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<b>Report To:</b>	<b>Environment and Regeneration Committee</b>	<b>Date:</b>	<b>5 March 2015</b>
<b>Report By:</b>	<b>Corporate Director, Environment, Regeneration and Resources</b>	<b>Report No:</b>	<b>E&amp;R/15/03/03/ SJ/AH</b>
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<b>Subject:</b>	<b>Local Development Plan (2014) - Proposed Supplementary Guidance on Enabling Development</b>		

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## 1.0 PURPOSE

- 1.1 To advise Members of the comments received during the consultation on the proposed Supplementary Guidance on Enabling Development and to seek Committee approval for the amended Guidance to be forwarded to the Scottish Government for permission to adopt it as Supplementary Guidance to the Local Development Plan 2014.

## 2.0 SUMMARY

- 2.1 The Planning etc. (Scotland) Act 2006 allows planning authorities to adopt statutory supplementary guidance, which provides further information on policies or proposals set out in the Local Development Plan.
- 2.2 The Inverclyde Local Development Plan 2014 – Policy HER6 ‘Enabling Development’ contains a commitment to adopt Supplementary Guidance on enabling development, which sets out the criteria that will be used to assess individual proposals.
- 2.3 In order to fulfil this commitment, and address concerns raised about enabling development during the public consultation on the Proposed Local Development Plan, draft Supplementary Guidance on Enabling Development was prepared for public consultation from 31<sup>st</sup> October – 29<sup>th</sup> November 2014.
- 2.4 Three representations were received in response to the public consultation; from the Scottish Government (including Historic Scotland), Kilmacolm Community Council (KCC) and Duchal Estate. A summary of the issues raised, and the response to them, are contained in Annex 2. The key amendments incorporated into the proposed Supplementary Guidance (refer to Annex 1) following public consultation are noted in paragraph 5.5 of this report.
- 2.5 This report provides background information on the development of Policy HER6, the preparation of Supplementary Guidance, the actions undertaken following public consultation on the Supplementary Guidance and the statutory process for adoption.

## 3.0 RECOMMENDATION

- 3.1 That the Committee approve the proposed Supplementary Guidance on Enabling Development as statutory Supplementary Guidance to the Local Development Plan (2014) and agree that the Head of Regeneration and Planning should forward the Guidance to the Scottish Government for permission to adopt.

**Aubrey Fawcett**  
**Corporate Director, Environment, Regeneration and Resources**

## 4.0 BACKGROUND

- 4.1 In the context of Scottish Planning Policy (2014), enabling development seeks to subsidise the cost of restoring a listed building and securing its long term future. The concept of enabling development is that development, which would otherwise be contrary to established planning policy and therefore not permissible, may be acceptable if it can be demonstrated that the public benefits of the proposal, e.g. restoring and securing the long term future of a listed building at risk of being lost, would outweigh any negative impacts. While enabling development can vary in type, it is most often associated with new build residential development to support the restoration and re-use (residential) of a historic building
- 4.2 Members will be aware that Policy HER7 in the Proposed Local Development Plan 2013 identified that enabling development may be an appropriate means of restoring the 'A' listed buildings at Ardgowan Estate, Duchal Estate and Finlaystone Estate, subject to the criteria listed in the policy. **Min Ref: 2/05/13 para 319**
- 4.3 During examination of the Proposed Plan, the reporter appointed by Scottish Ministers recommended that the Plan be modified to include a new 'enabling policy', in order to better align with Scottish Planning Policy. This new policy applies to all listed buildings and includes a commitment to prepare and adopt supplementary guidance, which sets out the criteria for assessing individual enabling proposals. The reporter made it clear that the preparation of supplementary guidance would also provide the scope to fully consider the concerns raised about enabling development during public consultation on the Proposed Plan. The reporter's modification was approved by Committee in June 2014 and the new enabling policy, HER6, was subsequently included in the adopted Inverclyde Local Development Plan. **Min Ref: 17/06/14 para 415**
- 4.4 In order to fulfil the commitment expressed in Policy HER6, draft Supplementary Guidance was prepared for a 4 week public consultation from 31<sup>st</sup> October – 29<sup>th</sup> November 2014. Details of the consultation were advertised and copies of the Supplementary Guidance made publicly available, while all relevant statutory key agencies, Community Councils and representees to the Proposed Plan were also notified. Three representations were received in response to the consultation; from the Scottish Government (including Historic Scotland), Kilmacolm Community Council and Duchal Estate. Following the public consultation a number of amendments were incorporated into the proposed Supplementary Guidance. These amendments are discussed in paragraph 5.5 of this report.

