements to address these points. The LDP may restrict the ability for specific bespoke clauses to be written.

Issue 6

Paragraph 58 states that where cumulative impact of a number of allocated sites creates the need for additional infrastructure, planning authorities may wish to seek contributions on the basis of standard charges and formulae. This statement is supported however it is not clear why this should only relate to 'allocated sites'. A previous paragraph on the Proposed Plan referred to a formula being created for how windfall sites might be addressed however these sites are not mentioned in any detail anywhere else in the guidance. Acknowledgement of windfall sites in this paragraph would be useful but also across the guidance. A standardised approach could

be introduced to the guidance. The guidance recognises the impact of early sites on infrastructure capacity and windfall sites can add to this impact. The issue being that windfall sites will not have been factored into any wider assessments carried out at the Proposed Plan stage. The option for developers is to either carry out a cumulative assessment for their site akin to that which will have been carried out for the Proposed Plan which will be very costly or if the site is within a zone of influence, accept a rate of contribution. Historically, Reporters have rejected both approaches as they consider it is for planning authorities to show the impact of a development on need for infrastructure, which is counter to most other impact/ mitigation assessments. Clarification on how to assess windfall sites would be very useful in the guidance for consistency reasons.

Issue 7

Related to the above issue, paragraph 62 outlines that appeals should consider, whether or not the planning authority has highlighted potential development constraints in the development plan and set out sufficient detail to demonstrate that planning obligations meets the policy tests. This again does not reflect on windfall sites. Windfall sites may be proposed in areas which, at the time of the Proposed Plan, had very little constraint but 8 years after the adoption now have constraints. This may have been because of delivery of planned sites in an area of low constraint taking up the capacity or because of other regulatory or population changes. The Development Plan will be unlikely to reflect these constraints or have identified solutions as they will not have been required. In areas where no development is proposed and a windfall site comes forward, again it is unlikely that the Proposed Plan will hold any information. To express information for a whole authority would create a very large LDP. Also, as the LDP covers a 10 year period, many things may change in an area resulting in the need of infrastructure that weren't previously envisaged. The consideration set out in this paragraph is likely to require significant justification during the appeal processes and again there is a concern about consistency of decision and weighting given to this by Reporters.

Issue 8

Fife Council have previously raised a concern with regards to section 75A of the Planning Act. This is weighted towards developers and landowners having the ability to modify planning obligations which creates significant risk for local authorities with no mechanism available for planning authorities to instigate change in planning obligations. Frequently local authorities are finding that the costs agreed through legal agreements do not meet the final construction costs of infrastructure resulting in the need for gap funding. This is sometimes caused by the delay between developers gaining permission and starting on site. Having no mechanism to change the agreements through s.75A creates an issue for local authorities. It is recognised that this matter would require a change in the primary legislation. More relevant to this consultation is the point relating to status of the Delivery Programme. There are examples of applicant's agreeing to planning obligations and shortly after receiving consent seeking to modify through s.75A. There could be greater risk with this given the issue (issue 5) raised on the status and use of the Delivery Programme. Also, there will be greater risk of costs increasing between the Proposed Plan and the time development starts on site creating potential burden on local authorities if there are insufficient funds identified at any of the stages.

11 September 2025
Agenda Item No. 7

Scottish Illegal Tobacco Officers – Hosting within Fife Council

Report by: Nigel Kerr, Head of Protective Services

Wards Affected: All

Purpose

The purpose of this report is to:

- highlight the opportunity for Fife Council to host up to two full time Scottish Illegal Tobacco Officers (SITO) as part of a nationwide initiative to combat the growing threat from illicit trade in illegal tobacco products in our communities; and
- outline the strategic benefits and collaborative opportunities this initiative brings to Scottish local authorities, including Fife.

Recommendations

It is recommended that committee:-

1. notes the strategic importance of Fife Council's hosting role for the project duration;
2. agree for Fife Council to formally host up to two full time Scottish Illegal Tobacco Officers (SITO) for a project duration for a minimum of four years from 1 April 2025;
3. supports the integration of Scottish Illegal Tobacco Officers into the Fife Trading Standards team to meet our aim and those of colleagues in other Scottish local authority Trading Standards Services (SLATS) of continuing and expanding the enforcement role in combatting the illicit supply of illegal tobacco products in our communities;
4. endorses continued collaboration with HMRC, Police Scotland, SLATS and the Society of Chief Officers of Trading Standards for Scotland (SCOTSS) and the new role of Fife Trading Standards in contributing to this; and
5. note that, if agreed, the Heads of Protective Services and Finance will agree the terms of the funding agreement between Fife Council, HMRC and the Society of Chief Officers of Trading Standards for Scotland.

Resource Implications

The full cost of providing the 2 full time officers will be paid for from the grant funding agreement between HMRC and SCOTSS based on £150,000 per year.

Legal & Risk Implications

In carrying out our programme of work to combat the growing threat from illicit trade in illegal tobacco products in our communities, Fife Trading Standards Service uses its statutory duty and enforcement powers set out in various pieces of consumer legislation to identify, seize and detain such products. These can be counterfeit tobacco products,

which breach the Trade Marks Act 1994, or they can breach consumer product safety legislation such as the Standardised Packaging of Tobacco Products Regulations 2015 or the Tobacco and Related Products Regulations 2016 because they do not self-extinguish when left unattended – historically a major source of domestic fire incidents – or do not feature the pictographic warnings, or plain packaging, intended to dissuade consumption.

The creation of this team expands our capability to carry out this work across SLATS, including Fife.

Following the end of the initial 4 year project period there could be potential redundancy costs; these will be managed within the envelope of the agreed funding. The funding terms have still to be agreed but will be assessed by the Heads of Protective Services and Finance to ensure that any risk is mitigated.

Impact Assessment

An Equality Impact Assessment (EqIA) is not required at this stage as there are presently no changes to existing service delivery and policy. However, this will be carried out as and when any specific processes and policy for this new role is established.

Consultation

The Heads of Finance, Legal and Human Resources and trade unions have been consulted on this report.

1.0 Background

- 1.1 The UK has some of the highest tobacco taxation levels globally, aiming to discourage smoking by making tobacco products less affordable. The principal aim of this is to reduce the levels of tobacco use across the UK because of its detrimental impact on health. The Scottish Government's stated policy aim is a 'Smoke-free Scotland by 2034' and its approach has contributed to a decline in smoking rates. However, the availability of illegal tobacco poses a significant challenge to these efforts. This unscrupulous illicit trade offers a low-cost alternative that undercuts legitimate businesses. It also makes tobacco more affordable to the public, including young people, who might otherwise be discouraged from smoking due to the price.
- 1.2 In a strategic change set out by HM Treasury in 2020, there was a recognition that this illicit trade was an enforcement priority for both local authority trading standards services and HMRC. The Treasury announced new funding for both with the proposition that HMRC focusses its efforts on importation, manufacture and wholesale of illegal tobacco products whilst Trading Standards Services concentrate their efforts on retail level supplies. This led to the creation of Operation CeCe by Trading Standards.
- 1.3 In Scotland, Operation CeCe has evolved into a national initiative jointly led by SCOTSS and HMRC. The project's aim is to support local authority TS services in their work against the illicit trade in tobacco by providing funding, intelligence, co-ordination, and training, as well as access to tobacco detection dogs. It has been active since 2021 with the funding provided by HMRC. It is aimed at disrupting the supply and distribution of illegal tobacco at retail level whilst, at the same time, gathering intelligence on those concerned in the illicit trade. This has proven to be so successful that HMRC proposed increasing the funding for a four year period from April 2025 to expand the project, hence this proposal to create two new Scottish Illegal Tobacco Officers (SITOs).

- 1.4 In 2024-25, Scottish local authority Trading Standards Services carried out 66 operations that led to the seizure of approximately 1.41 million counterfeit or non-compliant cigarettes and 458kg of hand-rolling tobacco. In terms of the duty evaded, these amounts equate to approximately £750K for tobacco and £250K for hand-rolling tobacco. Fife Trading Standards have been heavily involved in Operation CeCe work since its inception, seizing 515,000 sticks of tobacco and 67kg of hand-rolling tobacco.
- 1.5 One other consequence of this work is the vast amount of intelligence on retail level illicit trade which is gathered by trading standards officers. This intelligence is used to plan and direct operations across Scotland. It is also shared with HMRC and has been similarly used by their officers to great effect.
- 1.6 In recognition of this success, HMRC proposed that Trading Standards' teams should be given access to its Tobacco Track and Trace technology. This is a system whereby every legitimate packet of cigarettes and hand-rolling tobacco is marked with a unique serial number and a traceable security mark. This allows tobacco to be tracked from its point of manufacture, right through the supply chain to the point of retail. This also ensures the correct duty is paid on all legitimate tobacco products. These requirements are set out in the Tobacco Products (Traceability and Security Features) Regulations 2019 (the '2019 Regulations').
- 1.7 Illegal tobacco products do not have such markings and with access to the mobile technology, Trading Standards can identify such non-compliant packets in the field. In 2023, the 2019 Regulations were amended to allow Trading Standards Services access to this technology. In addition, the Regulations provided Trading Standards with an information disclosure gateway whereby seizures of illegal tobacco products may be reported to HMRC where these products also contravene the security requirements of the 2019 Regulations. This is what is now referred to as the Sanctions regime.
- 1.8 Under the HMRC Sanctions regime, Trading Standards Services have enhanced enforcement powers to allow case files to be referred to HMRC with a view to the application of civil penalties of up to £10,000 for those found to be supplying tobacco products which do not comply with the 2019 Regulations. The penalty banding is based on the volume of product seized from the retailer and the number of previous contraventions. Appendix 1 explains the Tobacco Track and Trace Security System in more detail. To get access to the Track and Trace system, the local authority must have signed the HMRC Memorandum of Understanding (MOU) for the exchange of information to facilitate Sanctions referrals under the 2019 Regulations.
- 1.9 Since the introduction of this regime, over 350 Sanction referrals have been made to HMRC by local authority Trading Standards across Great Britain (GB). To date, this has resulted in HMRC issuing 114 penalties totalling almost £700,000. Of these, over 40% have been referred by SLATS. In GB terms, SLATS lead the way in the use of the Sanctions regime. Fife Trading Standards have played their part in this Scottish success submitting Sanctions referrals to the value of £22,500.
- 1.10 Following these successful outcomes across Scottish local authorities, including Fife, Fife Trading Standards seeks agreement for Fife Council to host two Scottish Illegal Tobacco Officers who will work with SLATS, including Fife TS, to carry out and coordinate enforcement activity, intelligence sharing and multi-agency engagement.