## 5.0 PROPOSALS

- 5.1 The proposed Supplementary Guidance (refer to Annex 1) sets out the criteria for assessing whether enabling development proposals comply with Policy HER6, specifically when a listed building will be considered at risk of being lost, when a proposal is the 'only means' and the 'minimum necessary' to restore and secure the long term future of a listed building and what public benefits will be appropriate. The supplementary guidance also sets out the processes which will support the assessment, determination and implementation of enabling development applications, including pre-application discussions, professional advice, the consultation process, and the use of legal agreements and/or planning conditions.
- 5.2 With regard to the public consultation, all representations and the response to them are provided in Annex 2. It is worth noting that the Scottish Government, on behalf of Historic Scotland, stated that they "*welcome the collaborative approach taken by Inverclyde Council in relation to this Supplementary Guidance and confirm that they have no further comments to offer*". This response followed direct engagement with Historic Scotland on an initial draft, at which point they also commented that the guidance was "*well considered and comprehensive*".
- 5.3 Kilmacolm Community Council's representation noted that the Supplementary Guidance "*represented very useful work in progress towards a policy on Enabling Development, but that it is not yet complete*". The representation highlighted a number of issues which required further consideration. Two of these issues have resulted in an amendment to the proposed Supplementary Guidance (see paragraph 5.5). The remaining issues have been addressed either through clarification or justification of the approach taken.

5.4 In contrast, the representation from Duchal Estate sought significant and wide ranging changes to the Supplementary Guidance, however the majority of these could not be accommodated as they related to Policy HER6 in the adopted LDP, and it is not within the scope of Supplementary Guidance to amend or go beyond policies in the Plan.

5.5 The key amendments incorporated into the proposed Supplementary Guidance following public consultation are to:

- widen the definition of ‘buildings at risk of being lost’, in order to prevent listed buildings having to decay further before they can be considered for enabling. This also avoids a greater scale of enabling development being required at a later date.
- remove the requirement for the financial justification, submitted in support of an enabling proposal, to be made publicly available. This followed advice from the Council’s Legal Service.
- clarify that while public benefits should be directly related to the use of the listed building and/or its setting, off-site public benefits will be considered where they are proportionate to the proposed development.
- remove the requirement for the applicant to pay for the verification of the financial justification. This followed advice from the Council’s Legal Service.
- encourage applicants to carry out pre-application public consultation, in the form of at least one public meeting. This will enable local communities to contribute to the identification of public benefits and provide the opportunity for any concerns/issues to be identified and resolved before submission of a planning application

5.6 A number of other minor amendments were made to aid clarity.

5.7 In accordance with Circular 6/2013 ‘Development Planning’, the Council is required to send Scottish Ministers a copy of Supplementary Guidance which they wish to adopt, along with a statement setting out the publicity (consultation) measures undertaken, the comments received, and an explanation of how these comments have been taken into account.

## 6.0 IMPLICATIONS

6.1 **Legal:** there are none arising from this report that have not already been covered.

6.2 **Finance:** there are none arising directly from this report.

### Financial implications

#### One off costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

#### Annually Recurring Costs/Savings

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

6.3 **Personnel:** there are none arising directly from this report.

6.4 **Equalities and diversity:** there are none arising directly from this report.

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6.5 **Repopulation:** there are none arising directly from this report.

## 7.0 CONSULTATIONS

7.1 **Chief Financial Officer:** no requirement to comment.

7.2 **Head of Legal and Property Services:** advice was sought on a number of matters, summarised in paragraph 5.5 above.

7.3 **Head of Organisational Development, HR and Communications:** no requirement to comment.

## 8.0 CONCLUSIONS

8.1 The proposed Supplementary Guidance on Enabling Development fulfils the commitment, included in Policy HER6 of the Local Development Plan (2014), to prepare supplementary guidance on this issue. The proposed guidance has, where necessary, been amended to take account of comments received during public consultation.

## 9.0 BACKGROUND PAPERS

(1) Representations to the consultation on the Inverclyde Local Development Plan (2014) Supplementary Guidance: Enabling Development.