2.0 Scottish Illegal Tobacco Officers

- 2.1 The team of up to two full time officers will be dedicated to Operation CeCe and carry out tobacco seizure and illicit tobacco supply disruption visits across Scotland. That will include assisting Fife TS staff to carry out their work within Fife, which may also take the form of carrying out their own visits and investigations within Fife should additional resource be required. They will also be responsible for the submission of Sanctions referrals to HMRC, in accordance with any operational plan agreed with participating local authority.
- 2.2 This is a grant funding agreement between HMRC and SCOTSS. The funding period starts from 1 April 2025 and ends on 31 March 2029 and is based on £150,000 per year. HMRC will pay SCOTSS quarterly in arrears then Fife, as the hosting authority, would receive payment from SCOTSS on a quarterly basis, in arrears. Depending on who the successful candidates are will determine what scale point they are placed on, however, the modelling of cost has been done for top of the salary scale. As no officers are yet in post, no funding has been claimed.
- 2.3 The cost of providing up to two full time officers has been established at around £142,422 per year. It will be less in the first year (2025/2026) due to no officers being in post yet. This includes funding for equipment (paid in the first year and accrued thereafter for the rest of the funding period), travel expenses and an annual management fee - see **Appendix 2** for full breakdown of costs.
- 2.4 The successful candidates will be offered full time contracts until 31 January 2029 to allow for some available funding for any potential redundancy costs should HMRC chooses not to continue this funding after March 2029.
- 2.5 The Scottish Illegal Tobacco Officers will be line managed by Fife Council's Trading Standards Service Manager and the relevant Lead Officer and will be expected to demonstrate initiative and the ability to work independently, in line with the Trading Standards team. Role titles and profiles will also be subject to job evaluation and regulated by Fife Council HR. A joint governance structure will be in place between Fife Trading Standards and SCOTSS. The officers will be authorised by Fife Council for the relevant legislation including cross border work with other SLATS.
- 2.6 **Objectives:**
- 2.6.1 **Disruption visits:** The focus of the team will be to increase disruption and seizure visits across Scotland. In authorities where there has been limited or no Op CeCe activity, they will communicate with individual local authorities and agree an operational plan for carrying out Op CeCe visits including raids and seizures of illegal tobacco. This may include training local authority staff in the equipment and techniques used in Op CeCe work.
- 2.6.2 **Resource Enhancement:** Where resource limitations initially exist or the operational need dictates, the officers will work with the local authority Trading Standards service to support their planned operations, offering an additional team to assist with building capacity and sharing expertise.
- 2.6.3 **HMRC – Communication and Operations:** Develop operational links with and be the point of contact for HMRC to enhance support for the operations conducted by the team, and jointly with SLATS.

- 2.6.4 **Intelligence Gathering to identify patterns and hotspots of illegal activity.** Where practical and an identified need, officers may use their time to gather intelligence through test purchasing and covert surveillance, etc. This may be for the benefit of the national team or carried out at the request of SLATS.
- 2.6.5 **Annual Plan:** The team will operate in accordance with the annual plan agreed with SCOTSS and Fife Trading Standards. This plan will outline specific performance indicators that the team is expected to meet, ensuring accountability and measurable performance and progress throughout each year.
- 2.7 **Strategic Benefits**
- Enhanced capacity for tackling illicit tobacco at a regional and national level.
 - Improved intelligence sharing and operational coordination.
 - Strengthened partnership working across local authorities and partner enforcement agencies.
 - Increased visibility and deterrence of illicit tobacco activity.
 - Support for local enforcement teams through specialist expertise and resources.

3.0 Conclusions

- 3.1 This report has highlighted the critical role of illegal tobacco officers in curbing the distribution and sale of illicit tobacco products.
- 3.2 Joint initiatives between Trading Standards Services and HMRC have led to substantial progress in reducing the prevalence of illicit tobacco products, however, there are still areas that require further attention. It is recommended that there is a greater focus on enhancing intelligence-gathering capabilities and inter-agency collaboration to ensure sustained success in the fight against illegal tobacco.
- 3.3 By Fife Council hosting two Scottish Illicit Tobacco Officers as part of Operation CeCe, to combat the illicit tobacco trade, these officers will co-ordinate enforcement efforts, share intelligence and support local Trading Standards teams across Scottish local authorities. The initiative enhances capacity, strengthens partnerships and improves public awareness, with funding provided by HMRC and oversight through SCOTSS and Fife Trading Standards.

List of Appendices

1. Breakdown of costs to be funded by HMRC for 2 officers over a 4-year period
2. HMRC Track and Trace System

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HMRC Track and Trace System

The Tobacco Track and Trace System is a regulatory framework introduced in the UK in 2019 as part of the implementation of the EU Tobacco Products Directive. Although the system originated in the EU, it continues independently in the UK, under UK specific regulations following Brexit.

The purpose of the system is to combat illicit tobacco trade, track the movement of tobacco products, verify the legitimacy of products sold in the UK and supports enforcement efforts against counterfeiting and smuggled tobacco.

How the System works

All cigarettes and hand rolling tobacco manufactured and imported into the UK must carry a Unique Identifier Code (UID) on each pack.

The UID allows for tobacco to be tracked and traced through the supply chain from the point of manufacture, including when manufactured out with the UK, through importation and to the final destination of retail outlets.

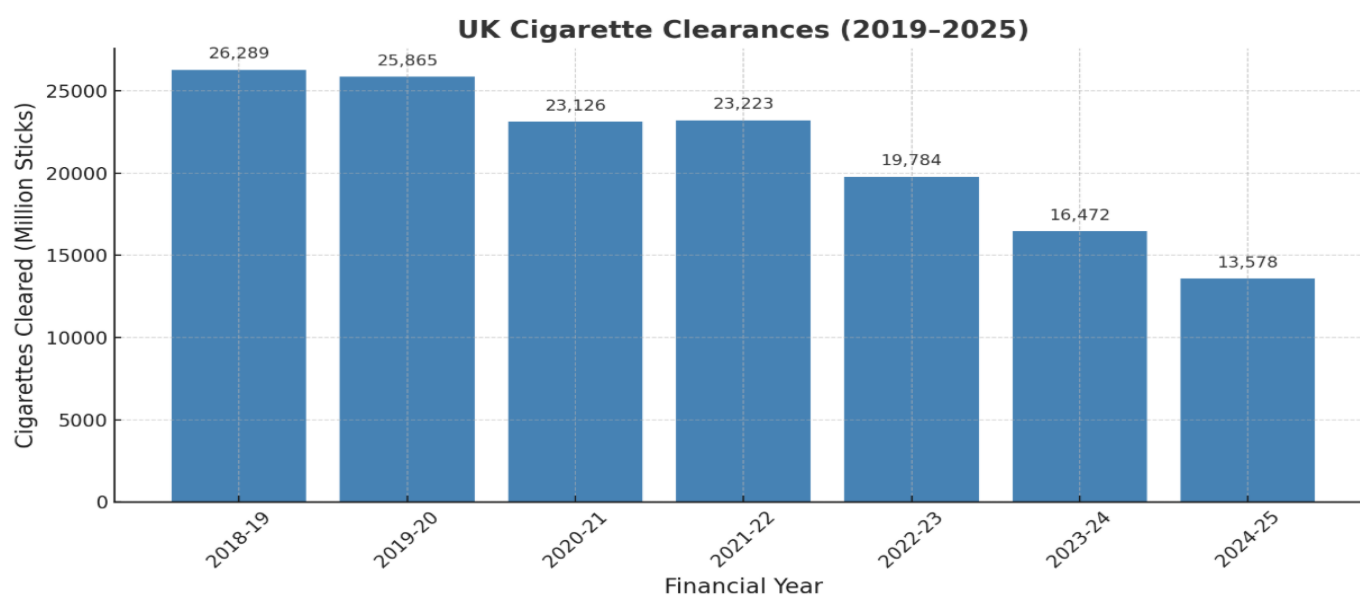
Businesses involved in manufacturing, importing, distribution or selling tobacco must register as Economic Operators and register their facilities i.e. warehouses and/or shops. This is managed through the Track and Trace Portal.

Scanning is required at the point of arrival and dispatched to and from each facility in the supply chain up to the first retail outlet.

Enforcement

The Track and Trace system supports enforcement efforts to reduce illegal tobacco in the UK. It helps regulators protect public health and legitimate businesses by enhancing supply chain transparency. It provides evidence for HMRC Sanctions and criminal enforcement by Trading Standards.

The chart below shows the UK cigarette clearances from 2019 to 2025 (in millions of sticks/individual cigarettes).



Source used to produce the chart [Tobacco Bulletin - GOV.UK](#) and [Tobacco statistics background and references - GOV.UK](#)

Year 1

	Per officer £	2 officers £
Salary (including on costs)	59,261	
@ 75% for first year	44,445	88,890
Equipment	4,000	8,000
Management	5,000	10,000
Travel expenses	7,000	14,000
Total	64,445	120,890

Years 2 to 4

	Per officer £	2 officers £
Salary (including on costs)	59,261	118,522
Management	5,000	10,000
Travel expenses	7,000	14,000
Total	72,261	142,522

11 September 2025
Agenda Item No. 8

Active Travel Strategy and Action Plan

Report by: John Mitchell, Head of Roads and Transportation Services

Wards Affected: All

Purpose

The purpose of this report is to seek committee approval for the Active Travel Strategy and Action Plan for Fife 2025-2035.

Recommendations

It is recommended that committee approves the Active Travel Strategy and Action Plan for Fife 2025-2035, as detailed in Appendix 1.

Resource Implications

There are no direct financial implications from this report. The strategy would be delivered over a long timeframe in partnership with communities, council services, partners and stakeholders. Approval for projects will be sought from local area committees.

External funding opportunities will continue to be explored with funding being identified prior to the start of individual projects.

Legal & Risk Implications

No legal or risk implications attach to this report and/or the Active Travel Strategy and Action Plan because both implement Action 1 of the Local Transport Strategy.

Impact Assessment

The Fife Environmental Assessment Tool (FEAT) has been satisfactorily completed, together with an Equality Impact Assessment (EqIA) for each of the actions in the strategy and a Strategic Environmental Assessment (SEA) and EqIA for the Local Transport Strategy was approved by Cabinet on 30 November 2023 (2023 CC 102 Para. 185 refers). The EqIAs and SEA can be found in Appendix D in the ATSAP document (Appendix 1).

Consultation

Fife Council's Finance and Legal Services have been consulted.

A working group from officers in Roads and Transportation, Planning, Housing, Education and Communities Services contributed to the development of the strategy.

External stakeholder and public consultation took place during January and February 2024, including nine ‘in person’ events across Fife and twelve online webinars or meetings with stakeholder groups. Stakeholder groups included councillors, community councils, public transport operators, equalities groups, climate groups, active travel interest groups and businesses.

In February and March 2025, further consultation events were held with councillors from across Fife. This consisted of seven briefing webinars and a meeting. Councillors unable to attend the events were able to submit comments on the strategy by email. In total, 39 councillors attended the briefings, contributing thoughts and representations from constituents/areas.

1.0 Background

- 1.1 Fife’s Local Transport Strategy (LTS) was approved by Cabinet Committee on 30 November 2023 (2023 CC 102 Para 185 refers) and included short, medium and long term actions. The Local Transport Strategy sets out four priorities:

- Fair access to daily activities
- Safe and secure travel for all
- A just transition to net zero
- A resilient transport network

- 1.2 A key action of the LTS is to advance an Active Travel Strategy and Action Plan (ATSAP).