### **ATTACHMENTS**

**Annex 1: Local Development Plan (2014) Supplementary Guidance on Enabling Development**

**Annex 2: Local Development Plan (2014) Supplementary Guidance on Enabling Development – Summary of Consultation Responses**

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5 February

E&R Cmtee: March 2015

# LOCAL DEVELOPMENT PLAN (2014) – PROPOSED SUPPLEMENTARY GUIDANCE ON ENABLING DEVELOPMENT

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## 1.0 Introduction

- 1.1 This Supplementary Guidance (SG) will be part of a suite of SG's which have been adopted under the Planning etc. (Scotland) Act 2006, following consultation with relevant stakeholders. Supplementary guidance provides detailed information on specific policies in the Inverclyde Local Development Plan 2014 (LDP), thereby enabling the Plan to focus on the spatial strategy, main policies and development proposals. Supplementary guidance has a statutory basis and should be read in conjunction with the Plan.
- 1.2 This guidance supplements Policy HER6 'Enabling Development' in the LDP by setting out the criteria for achieving compliance with the policy and identifying supporting processes.
- 1.3 The guidance is aimed at:
- Developers/professionals considering new projects
  - Communities and interest groups considering the benefits/disbenefits of an enabling development proposal
  - The Regeneration and Planning Service and Local authority Councillors, who will assess and determine planning applications for enabling development
- 1.4 The guidance is structured as follows:
- Section 2.0 provides background information, including a definition of enabling development and its relevance in Inverclyde. It also sets out the national and local planning policy context, explains why supplementary guidance is required and outlines the scope of the guidance.
  - Section 3.0 sets out the assessment criteria which will be used to determine whether enabling proposals comply with Policy HER6.
  - Section 4.0 outlines a number of processes which will support the assessment and determination of enabling proposals and, where applicable, their implementation.

- 1.5 This SG is supported by Annex 1: 'Checklist of information to be submitted with an Enabling Development application'.

## 2.0 Background

### What is Enabling Development?

- 2.1 Enabling development is an established planning tool. In the context of Scottish Planning Policy (2014), enabling development seeks to subsidise the cost of restoring a listed building and securing its long term future. The need for a subsidy arises when this cost is greater than the buildings resulting value to its owner, also known as the 'conservation deficit'. The concept of enabling development is that development, which would otherwise be contrary to established planning policy and not permissible, may be acceptable if it can be demonstrated that the public benefits of the proposal, e.g. restoring and securing the long term future of a listed building at risk of being lost, would outweigh any negative impacts.
- 2.2 Enabling development was confirmed as a legitimate planning tool in 1988, when the Court of Appeal, in R v. Westminster City Council ex parte Monahan, upheld the validity of a planning permission authorising office development, even though contrary to the development plan, on the basis that it would provide the funds to improve the Royal Opera House, Covent Garden, which was unobtainable by other means.
- 2.3 While enabling development can vary in type, it is most often associated with new build residential development to support the restoration and re-use (residential) of a historic building.

### Why is Enabling Development important in Inverclyde?

- 2.4 Enabling development has already been shown to be a relevant and important planning tool for restoring historic buildings in Inverclyde. Prior to the adoption of the Inverclyde LDP, planning approval was

granted (under the 2005 Local Plan) and work completed on a number of enabling proposals, including the redevelopment of the former Bridge of Weir Hospital at Quarriers village.



Redevelopment of the Former Bridge of Weir Hospital

- 2.5 In addition, a number of listed buildings in Inverclyde are identified on the 'Buildings at Risk Register', which highlights 'at risk' properties of architectural or historic merit throughout Scotland. Subject to compliance with Policy HER6 and the wider LDP, some of these buildings could be restored and brought back into use through enabling development.

#### Policy Context

- 2.6 Enabling development is supported by Scottish Planning Policy (SPP 2014), which states that:

*"Enabling development may be acceptable where it can be clearly shown to be the only means of preventing the loss of the asset (listed building) and securing its long-term future. Any development should be the minimum necessary to achieve these aims. The resultant development should be designed and sited carefully to preserve or enhance the character and setting of the historic asset".*

- 2.7 In accordance with SPP, the LDP supports enabling development through Policy HER6 - Enabling Development:

#### **Policy HER6 'Enabling Development'**

Proposals for enabling development to support the restoration of listed buildings will be considered favourably where it is the only means of preventing the loss of the asset and securing its long term future. Any development should be the minimum necessary to achieve these aims. The resultant development should be designed and sited carefully to preserve or enhance the character and setting of the historic asset. The Council will adopt further detailed policy on this topic, setting out the criteria that will be used to assess individual proposals, **as Supplementary Guidance.**

#### Why was Supplementary Guidance Required?

- 2.8 While Policy HER6 provides the context for enabling development proposals to be brought forward in Inverclyde, the additional scope provided by SG allowed the process and criteria for assessing proposals to be transparent and clearly align with national planning policy and best practice guidance. The development of SG also provided the opportunity to take account of the consultation responses to the Inverclyde Local Development Plan: Proposed Plan (2013).