LTS Ref. No.	Timeframe	Action
Action No.1	Within 12 months of approval	<i>‘Develop an Active Travel Strategy, including a plan for a Fife-wide walking, wheeling and cycling network’.</i>

- 1.3 The vision, objectives and actions of the LTS support the Sustainable Investment Hierarchy set out in Transport Scotland’s National Transport Strategy 2, which prioritises walking, wheeling and cycling above public transport; taxis and shared transport; and use of the private cars.
- 1.4 The strategy details the overarching policy provision, including links to climate, health and transport provision. Delivery of the strategy and action plan would help Fife Council meet the LTS objectives in alignment with national standards. The relevant actions and policies from the LTS are detailed in Appendix 2.
- 1.5 It would better co-ordinate and promote active travel initiatives through a common approach with communities and within Fife Council. The accompanying action plan prioritises deliverables within year 1, years 2-4 and years 5-10.
- 1.6 Whilst the Active Travel Strategy is a non-statutory document, it is a key requirement in supporting the council’s funding applications to external organisations, including the Scottish Government and Sustrans, etc.

- 1.7 The strategy has been developed through extensive public and stakeholder engagement. Transport data and modelling have been used to inform the proposed network of routes and standards have been developed in line with Cycling by Design guidance. The key stages in developing the strategy are shown below:

Timeline	Action
August 2023 – January 2024	Development of aspirational network and consultation materials. Parameters for the strategy drafted by the internal working group.
January – February 2024	Public and stakeholder consultation on the proposed network and supporting measures.
March – April 2024	Analysis of the consultation returns, early production of the network map and initial strategy drafts.
May 2024 – January 2025	Internal review across council services
February – April 2025	Internal review by councillors
May 2025 – Sept 2025	Committee approval processes

- 1.8 The feedback from the consultation highlighted the following main themes which are reflected in the final strategy draft.

- Support for the ambition of the proposed active travel network.
- The need for more suitable active travel routes.
- Suggestions for additional routes or route realignment.

- 1.9 The final round of consultations with councillors highlighted the following themes for inclusion in the strategy.

- Public Transport Integration
- Surfacing and maintenance of routes
- Working with schools and education
- Engaging with communities
- Prioritising safety for pedestrians and cyclists
- Access and equality provision

- 1.10 The Strategy was presented to Scrutiny Committee on the 27 May 2025 (2025 ETCCS 51 para 140 refers). Members considered the report and noted the contents and approach within the draft final Active travel Strategy and Action Plan 2025-2035, delegating authority to the Head of Roads and Transportation Services to make any minor amendments prior to consideration by Cabinet Committee. Two actions were noted and have been incorporated into the strategy document, these were:

- Add active travel information for all council events and venues.
- Make active travel data collection results available to members

2.0 Issues and Options

- 2.1 In keeping with the LTS priorities, the Vision for the Active Travel Strategy is: ***‘more people are enabled to walk, wheel and cycle more often for functional and recreational journeys in Fife’.***
- 2.2 The key objectives of the Strategy support the vision by addressing the main barriers to active travel, including:
- Real and perceived road safety and personal security risks
 - Active travel routes that are unattractive, incoherent or are not accessible to everyone
 - Many people do not know of active travel routes that may be available for their journeys
 - Many people do not have access to bikes, training, or other support to enable them to walk, wheel or cycle
 - Social norms, such as perceived car dependency, lead many people to favour other travel choices
- 2.3 The strategy commits, with partner support, to:
- Providing a network of high quality and well-maintained routes for walking, wheeling and cycling within and between communities
 - Improving integration of active travel with other modes
 - Encouraging more people to walk, wheel and cycle through promotion and behaviour change campaigns
 - Enabling more people to walk, wheel and cycle for example cycle training, access to bikes and led walks
- 2.4 The Action Plan proposed within the Strategy is extensive and would be delivered over the long term. The proposed network has been prioritised and individual projects in each council area will be advanced as resources and funds are identified. Network development will focus on three main priorities for improving active travel infrastructure. The three main priorities are:
- Area Transport Plan derived projects / community-led projects
 - ATSAP Network prioritisation process
 - Active travel network upgrades
- 2.5 The proposed network identifies local and strategic routes, including the National Cycle Network and it is intended that the proposed network plan would be made available online as an interactive map.
- 2.6 Any proposed projects will be presented to each local area committee for consideration in the Spring of each year, as part of the final Annual Roads Programme report. It should be noted that any approval will be subject to the receipt of annual, in year active travel infrastructure funding from Transport Scotland. Appendix 3 illustrates the proposed process for implementing active travel infrastructure in Fife.

3.0 Conclusions

- 3.1 The Active Travel Strategy and Action Plan for Fife 2025-2035 will help co-ordinate development and delivery of active travel measures within Fife and is complementary to Fife Council's Local Transport Strategy and Transport Scotland's National Transport Strategy. The strategy will also help Fife align with national aspirations.
- 3.2 The strategy has been developed through extensive community and stakeholder consultation and reflects the current opportunities and challenges associated with sustainable and active travel modes of transport. It will help align future projects with potential funding opportunities and assist the council, communities and partners to incorporate sustainable and active travel as an integral part of other associated policy areas.
- 3.3 The document and network mapping highlights opportunities for communities to help implement the strategy at a local level, for example, via community led projects or behaviour change initiatives and includes a monitoring process, to support and track progress.

List of Appendices

1. Active Travel Strategy and Action Plan 2025-2035 ([Active Travel Strategy and Action Plan](#))
2. Summary of LTS Objectives, Actions and Policies related to active travel
3. Process for Infrastructure Implementation

Background Papers

The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act, 1973:-

- National Transport Strategy 2, Transport Scotland
[National Transport Strategy 2 | Transport Scotland](#)
- Cycling by Design 2021, Transport Scotland, Sustrans, SCOTS
[Cycling by Design Update 2021 \(transport.gov.scot\)](#)

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Summary of LTS Objectives, Actions and Policies related to active travel

Note: Measurement and baseline data for the LTS objectives has begun to be developed for Year 1. A Year 2, 2024 monitoring review will be undertaken when resources allow.

Local Transport Strategy objectives which the ATSAP will assist

Objective 1	<p>Increase the proportion of trips that are walked, wheeled or cycled to 30% by 2033, from a baseline of 23% in 2019.</p> <p>ATSAP response: Improving active travel infrastructure through the network plan's three priorities.</p>
Objective 7	<p>Increase the proportion of bus infrastructure, active travel infrastructure and town centres that meet modern accessibility standards by 20% by 2033.</p> <p>ATSAP response: Routinely removing physical barriers along paths and improving widths and gradients where practicable.</p>
Objective 9	<p>Increase the proportion of people who feel safe when walking, wheeling and cycling, and on public transport, by 20% by 2033. (Baseline from 2022 45% feel safe when walking, wheeling or cycling)</p> <p>ATSAP response: Active travel infrastructure is built with safety in mind, this can include ensuring passive surveillance.</p>
Objective 10	<p>Provide leadership in working with others to reduce Fife's transport emissions by 56% by 2030, compared to a 1990 baseline. (From the Scottish Government target for Scotland)</p> <p>ATSAP response: Fife Council will host active travel workshops and include key stakeholders, to lead the response to reducing transport emissions in Fife by encouraging active and sustainable travel.</p>
Objective 11	<p>Support a reduction in total car kilometres travelled by 20% by 2030, compared with a 2019 baseline.</p> <p>ATSAP response: Extending the active travel network will enable more journeys to be undertaken by sustainable modes of travel.</p>
Objective 12	<p>All newly approved developments within settlements, with greater than five dwellings or employees, will be accessible by quality active travel and public transport by 2030.</p> <p>ATSAP response: Working across council services and with partners to ensure new developments are connected to the active travel network.</p>

Local Transport Strategy actions which the ATSAP will assist

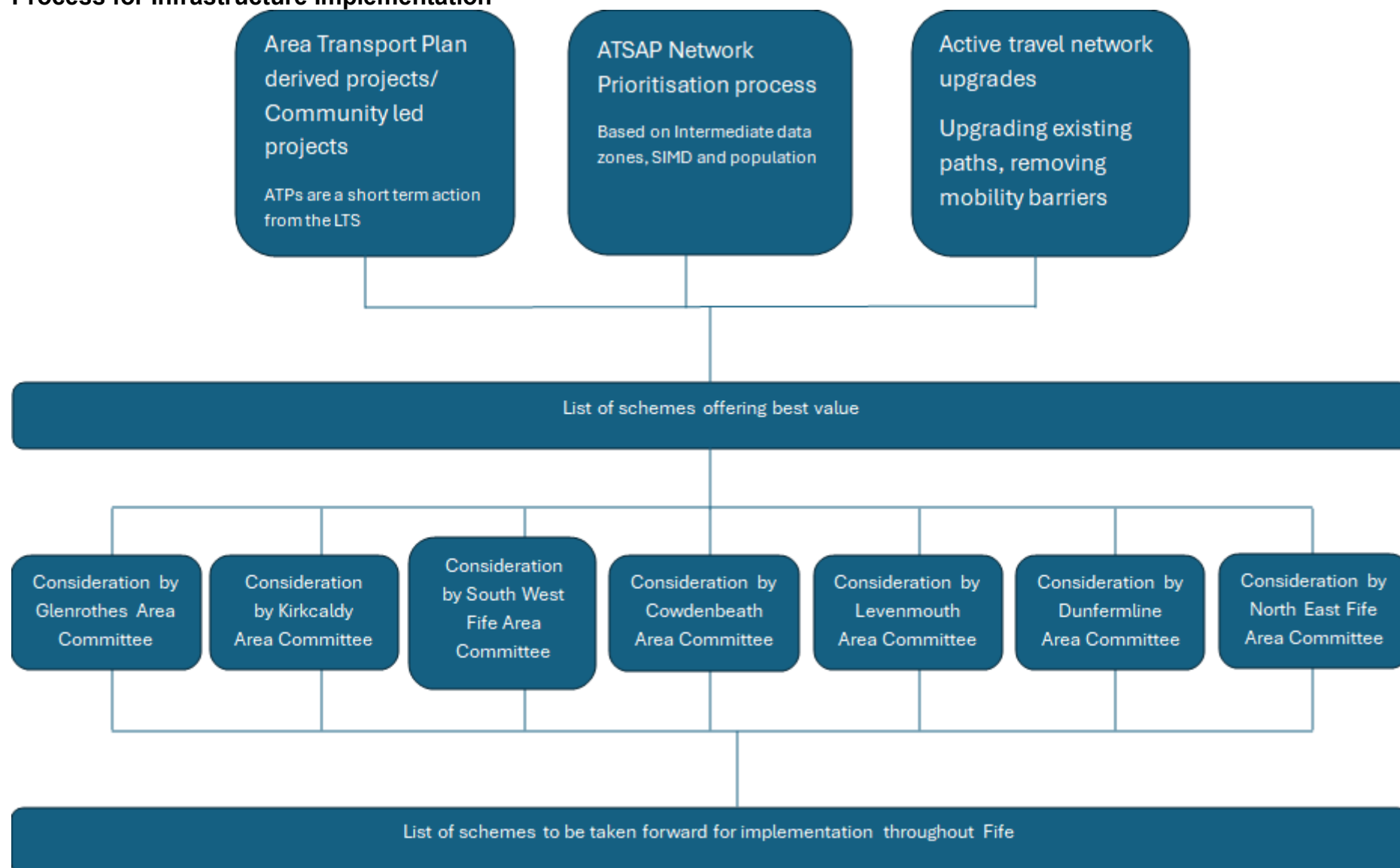
Action 1	Develop an Active Travel Strategy, including a plan for a Fife wide walking, wheeling and cycling network.
Action 8	Consider adopting traffic-free walking, wheeling and cycling routes as part of the public road network, by reviewing our policy on active travel route adoption.
Action 24	Investigate the feasibility of a town Circulation Plan in Fife. Circulation Plans promote walking, wheeling and cycling and close some direct vehicle routes in a town centre to improve safety and air quality.