#### Scope of the Guidance

- 2.9 While this SG applies solely to enabling development, it is not intended to cover all the issues which may be associated with this type of application. For example, issues relating to the protection of the Green Belt, the design and sustainability of new build development and impact on the character and setting of listed buildings will be dealt with through Policy RES7 'Residential Development in the Green Belt and Countryside', SG 'Planning Application Advice Notes', Policy INF2 'Energy Efficiency', Policy HER4 'Alteration, Extension and Demolition of Listed Buildings' and Policy HER5 'The Setting of Listed Buildings'. In addition, any potential environmental impacts will be identified and addressed through the policies set out in the Natural Heritage and Environmental Resources section of the LDP, i.e. Policies ENV1 – ENV8.

**2.10** In light of the above, this SG only addresses those issues which relate specifically to enabling development proposals and are not covered elsewhere in the LDP. This guidance should therefore be read and applied in conjunction with other relevant LDP policies.

**2.11** The nature of enabling development means that proposals may not comply with all relevant LDP policies. Where there is conflict between policies, the final decision will be based on whether the public benefits associated with complying with planning policy decisively outweigh any disbenefits associated with non-compliance. For example, there may be situations where the public benefit of restoring a listed building does not decisively outweigh adverse impacts on the setting of the building and/or the surrounding landscape. The balance of benefits and disbenefits will be determined on a case by case basis, taking into account the merits of each proposal and consultation comments from stakeholders. It is not appropriate for this or any supplementary guidance document to prescribe the weight which should be given to individual plan policies and how the overall balance should be determined.

### **3.0 Assessment Criteria**

#### What buildings will qualify for Enabling Development?

**3.1** Policy HER6 requires that enabling development proposals should prevent the loss of the asset (listed building). While the assessment of when a listed building is in danger of being lost is subjective, the 'Buildings at Risk Register' provides an independent, robust and transparent approach to the determination of a buildings condition.

#### The 'Buildings at Risk Register'

The register highlights properties of architectural or historic merit throughout Scotland, which are considered to be at risk or under threat. It is maintained by the Royal Commission on the Ancient and Historical Monuments of Scotland, on behalf of historic Scotland.

A Building at Risk is usually a listed building, or an unlisted building within a conservation area, that meets one or several of the following criteria:

- Vacant with no identified new use

- Suffering from neglect and/or poor maintenance
- Suffering from structural problems
- Fire damaged
- Unsecured and open to the elements
- Threatened with demolition

It should be noted that the above list is not exhaustive and other criteria may sometimes be considered when assessing a building for inclusion in the Register.

Anyone can suggest that a building should be added to the Register as long as it meets one of the criteria listed above.  
<http://www.buildingsatrisk.org.uk/rcahms-barr-suggest>

**3.2** To comply with this policy requirement, enabling proposals should relate to a listed building(s) identified on the 'Buildings at Risk Register' at the time of application.

**3.3** Listed buildings which have previously been granted planning approval for enabling development, and where work has been completed, will not be supported for further enabling development. Incremental enabling development would not only be contrary to the key objective of 'securing the long term future of the listed building', but would also distort the assessment of public benefit/disbenefit, as the full impact of enabling development could not be known in advance.

#### Securing the long term future of the Listed Building

**3.4** Policy HER6 requires that enabling development proposals secure the long term future of the listed building(s) to which they relate. To comply with this policy requirement, proposals should demonstrate that they will secure the restoration, appropriate re-use, and ongoing management/maintenance of the listed building, through submission of:

- A Conservation Plan, defining all aspects of significance of the building and landscape, its vulnerability, and guidelines or policies for sustaining its significance. This should include consideration of where any new build enabling development would be most appropriately sited.



- A Conservation Management Plan, which sets out the ongoing actions necessary to sustain the significance of a listed building once works to restore and re-use the building have been completed. In particular, it should identify:
  - a) who will be responsible for the long-term management of the listed building
  - b) the necessary maintenance tasks and the frequency with which they will be undertaken.
  - c) how future maintenance will be funded in the long term

**3.5** These plans should be prepared by a suitably accredited professional in building conservation. Historic Scotland's 'Conservation Plans: A Guide to the Preparation of Conservation Plans' (2000) provides useful information on conservation planning and management.

**3.6** It is important that restoration works are carried out as soon as possible, in order to prevent further deterioration of the listed building(s). In light of this, proposals must demonstrate how the funds raised by the enabling development will be channelled into the restoration of the listed building at the earliest possible opportunity, i.e. through a phasing plan.

#### The Only Means Possible

**3.7** Policy HER6 requires that enabling proposals are the '**only means**' of preventing the loss of a listed building and securing its long term future. This reflects the fact that enabling development should only be used as a last resort as it often requires disbenefits to be accepted in return for greater public benefits. In addition, enabling is an inefficient means of funding a conservation deficit, usually requiring development with a value of three or four times the conservation deficit to break even.

**3.8** To comply with the above policy requirement, an options appraisal should demonstrate that:

1. a number of potential uses have been investigated, with the proposed use being the optimum viable use that is compatible with the listed building.
2. the listed building has been subject to market testing, unless:
  - it has been unsuccessfully marketed during the past 18 months or has been recently acquired for a price that reflects the current condition.

Where a listed building forms part of a larger historic entity, i.e. a Garden and Designed Landscape, it is expected that the historic entity will be market tested, unless it can be demonstrated, to the satisfaction of the Council and Historic Scotland, that this would be inappropriate. This approach is intended to prevent the detrimental fragmentation of the historic entity through the sale of the listed building only.

Market testing will normally include the offer of the unrestricted freehold or long leasehold (125 years or more) on the market at a realistic price reflecting the condition of the place, the presumption to retain and restore the asset, and, so far as ownership allows, with an appropriate curtilage. There should be no inflation of the price in the hope of demolition or additional development. The marketing should be carried out by a suitable firm of chartered surveyors or estate agents and include the placing of advertisements in all relevant journals. Assuming normal market conditions, the minimum period of active marketing will be six months. The emphasis must be on active marketing rather than merely placing the property's details on a website after an initial advertising campaign.

3. The potential for grant aid has been investigated and none is available. Where grant aid is available, but insufficient to cover the conservation deficit, this should be used in combination with enabling development to restore and secure the future of the listed building. Available grant aid should be included in the 'development appraisal' to be submitted with the planning application.

4. no other groups, such as a development trust, are willing to undertake the project.

#### The Minimum Necessary

- 3.9** Policy HER6 requires enabling development proposals to be the **'minimum necessary'** to restore and secure the long term future of a listed building(s). This reflects the fact that enabling development can only be justified by the inherent lack of viability of the listed building, not an owner's inability to fund a commercially viable scheme.
- 3.10** To comply with this policy requirement, proposals should meet, but not exceed an identified 'conservation deficit', which exists when the existing value, plus the development cost (e.g. restoration, conversion to an appropriate use and developer profit), exceeds the value of the listed building after development.
- 3.11** With regard to developer profit, it is right and proper that a developer be allowed a fair and reasonable return on their investment, to reflect the risk involved in the development project. The appropriate level of developer profit will be determined on a case by case basis, taking into account the location of the development, length of development period, the target market, complexity of the scheme, possibility of unforeseen problems (although a contingency figure in the building costs should take this risk into account) and the stability of interest rates etc.
- 3.12** Compliance with this policy requirement should be confirmed through submission of a development appraisal, which covers all financial aspects of the proposed enabling development in sufficient detail to enable scrutiny and verification by the Council. The development appraisal must establish and justify the 'need' for enabling development and the scale of development necessary to meet that need. A template for a typical development appraisal is provided in Annex 1. While this template is for a single phase development, it can be adapted to cover multi-phase proposals and a variety of circumstances.
- 3.13** The development appraisal should be substantiated by:
- a) justification for current value, if not nominal;

- b) justification for end values, based on comparable transactions;
- c) detailed costed schedules of works;
- d) justification for any other exceptional costs; and – sensitivity analysis

#### **3.14** Enabling proposals will not be justified where:

- a developer pays a higher price for a development opportunity than is justified by market conditions
- market conditions change to such an extent that the developer may not be able to realise the anticipated return on their investment.
- the owner's insurance is considered inadequate to meet the cost of repair and reinstatement following a normally insurable loss.