Action 38	Support partners to deliver step-free access at all Fife railway stations.
Action 39	Review the current School Streets trial and consider implementing in other locations across Fife. School Streets restrict non-residential traffic near schools during pick-up and drop-off times to improve safety and air quality for pupils.
Action 40	Review the Fife Council street lighting policy to provide clarity on how traffic-free walking, wheeling and cycling routes should be lit.
Action 48	Deliver a communications campaign to encourage a reduction in car travel, using the Transport Scotland 20% Traffic Reduction Toolkit.
Action 49	<p>Consider including the following policies in Fife Council's Local Development Plan 2:</p> <ul style="list-style-type: none"> • New developments should be located where they minimise the need to travel, with higher density dwellings near existing sustainable transport links and the provision of local services (Transit-Oriented Development and 20-minute neighbourhood/local living principles). • All new developments (with greater than five dwellings or employees) must include sustainable transport, including active travel and public transport. • Funding from developers (developer contributions) should be used to fund sustainable transport interventions. • Developers must subsidise public transport services in new developments until passenger numbers can support a commercial service. • Reduce maximum parking spaces allowed in some types of new development and support developments with no or low levels of parking.
Action 50	Deliver active travel, public transport and road links to serve housing development in Dunfermline, through the Dunfermline Strategic Transport Intervention Measures.
Action 51	Review what transport infrastructure is required to support Strategic Development Areas during the development of Local Development Plan 2.

Local Transport Strategy Policies which the ATSAP will assist

Policy 1	Adopt the Sustainable Travel Hierarchy
Policy 2	Support community groups from all areas to deliver community-led active travel projects.
Policy 9	<p>Do not provide new road capacity unless:</p> <ul style="list-style-type: none"> • Other strategic priorities will be significantly disadvantaged or links to new developments are required; and • The road prioritises walking, wheeling, cycling and public transport; and • No traffic growth is generated

Process for Infrastructure Implementation



11 September 2025
Agenda Item No. 9

Land Reform (Scotland) Act 2003 - Access Rights at East Dock, Burntisland

Report by Head of Community and Neighbourhoods Service and Head of Legal and Democratic Services

Wards Affected: Ward 9 – Burntisland, Kinghorn & Western Kirkcaldy

Purpose

At its meeting on 8 May 2025 Fife, Full Council agreed a motion requesting officers to bring a report to the Cabinet Committee covering:

- a summary of the Council's approach to managing access rights in general;
- a summary of the Council's position on access rights around the East Dock as defined under the Land Reform (Scotland) Act 2003; and
- a recommendation on options for access at East Docks and any associated enforcement action, with an indicative timeline for any enforcement action.

Recommendations

It is recommended the Cabinet:

- (1) note the Council's approach to managing access rights;
- (2) note that officers will continue to exercise the council's statutory function by reviewing information as it becomes available, engaging with interested parties and ensuring that any existing access rights are respected;
- (3) note that no further enforcement action currently is recommended on access rights at East Docks Burntisland; and
- (4) note that formal enforcement action cannot be taken at this time.

Resource Implications

There are no resource implications arising from the recommendations in this report.

Legal & Risk Implications

The Council are statutorily obliged to maintain access rights in terms of the Land Reform (Scotland) Act 2003 and the Countryside (Scotland) Act 1967.

Impact Assessment

No policy and/or budget is impacted by this report and/or any new service delivery proposed. As such, no impact assessment is necessary or required.

Consultation

Colleagues in Legal and Democratic and Communities and Neighbourhoods Services have contributed to this report.

Since this issue has been raised officers have also prepared briefing notes for local elected members and held discussions with BHAT, Forth Ports and the community council.

1.0 Background

- 1.1 Local authorities in Scotland have a legal obligation to uphold public access rights in terms of the Land Reform (Scotland) Act 2003 and the Countryside (Scotland) Act 1967. This includes managing access, planning for core paths, establishing Local Access Forums as well as ensuring access rights are upheld, planning for a system of core paths to provide reasonable public access throughout the area and publicising the Scottish Outdoor Access Code along with other bodies like NatureScot.
- 1.2 The council has a duty to protect and keep open existing rights of way and other routes that facilitate access. This could involve ensuring that routes are maintained and any obstructions addressed by responding to reports of obstructions or irresponsible access behaviour and taking action to resolve issues.

Summary of Access Rights

- 1.3 Core paths and public rights of way are both key elements of Scotland's outdoor access network, providing varied routes that connect people with natural landscapes. In broad terms, both give access across land in Scotland for particular purposes but **individually core paths and public rights of way each have unique features such as how they are created, who can use them and who is responsible for maintaining them.** The following is a summary of both types of access route and the important differences that landowners and members of the public should be aware of.
- 1.4 A **Core Path** is a route that is part of a network designated as such by the local authority under the Land Reform (Scotland) Act 2003 (the Act that originally established Scotland's public access rights, or "right to roam" as it is colloquially known). Under that legislation, every local authority in Scotland was required to draw up a plan for a system of paths to give the public reasonable access throughout their area. In common with Public Rights of Way, Core Path routes have a protected legal status.
- 1.5 Core Paths are intended to provide public access to the outdoors, connect communities, promote recreation and encourage healthy lifestyles. Core Paths can include a variety of routes such as footpaths, cycle tracks, bridleways and waterways and they can traverse diverse landscapes from urban areas to remote rural regions.
- 1.6 As with all access rights created under the 2003 Act, the public must exercise responsible behaviour when using Core Paths and are expected to respect the interests of others, the environment and take responsibility for their own actions. Anyone not doing so can be asked to change their behaviour or leave the route.
- 1.7 Whilst local authorities are required to designate the route of Core Paths and to ensure they are not illegally obstructed, **they do not have a statutory duty to maintain or signpost** them. In practice, most councils do try to work with private landowners and other stakeholders to assist in keeping core paths in useable condition, but limited budgets can mean that the burden of path creation, ongoing maintenance and signage often falls on the landowner.

- 1.8 Core Paths are not specially highlighted on Ordnance Survey maps, although many of them do appear on the maps as paths and tracks. If you want to check the location of a Core Path, you can find an online portal showing all Core Paths on the council's website and that of NatureScot.
- 1.9 **Public Rights of Way** are **specific routes** over which the public has a **legally protected right to pass** for the purposes of travelling between **two public places**. These rights of way are distinct from Core Paths and the broader access rights established under the 2003 Act, in that they have been **established under common law** and are not governed by any one single statute.
- 1.10 Public Rights of Way are historic in nature and have four essential criteria which must be evidenced. The route must:
- Connect one public place to another
 - Follow a more or less defined route which is clear and consistent
 - Have been used by the general public as a matter of right (rather than with the landowner's consent), openly and peacefully
 - Have been used continuously for at least 20 years
- 1.11 Public Rights of Way are quite distinct from Core Paths in that not every person will automatically have a right to use them. As most of the Public Rights of Way are created by **prescription**, how the route has been used over the 20-year prescriptive period will determine who has a right to use a Public Right of Way. For example:
- Pedestrian only use allows continued use by pedestrians only
 - Pedestrian and horse rider use allows continued use by both
 - Pedestrian, horse rider and vehicular use allow continued use by all three classes
- 1.12 Generally, a route will have been established by pedestrian use and so it can be assumed pedestrians will have a right to use a Public Right of Way without making further enquiries.
- 1.13 As public rights of way are created through continuous use over a period of more than 20 years, it is also possible for the right to be **lost by non-use for over 20 years**.
- 1.14 Due to their nature, no specific person or body is responsible for maintaining a Public Right of Way. It is entirely at the discretion of a landowner, public authority or path user as to whether they choose to maintain and repair a Public Right of Way.
- 1.15 Where a Public Right of Way is obstructed, any member of the public may take enforcement action in court in their own right as can the council.
- 1.16 Both Core Paths and Public Rights of Way are a vital part of Scotland's outdoor access network, providing a framework that allows people to enjoy the country's landscapes, connect with nature and move between communities. Whilst Core Paths and Public Rights of Way both facilitate public access over land in Scotland, not all routes benefit the general public or give an automatic right to pass over land, whether that be on foot, by vehicle or another means of non-motorised transport and it is therefore important to be clear on the specific rules that apply to any particular access route.
- 1.17 Successful public use and private management of these access routes depends on an awareness of the correct legal framework that applies, as well as ongoing collaboration between landowners, local authorities and communities.

- 1.18 The laws governing access rights in Scotland can be complex and can take significant resource in terms of time and costs to research properly.

Background information East Docks Burntisland

- 1.19 The council, as planning authority, considered an application for the Burntisland Dock area in 2021 in relation to a Listed Building Consent. Planning application reference 21/01493/LBC for Listed Building Consent to erect fencing and access gates to part of the Burntisland harbour was submitted in May 2021 and approved by members of the Central and West Planning Committee at its meeting of 29 September 2021 in line with the officer recommendation. There was no need for an application for planning permission for the fencing and gates (other than the Listed Building aspect) as these works were considered to be Permitted Development under Class 35 – ‘Dock, pier, harbour, water transport, canal or inland navigation undertakings’, as defined in The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended. In this instance, Forth Ports Limited are classed as a Statutory Undertaker and therefore benefit from these Permitted Development Rights.
- 1.20 To allow the works to commence, all necessary planning consents required to be in place, including in this case Listed Building Consent because of the close proximity of listed buildings to the planning application site. As such, the planning consent was required to ensure that the proposed development did not significantly detrimentally impact on the visual appearance and setting of the protected buildings. As approval was granted, this authorised the owner of the planning site and surrounding area to erect metal railings around the East Dock perimeter in the interests of health and safety given the harbour is an active working harbour and to minimise any conflict of use of the area.
- 1.21 In the planning authority’s assessment of the planning application, the Countryside & Access Officer was consulted and confirmed that no Rights of Way were recorded by the council over the site and the networks of paths enjoyed by the community might be described as permissive – in other words – enjoyed with the permission of the land interest consent rather than exercised of right.

There are also areas where access rights do not apply and these are set out in the Land Reform (Scotland) Act 2003 at Section 6. The list of areas where access rights are not included includes land on which works are being carried out by a Statutory Undertaker for the purposes of the undertaking. A core path could not be promoted over the site for the same reasons.

- 1.22 The council have no interest in the area other than the statutory obligation to protect and maintain access rights. Forth Ports is the landowner and controller of the area including the working harbour and by virtue of the Forth Ports Authority Order Confirmation Act 1969, Forth Ports is the Statutory Harbour Authority for the Firth of Forth with a number of statutory powers and duties including in relation to conservancy and the safety of navigation, and the licensing of works. These statutory powers and duties mean that Forth Ports is a statutory undertaker under planning legislation and so has the benefit of the Permitted Development Rights referred to above.
- 1.23 Officers have supported both the community and Forth Ports in discussions to try and agree a resolution.
- 1.24 BHAT (Burntisland Harbour Access Trust) is understood to have engaged with Forth Ports but have recently desisted from doing so and concentrated their intention to be a focused campaigning organisation with the aim of persuading Fife Council to recognise access rights in this area and take action to secure the public have access to the same. It is also understood that Forth Ports have engaged and continue to engage with the Community Council on such matters.