#### Public Benefits

- 3.15** Enabling development is often contrary to one or more planning policies and justified on the basis that the public benefits of the proposal decisively outweigh any disbenefits. While the restoration of a listed building is the key public benefit derived from enabling development, in terms of contributing to the retention and maintenance of the wider historic environment, it does not provide a direct benefit to the public/local community, who are likely to be most directly affected by any disbenefits. In light of this, a proposal should demonstrate how it will provide a significant public benefit, in addition to the restoration of the listed building. It is expected that public benefits will be directly related to the use of the listed building and/or its setting. However, off-site public benefits, which are proportionate to the proposed development, will be considered. While not exhaustive, the following is a list of potential benefits.
- New or improved public access to the listed building and/or its setting
  - Restoration/reinstatement of the setting of the listed building (must be accompanied by public access)
  - Biodiversity enhancements on site (must be accompanied by public access)

- Provision of affordable housing (dependent upon the 'Housing Needs and Demand Assessment' and Policy RES4 'Provision of Affordable Housing')
- Conversion of the listed building to a public use (i.e. tourist attraction, education facility etc)
- Provision of Employment opportunities

**3.16** The appropriateness and significance of public benefits will be determined by the Regeneration and Planning Service, taking into account the scale and impact of the proposal and public comment received during the statutory 21 day consultation period.

#### Location of New Build Development

**3.17** In some cases applicants, who own or have control of land outwith the site of the listed building, may wish to locate the new build element off-site, either because there is no scope for new build development within the curtilage of the site, or to remove potential impacts on the setting of the listed building. This type of proposal will be considered on its merits, including the suitability of the off-site location. It should be noted that any additional costs associated with off-site development, such as the purchase of land, will not be accepted as a 'development cost', as this will increase the 'conservation deficit' and the scale of enabling development required to meet it. This would be contrary to the principle of 'the minimum necessary'.

#### Provision of Supporting Information

**3.18** Supporting information should be of sufficient detail to allow the Regeneration and Planning Service and its consultees to make an informed decision on whether an enabling proposal meets the criteria set out in this SG. While some of the requirements for supporting information have already been highlighted under specific criteria, applicants should ensure that all the supporting information listed below is submitted with a planning application.

#### Checklist:

1. A report, including survey drawings, showing the existing form of the building and associated landscape and how it has developed through time.

2. A Conservation Plan, defining all aspects of significance of the building and landscape, its vulnerability, and guidelines for sustaining its significance
3. A Conservation Management Plan, which sets out the ongoing actions necessary to sustain the significance of a listed building once works to restore and re-use it have been completed. In particular, it should identify:
  - a. who will be responsible for the long-term management of the listed building
  - b. the necessary maintenance tasks and the frequency with which they will be undertaken.
  - c. how future maintenance will be funded in the long term
4. A design and access statement
5. An options appraisal (covering potential uses and sources of funding)
6. Proposals, defined in sufficient detail to understand their impact on the significance of the place
7. Impact assessment, including results of detailed targeted investigations to define impact.
8. A development appraisal, substantiated by:
  - justification for end values, based on comparable transactions
  - detailed costed schedules of works
  - justification for any other exceptional costs; and sensitivity analysis
  - justification for current value
9. A Phasing Plan
10. Pre-Application Consultation Report (where undertaken)
11. A parallel application (if applicable) for scheduled monument consent or listed building consent

## Type of planning application

**3.19** As highlighted in the sections above, the determination of enabling development applications requires a full understanding of the benefits and disbenefits of each proposal, which can only be achieved if a sufficient level of detail is submitted with the application. For example, detailed information on layout and design and the financial justification are required to determine the proposals impact on the listed building and its setting and to establish and quantify the need for enabling. In light of this, applications for planning permission in principle, where substantive matters are reserved for later approval, are not appropriate and all enabling development proposals must be submitted as full/detailed planning applications.

### **4.0 Supporting Processes**

#### Pre-Application Discussion

**4.1** Applicants are encouraged to engage in pre-application discussion with the Regeneration and Planning Service, in order to highlight the key issues and identify any obstacles which need to be addressed. This should avoid unrealistic expectations and ensure that the determination of planning applications is not unduly protracted.

#### Professional Advice

**4.2** An enabling development application will include detailed supporting information on a wide range of issues, including building conservation/management and development finance. The process of assessing and verifying this information requires a range of professional skills. While the Council will, whenever possible, utilise internal resources and statutory consultees, independent professional advice may be sought to verify supporting information. For example, where appropriate, an independent professional in building conservation may be used to verify the conservation statement and conservation management plan.

**4.3** For all enabling development applications, an independent professional agency, chosen by the Council, will be used to verify the financial justification (development appraisal) submitted.

## Consultation Process

**4.4** Since the principle of enabling development involves a degree of disbenefit being accepted in return for a greater public benefit, it is important that the views of stakeholders are integrated into the decision making process. This will be achieved through the consultation process. As a statutory consultee, Historic Scotland should be consulted on all enabling development proposals, with other bodies, such as the Architectural Heritage Society of Scotland and the Scottish Civic Trust, consulted as and when required. The statutory 21 day public consultation period will provide the opportunity for local communities to comment. Applicants are encouraged to carry out pre-application (pre-app) public consultation, in the form of one public meeting. This will enable local communities to contribute to the identification of public benefits and provide the opportunity for any concerns/issues to be identified and resolved before submission of a planning application. Where pre-app consultation is undertaken, a consultation report, setting out the issues raised and how these have been taken into account, should be submitted with the planning application.

#### Use of Legal Agreement and/or Planning Conditions

**4.5** A Section 75 legal agreement and/or planning conditions may be used to ensure that the design, layout, public benefits and phasing agreed at the development management stage are delivered.

### **5.0 Summary**

**5.1** Scottish Planning Policy makes it clear that the planning system has a role to play in preventing the loss of listed buildings and securing their long term future by supporting 'enabling development', where appropriate.

**5.2** While the Inverclyde Local Development Plan 2014 – 'Policy HER6 'Enabling Development' sets out the broad policy requirements, this SG provides the detailed criteria for assessing compliance with the policy and identifies the supporting information required. In particular, the criteria clarifies when a listed building will be considered at risk of being lost, when a proposal is the 'only means' and the 'minimum necessary' to restore and secure the long term future of a listed

building and what public benefits will be appropriate. The guidance does not address those issues which relate to enabling development, but are covered elsewhere in the Plan.

- 5.3** This SG also sets out the processes which will support the assessment, determination and implementation of enabling applications, including pre-application discussions, professional advice, the consultation process, and the use of legal agreements and/or planning conditions.
- 5.4** This guidance should be read and applied in conjunction with other relevant LDP policies and supplementary guidance documents.

## ANNEX 1

### Example of a typical development appraisal layout for a single-phase development

#### Site costs

Market value of property in existing condition

Costs incidental to acquisition:

Stamp Duty Land Tax on acquisition at market value legal fees on acquisition at market value  
agent's fees on acquisition at market value reasonable holding costs

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Total site costs £ xxx

#### Design and construction

Survey costs

Research and analysis costs

Contamination costs

Construction costs:

- repair
- conversion
- New build

Landscaping costs

Professional fees:

- project manager
- architect/surveyor
- landscape architect
- quantity surveyor
- structural engineer
- M&E engineer
- planning supervisor
- other

Contingency on design and construction costs

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Total design and construction costs £ xxx

#### Statutory and other charges

Planning fee

Building control fee

Funding and valuation fees:

- funding fees
- financial cap
- bank valuation fee
- bank's legal and monitoring fees second charge costs

Payments required under Article 40 agreement

Legal costs of Article 40 agreement

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Total statutory and other charges £ xxx 54

**Interest (preferably calculated by way of cash flow)**

Site cost + fees

Construction + fees

Statutory and other charges

Voids

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Total interest costs £ xxx

**Letting and sales costs**

Agent's letting fees

Legals on letting agent's sale fees

Legals on sales promotion costs

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Total letting and sales costs £ xxx

**Deductions from costs**

Short-term income from site

Grants

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Total deductions (£ xxx)

**Developer's profit**

Total @ x % on net costs £ xxx

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TOTAL COSTS £ xxx

COMPLETED MARKET VALUE OF SCHEME (£ xxx)

SURPLUS/DEFICIT £ 0

**NOTES:**

In an enabling development scheme, the surplus/deficit should be approximately zero.

Developer's profit is calculated on all costs except any cash grant or subsidy from public funds.

**ANNEX 2: REPRESENTATIONS RECEIVED TO THE CONSULTATION ON SUPPLEMENTARY GUIDANCE ON ENABLING DEVELOPMENT**

The table below provides an officers summary of the issues received and responses to them. The original representations can be viewed in Background Report 1.