2.0 Summary of current position

Summary of Position on Access Rights at the East Dock and Enforcement Action

- 2.1 The community seek access in this area to be recognised by the council and/or provided by Forth Ports and have provided the council with a copy of a legal opinion they obtained on the issue of access rights at East Dock by a firm of solicitors they engaged to carry out this work. This legal opinion provides an overview of the law surrounding access rights and although council officers largely accept the content of the opinion, it does not set out a basis for the council to seek to enforce any access rights in this circumstance. To date, no new information has been presented to persuade the council that the previous position confirmed during the processing of the planning application should be reconsidered.
- 2.2 Officers therefore maintain the view that Forth Ports Limited have restricted access rights through the exercise of their Permitted Development Rights lawfully and in accordance with the correct statutory regulations to comply with Health and Safety as well as other relevant requirements necessary to protect an active working harbour facility. All necessary planning related approvals (i.e. Listed Building Consent) have been properly submitted, assessed and secured. A copy of the Planning Services' report to the September 2021 committee is attached as Appendix 1 to this report for members' information and consideration as is the advice and guidance from the council's Countryside & Access officer (Appendix 2).
- 2.3 Accordingly, in terms of the access rights in this area, the officers' position remains the same as was confirmed at the time the Listed Building Planning Application was approved. Forth Ports, as a statutory undertaker, lawfully erected a boundary feature around the working harbour area. As such, no enforcement is considered relevant or appropriate at this time.

Summary of Approach to Managing Access Rights in General

- 2.4 Fife has 400 Core Paths (around 1694km in length), many Rights of Way and other informal paths enjoyed by Fife's communities and visitors; significantly higher than many other local authorities. The Outdoor Access generic e-mail address regularly receives a high volume of queries, some involving historic cases that have been unresolved for many years, obstructions to paths, requests for path maintenance, planning and event applications seeking temporary and/or permanent path closures, general access restrictions and FOI applications.
- 2.5 The operational activities to deliver the council's statutory responsibilities for Outdoor Access have recently transferred to Fife Coast and Countryside Trust (FCCT) to provide more resilience and maximise the complementary skill sets to deliver the access function on behalf of the council.
- 2.6 With the challenge of limited resources, and the backlog of legacy cases still requiring attention, FC/FCCT is currently reactive when dealing with Outdoor Access, reliant on members of the public and landowners or occupiers in highlighting issues. The council has a neutral role in responding to these issues and will focus on achieving the best outcome for all involved unless enforcement action proves necessary. Many queries require site visits, discussions with stakeholders and checking legalities which is time intensive. FC/FCCT is striving to have a more proactive and systematic approach to delivering statutory responsibilities for Outdoor Access.

3.0 Conclusions

- 3.1 As requested, this report is brought to Cabinet Committee to set out officers' assessment of the statutory position on access rights around the Burntisland East Dock Area and to clarify the council's approach to managing access rights in general.
- 3.2 Officers do not consider any enforcement action would be appropriate at this time in relation to the Burntisland Dock area given that Forth Ports are a statutory undertaker and, as such, have acted lawfully in enclosing the active harbour area from unauthorised and/or public access. This being the case, there is no recommendation proposing options for access at East Docks and any/or associated enforcement action. Rather, the recommendation is that officers continue to monitor the situation, assist the community and land interests where appropriate in their discussions regarding this issue, and consider any new information that may come to light – as would happen with such matters elsewhere in Fife.

List of Appendices

1. 21/01493/LBC – Committee Report to Central and West Planning Committee (September 2021)
2. Advice and guidance from Council's Countryside & Access Officer to the application (dated 31 August 2021)

Background Papers

The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act, 1973:-

- [Fife Council Minute - 8th May 2025](#) – 2025.FC.277

Report Contact

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CENTRAL AND WEST PLANNING COMMITTEE

COMMITTEE DATE: 29/09/2021

ITEM NO:**APPLICATION FOR LISTED BUILDING CONSENT REF: 21/01493/LBC****SITE ADDRESS: BURNTISLAND HARBOUR, HARBOUR PLACE,
BURNTISLAND****PROPOSAL : LISTED BUILDING CONSENT FOR ERECTION OF FENCING
AND GATES TO HARBOUR****APPLICANT: FORTH PORTS LIMITED
1 PRINCE OF WALES DOCK LEITH EDINBURGH****WARD NO: W5R09
Burntisland, Kinghorn And West Kirkcaldy****CASE OFFICER: Chris Smith****DATE 23/06/2021
REGISTERED:****REASONS FOR REFERRAL TO COMMITTEE**

This application requires to be considered by the Committee because:

The application has more than five letters of objection and is recommended for approval.

SUMMARY RECOMMENDATION

The application is recommended for:

Conditional Approval

**ASSESSMENT AGAINST THE DEVELOPMENT PLAN AND OTHER MATERIAL
CONSIDERATIONS**

Under Sections 14(2) and 59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, in determining the application the planning authority should have special regard to the desirability of preserving a Listed Building or its setting or any features of special architectural or historic interest which it possesses. Further to this, under Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, in determining the

application the planning authority should pay special attention to the desirability of preserving or enhancing the character or appearance of the relevant designated area.

1.0 BACKGROUND

1.1 Site Description

1.1.1 The application site relates primarily to the East Docks and immediate surrounding area of Burntisland harbour, which forms part of the settlement, as defined in the Adopted FIFEplan – Fife Local Development Plan (2017). The harbour is a statutory category 'B' Listed Building for which the original 16th century harbour was remodelled in the second half of the 19th century. The harbour (consisting of a tidal 'Outer' harbour as well as the controlled water level West and East Docks) is constructed predominantly of natural stone walls with some cobble/setts and tracks and inserted rail tracks from previous uses still present around the harbour wall perimeters. Low level metal barriers, handrails and 'tie-up' bollards are also located around the harbour area. The harbour also consists of large areas of concrete and tarmac hardstanding and has street lighting columns.

1.1.2 The surrounding land uses include Burntisland Railway Station ('C' Listed), residential as well as other commercial and transportation related land uses. The local sailing club also have premises/facilities (leased) on the southwestern side of East Dock as well as boat storage nearby. The East Dock as well as other areas near the tidal harbour area currently have temporary safety fencing around the majority of its northern flank. Pedestrian and vehicular access around and through the harbour pier areas as a whole can be achieved from multiple access points from the town. Several commercial premises nearby as well as some unsafe jetty's and harbour wall sections (some stone wall slippage) and the dock gate areas have all been fenced off with permanent modern style fencing (typically vertical lined metal fencing or barbed chain link fencing) on the grounds of security and health & safety measures.

1.1.3 The application site is located immediately adjacent to the south-western corner of the Burntisland Conservation Area (particularly along the Forth Place/Railway Station/site boundary lines). Adjacent to the listed harbour is the listed Railway Station building; the 'B' Listed Station House/32 Forth Place; 'C' Listed Forth Place and Harbour Place boundary wall and railings; and, the 'C' Listed No's 33-37 Harbour Place (including No's 1-6 Forth Place) buildings located at the corner of Harbour Place and Forth Place. A recorded local path (LP176 linking Harbour Place to the Police Station), is also located along the northern flank of the East Dock following the northern internal access road route and a further local path (LP160) linking the jetty with the Beacon Leisure Centre was also recorded in loop layout (mostly following the internal access road and then looping around the jetty head to return along the breakwater/coastal wall pier) in the area of land south of the East Dock area. No recorded formal Rights of Way or other recorded routes were noted and no part of the designated Coastal Path falls within the site. None of the internal access roads are adopted by Fife Council as Roads Authority.

1.1.4 The applicant (Forth Ports Limited) is deemed to be a statutory harbour/port authority and therefore has certain obligations and responsibilities and in planning terms has rights with regards to works that can be carried out without requiring planning permission. These matters are considered in more detail in the Representation section of this report.

1.2 Proposal

1.2.1 The application for Listed Building Consent is for the proposed erection of new 1.8 metres high galvanised weld mesh fencing (with 0.45m (3 rows) of barbed wire on top) and hollow tube posts and supports. The installation of palisade fencing (typically 1.8 to 2.3 metres high and sometimes stepped in formation) is also proposed as well as the installation of gated features for access into the site where necessary. 4 key sections of work are proposed (see also Proposed Site Layout plan – Document Number 03 online):-

Section 1 – proposed new steel mesh fence (with gate) would link the edge of a warehouse to an existing chain link fence located on land near to the Firth entrance to the East Dock.

Section 2 – proposed new steel mesh fence (with 2 gates) from the land adjacent to the Firth entrance to the East Dock north westwards to Forth Place, following the internal access road/footpath loading/unloading hardstanding/turning area then would wrap around the north-eastern corner of East Dock and link into an existing mesh fence near the pallet manufacturer. The fence would ensure a 3 metres wide footway would be retained and this would also allow for controlled vehicle access using lockable bollards installed at either end of the vehicular route.

Section 3 – proposed steel palisade fence (with sliding gate) would traverse the road linking to two existing fences either side of this sailing club and out head area roadway.

Section 4 – proposed stepped steel palisade fence at sea front linking corner of a storage yard connecting to the yard chain-link fence across the sea wall to the south and stepped across the rock armour of the breakwater to prevent unauthorised access along both sides of the sea wall.

1.2.2 The proposed fencing (in some instances linking existing fenced off areas) has been justified as being required on health and safety grounds as well to make the site safe and secure. This would result in the area immediately to the north of the East Dock basin and all the remaining land to the south of that dock and the south pier and associated ground between having access limited to those with permission. Access would probably be by means of an electronic security fob or a key code. Users such as Boat Club members would continue to have access by this means. Access to the narrow walkway between the southern pier wall and the rock armour would also be limited. All works would be supervised by a contractor appointed archaeologist to ensure no damage to significant historic elements.

1.2.3 The applicant's supporting statement advises that after a period of relatively low use, port activities at Burntisland, particularly in East Dock have increased in recent years mainly due to the relocation of a pallet company from Rosyth to Burntisland as well as increased use from a marine services company. More recently though they have advised that there has been an increase in cargo activity associated with the Fife ethylene plant and offshore windfarms. The applicants have also advised that Burntisland also serves as an alternative port to Kirkcaldy when vessels cannot get into the harbour there due to weather or sea conditions and a switch of destination can often occur with less than 12 hours' notice. More importantly though is that Burntisland is the only port within the Forth Ports Group which currently has no restriction to public access and as such all other ports operate within a secure fenced boundary with security provision at port entrances. Subsequently the applicants carried out an assessment of risk to the public and to authorised port users (customers and tenants) and a number of risks were identified including - risks of falling into water; contact with moving vehicles; lifting operations and related risks due to falling objects, moving objects or moving machinery; tripping over or release of mooring lines; and, the presence of numerous temporary and permanent structures

and related operations that present risk of falls from height, trapping/crushing and/or contact with sharp objects.

1.2.4 As part of the application submission, the applicant's submitted a detailed Legal Opinion which advises in summary terms amongst others, that as both owner and occupier of the port, Forth Ports has a duty of care to all visitors to ensure the premises are reasonably safe under the Occupiers' Liability (Scotland) Act 1960 which imposes an obligation to take reasonable care '*...towards persons entering on the premises in respect of dangers which are due to the state of the premises or to anything done or omitted to be done on them and for which he is in law responsible*'. Further to this, that Act also advises that '*...such care as in all circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger*'. An important note made in their submission is that '*...it is plainly not in the long-term public interest to leave land in a situation which is unsafe...and...more broadly, health and safety considerations are at the heart of all decisions related to the development and use of land (including under the Listed Building regime)...and that is reflected in the fact that it is entirely standard practice for health and safety matters to be assessed as part of considering the acceptability of development...*'. In other words, health and safety is paramount and therefore should be at the fore of decision making including those involving listed buildings on the premise that health and safety overrides the protection and enhancement of such structures if a risk can not be addressed using other means appropriate to satisfy both areas of remit etc. Members should note that other legislation was included in the submitted Legal Opinion to justify the development and impact on the built heritage assets.

1.2.5 In conclusion it was recommended that perimeter fences should be erected to reduce the possibility of an accident occurring in the areas of highest risk. A detailed assessment of risks and a justification at East Dock was included as Appendix A – Forth Ports Risk Assessment as part of the submitted Burntisland Harbour Installation of Perimeter Security Fencing – as included in the submitted Design Statement produced by LDN Architects and dated May 2021. The applicant's submitted Supporting Statement by Holder Planning dated 12 May 2021) also advises and gives examples of incidents where the proposed measures forming part of this application would address safety and security. The agent also advises that as Forth Ports is part of the ports Authorised Economic Operator status and in terms of customs requirements, cargo must at all times be stored securely and as such temporary fencing as erected at present does not offer adequate protection.

1.2.6 The applicant's agent has also advised that in designing this proposal consideration was given to the impact on built heritage assets hence the visually 'lighter' but equally secure mesh fencing along sections closest to the Listed Buildings and Conservation Area boundary. Equally consideration was given to the technical aspects and thus referred to Health & Safety Executive (HSE) guidance publication - L148 Safety in Docks: Approved Code of Practice and Guidance (2014) and in particular Section 55, which discusses fatalities relating to workplace transport and the hazard of unsegregated pedestrian/vehicle access. Whilst temporary fencing can be put in place for operations which benefit from advance planning, it does not allow for ad hoc quayside operations to be undertaken freely. The erection of permanent fencing allows the port to operate in an un-curtailed manner and eliminates the risk of injury to the public through interaction with workplace transport. In addition, the applicant has obtained advice and guidance on the design of the fencing from the contractor appointed to carry out the works. Taking into account all advice and considerations, Forth Ports has concluded that permanent fencing is required and it has been designed appropriately to take account of the built heritage assets using appropriately designed mitigation to provide a safe and secure environment whilst

retaining the visual relationship the harbour setting has with the town with minimal interventions into the historic fabric of the listed structure proposed.

1.3 Planning History

1.3.1 The planning history of the application site relates predominantly to a Notification of Intention to Develop application (02/03201/CNID) for the formation of a temporary vehicular access road; the erection of 2.4 metres high fencing and street lighting (retrospective) and the related Listed Building Consent application (02/03200/CLBC), both approved in November 2002.

1.4 Procedural Issues

1.4.1 Due to the ongoing COVID-19 restrictions a restricted site visit was carried out by the case officer and the Built Heritage officer within Fife Council during the assessment of this application. Drone footage was also recorded by the Council's Communications Team photographer to aid the application assessment.

1.4.2 The application was advertised in The Courier on 1st July 2021 and in the Edinburgh Gazette on the 29th June 2021 as the proposal involved works to a Listed Building (including its setting) – 21 day notice. A site notice was also erected on the 1st July 2021 and gave interested parties 28 days to make written representations. The overall expiry date for written comments was 29th July 2021. Whilst it is noted that some representations received were after that date they raised matters already included in earlier representations so were included as materially relevant matters in the determination of this application (see the Representations section later in this report).

1.4.3 Members should note that as this application is for Listed Building Consent (LBC) the area of remit for the consideration of such an application is quite specific (as outlined in paragraphs 2.2.1 to 2.2.5 inclusive below) and thus consideration should be confined to only those specific areas. Equally, as Members will also have noted, there has been a considerable amount of local interest on issues out with the scope and remit of an application for LBC - most notably planning related matters such as public access, ability to enjoy outdoor amenity areas, access being restricted, planning related permission and associated procedural matters. Whilst not relevant to the determination of this LBC application officers have provided clarity on these planning related matters to provide the necessary assistance and comfort to Members and interested third parties.

1.4.4 In terms of Environmental Impact Assessments (EIA), Fife Council considered the proposal under the terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. As the proposed site lies adjacent to part of the Proposed Special Protection Area (PSPA) 'Outer Firth of Forth and St Andrews Bay Complex and involves a Schedule 2 Section 10(g) harbour/port related development, consideration of the likely extent and significance of the proposal and its potential impact on the natural environment and built heritage assets identified locally was required. The Planning Authority concluded that as the works would not directly affect the PSPA, would not be linked, and would be ancillary works to an established harbour/port, the development did not constitute a significant enough effect in EIA terms and therefore an EIA was not required.

2.0 PLANNING ASSESSMENT

2.1 The issues to be assessed against the Development Plan and other guidance and material considerations are as follows:

a) Design, Scale and Finishes/Placemaking/Impact on Built Heritage (Listed Buildings/Conservation Areas)

2.2 Design, Scale and Finishes/Placemaking/Impact on Built Heritage (Listed Buildings/Conservation Areas)

2.2.1 Under Sections 59(1) and 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, in determining the application the Planning Authority should pay special attention to the desirability of preserving or enhancing the character or appearance of the relevant designated area and the Planning Authority should have special regard to the desirability of preserving a Listed Building or its setting or any features of special architectural or historic interest which it possesses.

2.2.2 Scottish Government Policy Statements Creating Places and Designing Streets both state that an emphasis should be placed on design providing a 'sense of place' and taking cognisance of the context of the surrounding area, design should connect and relate to the surrounding environment. The approved SESplan (2013) advises that local Development Plans should have regard to the need for high quality design, energy efficiency and use of sustainable materials, whilst Policy 1B advises that Development Plans will ensure there are no significant adverse impacts on the integrity of international, national and local designations and classifications (listing a number of ecological, landscape and visual, as well as built or cultural heritage protected site designations). Further to this, local Development Plans should also have regard to the need to improve the quality of life in local communities by conserving and enhancing the natural and built environment to create more healthy and attractive places to live, and ensure proposals have regard to the need for high quality design, energy efficiency and the use of sustainable building materials.

2.2.3 Scottish Planning Policy (SPP) (2014) (Valuing the Historic Environment) advises that the planning system should promote the care and protection of the designated and non-designated historic environment (assets, settings and landscape) and its contribution to sense of place, cultural identity, and enable positive change in the historic environment, which is informed by a clear understanding of the importance of the heritage assets affected and ensure their future use. Proposals should protect and enhance amongst others referenced; listed buildings and their setting, as well as Conservation Areas, and as such proposals should have high standards of design and form, layout, detailing and choice of finishing materials. Change should be sensitively managed to avoid or minimise adverse impacts on the fabric and setting and ensure its special characteristics and protected, conserved or enhanced. The policies of the Development Plan follow on from the guidelines set out in SPP and the Historic Environment Policy for Scotland (2019), both of which indicate that development that fails to preserve or enhance the character or appearance of the area should normally be refused. Development that does not harm the area, building or its setting should be treated as being one, which preserves the areas/buildings character or appearance.

2.2.4 Approved SESplan Policy 1B advises that local Development Plans will ensure there are no significant adverse impacts on the integrity of built and cultural heritage sites of international and national importance such as amongst others Listed Buildings. SESplan also advises that local Development Plans should have regard to the need to improve the quality of life in local

communities by conserving and enhancing the built environment to create more healthy and attractive places to live.

2.2.5 Approved FIFEplan Policy 1 (Part B (10)); Policy 10 (7); and Policy 14 (Built and Historic Environment) advise that proposals should safeguard the character and qualities of the built and historic environment and wider landscape, proposals should not lead to a significant visual detrimental impact on their surrounds, and new developments must meet the 6 qualities of successful places - distinctive; welcoming; adaptable; resource efficient; safe and pleasant; and, easy to move around and beyond. Further guidance on how these qualities will be interpreted and addressed are provided in Fife Council's Making Fife's Places Supplementary Guidance document. Further to this, Policy 14 also advises that development, which protects or enhances buildings or other built heritage of special architectural or historic interest, will be supported. Such interests in this instance include listed buildings or their setting (including structures or features of special architectural or historic interest), and the character or special appearance of a conservation area and its setting and also have regard to Conservation Area Appraisals and associated Management Plans. Support will only be given if, allowing for any possible mitigating works, there is no adverse impact on the special architectural or historic merit of the building (statutorily protected or not) or character or appearance of the conservation area or Designed Landscape.

2.2.6 The Scottish Government's document Creating Places: A Policy Statement on Architecture and Place for Scotland (2013) again refers to the 6 qualities of successful places but also sets out the need for new developments to include sustainability, good architecture, and quality building design. In doing so such developments will assist in conserving and enhancing the built environment, help promote regeneration, and thus add to the communities themselves. The document also advises that new development proposals should reflect a site's setting, the local form of buildings, and use of finishing materials.

2.2.7 Further guidance on the application of these principles to specific proposals is set out in Making Fife's Places Supplementary Guidance. Applicants are encouraged to demonstrate that the proposal has followed a robust design process. Making Fife's Places includes an evaluation framework to guide the assessment of the design process undertaken. In this instance both a Written Statement as well as a Design Statement have been submitted outlining the design considerations as well as the options and appraisals in meeting a final submitted design.

2.2.8 The Fife Council Burntisland Conservation Area Appraisal and Management Plan (2010) does not include the application site itself but as the southwestern corner of the Burntisland Conservation Area lies immediately adjacent to part of the site boundary consideration should be given to any advice and guidance contained within it. It should also be noted that whilst that document is tasked with the protection and enhancement of the Conservation Area as a whole it does make detailed analysis of listed structures within the designated area and also notes how important the development and evolution of the harbour is in terms of developing and influencing the town. The document makes reference to the style and condition (in 2010) of the buildings along Harbour and Forth Places and also notes that the listed Station House was associated with the first ferry terminal in Scotland dating to 1847. It is also noted that the amenity of the area is 'badly affected by the heavy traffic generated by the harbour' and the properties are predominantly of 19th century construction. The document then provides details and guidance regarding architectural features and building materials and areas where protection as well as improvements should be considered with regards to the public realm. No specific advice provided is relevant to the consideration of this application other than the need

(as outlined in other national and local built heritage guidance) to protect and enhance the assets of Conservation Area including sites out with but of a scale and nature that could have an impact on such designated areas.

2.2.9 In assessing this proposal and following a joint site visit with the planning case officer, the Council's Built Heritage officers advised of the following. Officers noted that from the comprehensive submissions and justification that the proposed fencing layout would not detrimentally affect any of those features of note, except for a small area of tracks and setts near Section 2 (NE corner of East Dock). They accepted that there was a range of justification for the fencing and gates. Officers also noted that the visually heavier palisade fencing would be located well away from public views and a lighter mesh type would be used elsewhere. Heritage officers also accept the justification for the fencing and for the rock armour to reinforce the sea wall to the East. Officers noted that whilst the line of the fencing reads as rather angular and awkward to the south and southwest of Forth Place that no doubt arises from the land title boundary and should either be smoothed out or make it less obtrusive when viewed from the nearby Conservation Area possibly through the use of some natural landscaping. Heritage officers concluded that they had no objections to the fencing and gate design, or layout as proposed as there would be no significant harm to the physical fabric of the listed harbour or setting of listed buildings

2.2.10 Built Heritage officers also noted that members of the community had written about the value of the views into and out of the harbour; particularly from the railway station forecourt into the harbour and from the harbour mouth and south side of the harbour into the conservation area. Officers therefore appreciate that there are therefore potential impacts on the character and setting of both heritage assets where the views would be affected that should be considered, managed and mitigated. Officers also appreciate and have considered in their assessment that the proposal would if approved, limit the access to and from features as well as limit vantage points/views of built heritage assets.

2.2.11 As a result of the joint site visit and consultation response the applicant and their agent advised that only a small section of the setts (2 or 3 blocks at most) would be removed in Section 2 in order to allow a fence post to be inserted if the application were approved. Discussions were also held regarding some visual improvements close to the Forth Place element closest to the site. In terms of 'smoothing out' the angular layout nature of the fence at that section, this would not be possible due to landownership and the need to keep the public access route open and free for movement. Planters containing natural landscaping/species suitable for this coastal location were considered and discounted as the planters themselves would allow potential easy access to scale the fence, however the introduction of planting to help provide some additional visual and natural screening along that section of fence would be possible and the applicants are more than happy to the imposition of a landscaping condition all to ensure the setting of the adjacent listed buildings are protected and enhanced as a result of this development. A draft condition has been included for Member's consideration should they be minded to approve the application.

2.2.12 In assessing this proposal Historic Environment Scotland were consulted. They advised that they had no comments to make. They also reiterated their standard response following a no comment recommendation in that *'our decision not to provide comments should not be taken as our support for the proposals. This application should be determined in accordance with national and local policy on listed building/conservation area consent, together with related policy guidance.'* In this instance the necessary assessments have taken account of national and local policies and guidance.

2.2.13 The proposal is considered acceptable and necessary in the interests of health and safety and security; would have no significant adverse impacts (either directly on the fabric or the setting) on any built heritage assets (e.g. the adjacent Conservation Area and nearby listed buildings); would although functional in nature reflect some of the existing boundaries/safety fencing found locally; would use visually finer but equally secure mesh rather than visually heavier/thicker palisade fencing in sections closest to the built heritage assets to ensure views of the harbour/listed buildings and their wider setting/relationship as well as the retention of the wider harbours character can still be achieved. Further to this, soft landscaping is proposed along a key and widely viewed section of the site boundary and there would be minimal interventions into the physical historic fabric. The proposal also has the general support of the Council's Built Heritage officer.

2.2.14 The location, extent, proposed finishing materials/metallic and specification of the proposed structures, are acceptable in meeting the above regulations, policies and guidance to secure an operational port/harbour. Overall, the proposal as a whole would not impact significantly on the listed harbour building or affect its setting and equally the proposal would not significantly impact on the listed status, architectural quality or setting of the adjacent listed buildings on and near Harbour Place/Forth Place. The proposal, with the inclusion of conditions to ensure the proposed soft landscaping is planted and maintained, would result in an acceptable development which respects the built heritage yet provides enhanced safety and security measures as the operational harbour becomes busier in the future.

CONSULTATIONS

Business And Employability	Support an active and expanding key Fife port facility.
Historic Environment Scotland	No comments
Built Heritage, Planning Services	General support and recommend some minor visual mitigation near Forth Place.

REPRESENTATIONS

A total of 262 representations have been made regarding this application, including one from the Royal Burgh of Burntisland Community Council and one from the Burntisland Access Trust. Members should also note 5 late representations were received, however they raised the same material issues as those submitted in time. Members should note that reference was made in multiple representations to a petition, however no such petition was formally lodged with this Planning Authority.

Members should also note that the vast majority of the letters received raised concerns relating to planning matters out with the remit of the Listed Building Consent application before them for consideration. However, given the issues raised and the importance to address matters, it was considered appropriate to provide Members with clarity and direction on the specific issues raised.

The material issues raised were:-

- Visual impact/inappropriate designs/out of scale.
- Detrimental visual impact on Listed Buildings and their setting.
- Detrimental visual impact on adjacent Conservation Area and its wider setting.
- No alternative design options considered/should be scaled down and repositioned to active areas only.

The non-material(Listed Building Consent) issues raised were:-

- Widely and regularly used access routes and outdoor amenity/recreation space would be restricted (especially the unused scrub/grassed area to the south of East Dock and the sea walkway and adjacent foreshore areas).
- Lack of Planning Permission.
- Lack of Certificate of Lawfulness (Proposed)
- Wrong interpretation of Permitted Development Rights.
- Contrary to access legislation.
- Scale of works include non-operational aspects of harbour (land to south of East Dock) so no need to restrict access.
- Narrowness of remaining footpath.
- Lack of public consultation.

In this instance the concerns raised relating to visual impacts and impacts on built heritage assets (Listed Buildings, Conservation Area and their respective settings) have been noted and are considered in detail in Section 2.2 of this report.

Lack of Planning Application

Concerns raised regarding the lack of a related application for Full Planning Permission, which would include in its assessment consideration, public access and specifically the public's ability to access and enjoy the outdoor amenity of parts of the harbour, are noted. However, the fences and gates as proposed in this Listed Building Consent application, are Permitted Development under the provisions of Class 35 (Dock, pier, harbour, water transport, canal or inland navigation undertakings) of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended.

In this instance Forth Ports Limited are classed as a Statutory Undertaker and therefore benefit from these Permitted Development Rights. On that basis, the works proposed in this instance do not require planning permission. Members should note however that in order to allow the works to commence, all necessary consents require to be in place, including in this instance Listed Building Consent.

Interpretation of Permitted Development Rights legislation

Concerns raised regarding the above Class not specifically listing boundary treatments as a permitted work and thus the Planning Service may have erred in their interpretation and as a consequence a planning application should have been lodged have also been noted and fully considered. Members should also note that, the applicant's legal specialists also submitted a Legal Opinion to outline their interpretation of the above Order and to confirm the lack of need for planning permission.

Given the third-party concerns, a legal opinion was also sought from the Council's Solicitors in the context of the current proposal. Legal officers concur with this Service interpretation and position that the applicant is a Statutory Undertaker and as such the works they propose are Permitted Development and do not require planning permission.

Lack of submission of a Certificate of Lawfulness (Proposed)

In light of the legislative requirements and permitted rights outlined in Class 35 above, concerns were also raised that in the absence of an application for Planning Permission, no formal request had been made by the applicant for a Certificate of Lawfulness (Proposed) to confirm that the proposed works were indeed permitted under the relevant planning legislation. In such instances there is no statutory requirement for an applicant to seek such a certificate.

Public Access and Rights of Way

Concerns raised regarding public access rights and Rights of Way legislation have been noted. In this instance the Council's legal officers and Countryside and Access officers have advised that the areas where access rights do not apply are set out in the Land Reform (Scotland) Act 2003 at Section 6. The list of areas where access rights are not included includes land on which works are being carried out by a Statutory Undertaker for the purposes of the undertaking specifically under Section 6(1)(g)(ii).

Alternative Schemes

In terms of concerns raised relating to the consideration of alternative schemes, Forth Ports Limited have gone through appraisals and lodged one option for consideration as before officers and Members. There is no requirement to demonstrate the design process as part of any Listed Building Consent application, but a Design Statement has been lodged along with details of justification.

Lack of Public Consultation

Concerns regarding a lack of formal public consultation prior to lodging the application are noted however there is no statutory requirement for a Listed Building Consent application of this scale and nature to go through a formal public consultation process prior to being lodged. Members should note however that the proper advertisement and notification process was followed post registration to ensure all interested parties had sufficient time to make written comments.

CONCLUSIONS

The proposal is considered acceptable in meeting the terms of the Local Development Plan, National Guidelines and relevant Council Planning Guidance

Overall, the proposal would not visually undermine the qualities or setting of the built heritage assets nor the adjacent Conservation Area and other important listed harbour buildings. The proposal would result in minimal physical alterations to the listed building(s) and would, through appropriate fence design and soft landscaping, respect the character of the historic harbour and surrounding streetscene/settings, whilst providing for the continuation of formalised functional security/safety measures typical of modern-day operational ports and harbours.

RECOMMENDATION

It is accordingly recommended that the application be approved subject to the following conditions and reasons:-

1. BEFORE ANY FENCES AND GATES ARE INSTALLED, details and samples of the specification and colour of the proposed external finishes shall be submitted for approval in writing by this Planning Authority.

Reason: In the interests of visual amenity; to ensure that the proposed development does not detract from the character and appearance of the B Listed Building or its setting, or the character of the adjacent Burntisland Conservation Area.

2. NO DEVELOPMENT SHALL TAKE PLACE ON SITE, until such time as a scheme of landscaping has been submitted to and approved in writing by the Planning Authority. All landscaping planting/seeding shall be carried out only in full accordance with such approved details unless otherwise agreed in writing with this Planning Authority. FOR THE AVOIDANCE OF DOUBT the landscaping area shall be carried out on the section of ground immediately adjacent to the fence at the south west corner of Forth Place.

Reason: In the interests of visual amenity; to ensure that the proposed development does not detract from the character and appearance of the B Listed Building or its setting, or the character of the adjacent Burntisland Conservation Area.

3. All planting carried out on the landscaped site shall be maintained by the developer to the satisfaction of this Planning Authority for a period of 5-years from the date of planting. Within that period any plants which are dead, damaged, missing, diseased, or fail to establish shall be replaced annually.

Reason: In the interests of visual amenity and effective landscape management; to ensure that adequate measures are put in place to protect the landscaping and planting in the long term.

4. BEFORE ANY WORKS COMMENCE ON THE LANDSCAPING, details of the future management and aftercare arrangements of the proposed landscaping and planting shall be submitted to and agreed in writing with Fife Council as Planning Authority. For the avoidance of doubt, the submitted details shall include any factoring or management regimes proposed including timescales; and, once agreed, those arrangements shall be complied with in full to agreed timescales and maintained as such in perpetuity unless otherwise agreed in written with this Planning Authority.

Reason: In the interests of visual amenity; to ensure that adequate measures are put in place to protect the landscape and planting in the long term.

STATUTORY POLICIES, GUIDANCE & BACKGROUND PAPERS

In addition to the application the following documents, guidance notes and policy documents form the background papers to this report.

National Guidance:

Sections 59 and 64 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997

Scottish Planning Policy (2014)

Circular 4/1998 The Use of Conditions in Planning Permissions (1998)

Circular 3/2013 Development Management Procedures (2013)

Circular 1/2017 Environmental Impact Assessment (Scotland) Regulations 2017

PAN 68 Design Statements (2003)

PAN 71 Conservation Area Management (2004)

PAN 1/2013 Environmental Impact Assessment (Revised June 2017)

Historic Environment Scotland – Policy Statement (2016)
Historic Environment Policy for Scotland (2019)
Historic Environment Scotland - Managing Change in the Historic Environment (Setting)
Scottish Government Creating Places: A Policy Statement on Architecture and Place for Scotland (2013)
The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations (2017)
Historic Environment Scotland and Scottish Natural Heritage – Environmental Impact Assessment Handbook (April 2018)
Designing Streets: A Policy Statement for Scotland (2010)

Development Plan:

Approved SESplan - South East Scotland Strategic Development Plan 2012-2032 (2013)
Adopted FIFEplan - Fife Local Development Plan (2017)

Other legislation:

The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended.
Occupiers' Liability (Scotland) Act 1960
Harbours Act 1964
Land Reform (Scotland) Act 2003

Other Guidance:

Fife Council Making Fife's Places – Appendix C (Historic Environments)
Health & Safety Executive - L148 Safety in Docks: Approved Code of Practice and Guidance (2014)
Fife Council Burntisland Conservation Area Appraisal and Management Plan (2010)

Report prepared by Chris Smith (Lead Officer) Chartered Planner and case officer (06/09/2021)
Report agreed by Mary Stewart, Service Manager

Date Printed 10/09/2021

Appendix 2 – Countryside & Access Officer Application Advice

From: Sarah Johnston <Sarah.Johnston@fife.gov.uk>

Sent: 31 August 2021 13:33

To: Chris Smith <Chris.Smith@fife.gov.uk>

Subject: Re: Access Rights and Safety Measures

An occupier of land has a duty to show reasonable care towards people on that land. The Land Reform (Scotland) Act 2003 states that the extent of this duty is not affected by the access provisions of the Act.

Occupiers Liability (Scotland) Act 1960 An 'occupier' of land has a duty to show care towards people on that land. The level of this duty of care is the level which it is reasonable to foresee will be needed so that people do not suffer injury or damage. The occupier must consider injury or damage which may be caused as result of any dangers due to the condition of the property, or of anything done or omitted to be done by the occupier which is his legal responsibility. The Occupiers Liability (Scotland) Act 1960 states: "The care which an occupier of premises is required, by reason of his occupation or control of the premises, to show towards a person entering thereon in respect of dangers which are due to the state of the premises or anything done or omitted to be done on them and for which the occupier is in law responsible shall.....be such care as in all the circumstances of the case is reasonable to see that the person will not suffer injury or damage by reason of any such danger." (Section 2.1) **Occupier** – The occupier is defined as the person (or body) "occupying or having control of land or other premises". Where premises are leased, then the respective duties of the landlord and tenant will depend upon the terms of the lease. Where a landlord is responsible for the maintenance or repair of the premises, he has to show the same duty of care to persons on the premises as an occupier would. Different people exercising different degrees of control could owe a duty of care at the same time. **Reasonable care** – The duty of care to be shown to a person on 'the premises' is to take reasonable care to see that the person does not suffer injury. What is reasonable will depend on the circumstances of each case, and is generally regarded as what a reasonable person would consider to be reasonable. Generally, the occupier will owe a duty of care if he/she reasonably could have foreseen that harm would be caused to a person on the property because of the occupier's act or omission. The case by case decisions contained in Part Two below help to define and illustrate this level of care and responsibility and foreseeability. **Nature of danger** – The hazard must be one which is due to the state of the premises (which might include natural dangers as well as man-made ones) or to anything done or omitted from being done on the premises for which the occupier is legally responsible. This generally involves the principle of the occupier having been negligent over his/her responsibilities. An occupier is not normally expected to guard against dangers which are obvious – see the case decisions in Part Two. **Persons entering onto the premises** – The occupier owes a duty of care to all persons entering onto his/her premises. This is irrespective of whether they have permission to be there or not, so in Scotland since 1960 no statutory distinction has been drawn between classes of visitors to the premises (unlike in England where the statutory duty of care owed to invited visitors is greater than the level of care owed to trespassers).

Land Reform (Scotland) Act 2003 The Land Reform (Scotland) Act 2003, Part One, establishes statutory access rights to land in Scotland. This Act states that – "The extent of the duty of care owed by an occupier of land to another person on the land is not ...affected by this Part of this Act or by its operation." (section 5.2). (The only exception to this is where a Path Order has been made, which would then involve the local authority).

Land Reform (Scotland) Act 2003 section 15 below. States Health and Safety at Work Act 1974 and other relevant legislation will be **unaffected** by the new access legislation.

In order to ensure public safety, section 15 provides local authorities with powers to enable them both to warn and protect the public against any danger on any land in respect of which access rights are exercisable. If anything which in the opinion of the local authority has been constructed or adapted in such a way that it is likely to injure those exercising access rights then consideration should be given, if appropriate to making the public aware of the dangers in using any particular route. It will be for each local authority to decide how to communicate this to the public. It also provides for authorities to indicate, enclose, or to give directions to land in respect of which access rights are exercisable on which there is a danger. Examples of this could be making them aware at the starting point of a walk or the use of signs. However, this power does not in any way relieve landowners/managers of their existing obligations under, for example health and safety regulations, in respect of their duty of care to people on their land. These obligations under Health and Safety legislation, (i.e. the Health and Safety at Work Act 1974 and other relevant legislation will be unaffected by the new access legislation.

However in exercising this power local authorities must be aware that land managers may, in their carrying out of legitimate land management practices have to use material or erect such things as barbed wire fences, which may prove hazardous to the public when they are exercising access rights. In that respect it is, therefore, important that local authorities will have to initially ascertain the reason why for example a fence has been so erected or adapted that it might cause injury. In all cases it might not be appropriate to have it removed.

So if they are putting up fences for land management reasons thats ok as long as the land management reason is genuine..

Hope that helps!

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Outstanding Remits from Committees

Title	Service(s)	Comments
9th October, 2025		
Pay Strategy and Job Evaluation Project	Human Resources	As agreed at 30.11.23 Cabinet meeting - para. 188 of 2023.CC.103 refers - Cabinet Committee Minute - 30th November 2023 - see also para. 4.1 of report - updates to be brought back to Cabinet. UPDATE - Deferred from June to October 2025.
Pedestrian and Cyclist Access to Household Waste Recycling Centres	Environment and Building Services	As agreed at 11.01.24 Cabinet meeting - para. 199 of 2024.CC.110 refers - Cabinet Committee Minute - 11th January 2024 - Deferred to a future meeting. UPDATE: CIRECO to undertake a full health and safety review of all their facilities. Report to Cabinet deferred to October 2025.
Scaling Up Housing First in Fife	Housing	As agreed at 6th March 2025 meeting - para 343 of 2025.CC.181 refers - Cabinet Committee Minute - 6th March 2025 - Noted next steps and further reporting as detailed in section 3 of the report. UPDATE (July 2025): Deferred to October to allow partners and services to discuss the evaluation at a workshop event being held in autumn.
Community Wealth Building - Progress Report	Property Services	As agreed at 10.10.24 Cabinet meeting - para. 293 of 2024.CC.155 refers - Cabinet Committee Minute - 10th October 2024 - Annual report to be provided of future CWB achievements.
Housing Allocation Policy Review Update	Housing Services	As agreed at 03.04.25 Cabinet meeting - para. 355 of 2025.CC.187 refers - Cabinet Committee Minute - 3rd April 2025 - Report back to Cabinet in Autumn 2025.
Review of Safeguarding and Whistleblowing Procedures	Chief Executive's Service	As agreed at 14.08.25 Cabinet Committee - para. 408 of 2025.CC.212 refers - Cabinet Committee Minute - 14th August 2025 - Urgent Motion unanimously agreed with a report back to Cabinet as soon as possible.

Title	Service(s)	Comments
6th November, 2025		
Education Service Anti-Bullying Policy	Education	As agreed at 02.11.23 Cabinet meeting – para. 169 of 2023.CC.93 refers – Cabinet Committee Minute - 2nd November 2023 - Report to be brought back in a year's time. UPDATE (July 2025): Working Group recently established - update report being submitted November 2025.
Fife Bus Network Review	Roads and Transportation Service	As agreed at 30.11.23 Cabinet meeting - para. 185 of 2023.CC.102 refers - Cabinet Committee Minute - 30th November 2023 - A report be brought back to a future meeting of the committee providing options for the council to begin the provision of not for profit bus services. UPDATE: Deferred from August to November 2025.
Tackling Marine Pollution - Membership of KIMO UK and KIMO International - Update	Planning	As agreed at 01.05.25 Cabinet meeting - para. 369 of 2025.CC.196 refers - Cabinet Committee Minute - 1st May 2025 - Six monthly update to be submitted on progress of KIMO membership.
4th December, 2025		
Mothballing of Kirkton of Largo Primary School Review	Education	As agreed at 09.01.25 Cabinet meeting - para. 322 of 2025.CC.170 refers - Cabinet Committee Minute - 9th January 2025 - A further report be brought back to committee no later than December 2025 reviewing the decision.
Affordable Housing Programme 2026-29 / Affordable Housing Phase 4	Housing	As agreed at 6th March 2025 meeting - para 343 of 2025.CC.181 refers - Cabinet Committee Minute - 6th March 2025 - Noted next steps and further reporting as detailed in section 3 of the report. UPDATE: Deferred from October 2025 to coincide with the SHIP report being submitted in December. Work currently underway to look at alternative delivery and financing models for AH.
Short-Term Let Control Areas Update	Planning	As agreed at 03.04.25 Cabinet meeting - para. 358 of 2025.CC.189 refers - Cabinet Committee Minute - 3rd April 2025 - A report to Cabinet in December 2025/January 2026 would further comprehensively address the risk and benefits of promoting a STLCA in Fife.

Title	Service(s)	Comments
Unallocated		
Social Housing Net Zero Standard (SHNZS) - Scottish Government Consultation Response	Housing Services	<p>As agreed at 07.03.24 Cabinet meeting - para. 223 of 2024.CC.122 refers - Cabinet Committee Minute - 7th March 2024 - A further report be brought back to Cabinet later in 2024.</p> <p>UPDATE: December 2024 - Deferred from January 2025 meeting as Scottish Government announcement on SHNZS is still awaited. An Elected Members' Briefing to be issued meantime.</p>
Fife Council's Arm's Length External Organisations - Governance Arrangements	Legal and Democratic Services	<p>Further to the 5th December, 2024 Cabinet meeting and following discussion at CPLG, all elected members have been invited to attend a meeting on the role of ALEOs to provide feedback and inform next steps. UPDATE: September 2025 - All member working group on ALEOs took place on 17 June 2025 and CPLG discussed on 3 September 2025. Motion to Fife Council on 19 June 2025 - Lead Officers for ALEOs to action.</p>
Fife Transient Visitor Levy Scheme	Business and Employability	<p>As agreed at 03.04.25 Cabinet Committee - para. 362 of 2025.CC.192 refers - Cabinet Committee Minute - 3rd April 2025 - Draft Levy Scheme to be developed and brought back to Cabinet Committee for approval prior to statutory consultation.</p>