ORGANISATION	SUMMARY OF ISSUES RAISED	RESPONSE (REGENERATION AND PLANNING SERVICE)
Scottish Government	Policy HER6 of the adopted Inverclyde LDP states that the Supplementary Guidance will set out the criteria used to assess individual proposals, however, it does not make reference to ' <i>Supporting Processes</i> ' being an element of the adopted Supplementary Guidance. We recommend that the Council satisfy itself that the Supplementary Guidance meets the requirements of regulation 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008.	Following advice from the Council's Legal Service, we are satisfied that 'Supporting Processes' can be included in the Supplementary Guidance (SG) without a reference in Policy HER6 as these processes do not go beyond the criteria identified in the Policy, rather they simply seek to highlight procedures which are ancillary to the policy and established practice.  No amendments proposed.
	The Council should satisfy itself that there is sufficient legal provision to require applicants to pay for an independent verification of the financial justification (development appraisal) submitted.	Following advice from the Council's Legal Service, the requirement for applicants to pay for an independent verification of the financial justification has been removed from the proposed SG.
Scottish Government (on behalf of Historic Scotland)	Historic Scotland welcome the collaborative approach taken by Inverclyde Council in relation to this Supplementary Guidance and can confirm that they have no further comments to offer.	Noted.
Kilmacolm Community Council	Kilmacolm Community Council welcomes the production of guidance that goes some way in setting out the principles and procedures for the policy. However, there needs to be some further strengthening.	Noted
	We are pleased to see that the policy (SG) applies to all development designed to fund the preservation or conservation of listed buildings.	Noted.
	The SG does not make it a requirement for applicants to provide detailed costs for the long term maintenance of the listed building. Furthermore, there appears to be a major omission in that the example of a development appraisal makes no reference to maintenance. KCC regards these as essential to avoid further piecemeal enabling development when future maintenance work will be required. In the view of KCC these aspects of the proposed framework need further development	Para 4.3 of the proposed SG prohibits piecemeal enabling development.  While the template development appraisal does not explicitly reference future maintenance costs, para 4.4 (bullet point 2[c]) of the proposed SG requires applicants to identify " <i>how future maintenance (of the listed building) will be funded</i> ".



		<p>It is the applicants' decision how future maintenance should be funded and, where necessary, this can be included as a development cost in the 'development appraisal'.</p> <p>No amendments proposed.</p>
	<p>There is no indication of how long term maintenance is to be monitored and where necessary enforced</p>	<p>Compliance with the terms of a planning approval, i.e. planning conditions and/or legal agreements, will be monitored and, where necessary, enforced by the Council's Development Management team, in line with the relevant planning legislation.</p> <p>No amendments proposed.</p>
	<p>The requirement in the SG for the financial justification be made publicly available is very welcome as the need for public scrutiny of the financial information is entirely proper and necessary.</p>	<p>Noted.</p> <p>The Council's Legal Service has advised that the financial justification should not be made publicly available as the Council would not be obliged to disclose this information under the Environmental Information (Scotland) Regulations 2004, on the grounds that it could, potentially, damage the party to which the financial information relates.</p> <p>In light of the above, the requirement to make the financial justification publicly available has been removed from the proposed SG.</p>
	<p>A public consultation of 3 weeks is inadequate for the purpose of ensuring that the views of local stakeholders are "integrated into the decision making process". Enabling development may generate objection, but with only an extremely limited opportunity for any explanation and negotiation within 21 days. This would appear to not be in the public interest of attempting to reach a workable proposal for the retention of a significant building and/or securing an appropriate public benefit, both of which would need time for this to be discussed and negotiated.</p> <p>The Consultation Process with the local community needs to be made part of the Pre-Application Process so that the opportunity has been made available for agreement on development and public benefit prior to the formal application.</p>	<p>It is accepted that, in some circumstances, the 21 day statutory consultation period may not provide the time needed for local communities to fully discuss and influence an enabling development proposal.</p> <p>In light of this, the proposed SG has been amended (para 5.4) to encourage applicants to carry out pre-application public consultation, in the form of one public meeting.</p>

	<p>While the requirement to demonstrate how the funds raised by the enabling development will be channelled into the restoration of the listed building at the earliest possible opportunity is welcomed, it needs to be stronger and explicitly state that enabling development can only take place after the restoration work has been implemented; and where public benefit requires investment separate from commercial development. This will need to be considered within the cashflow management requirements of the plan This should be part of the Legal Agreement /Planning Conditions (para 5.5).</p>	<p>It is often not possible for the restoration works to be completed prior to the 'enabling development' element, as income from the latter is usually needed to fund the restoration works. It is therefore realistic and appropriate that the SG requires applicants to demonstrate how the restoration works will be carried out as soon as possible, i.e. through a phasing plan.</p> <p>Para 5.5 of the proposed SG notes that the phasing plan may be secured through planning condition or legal agreement.</p> <p>No amendments proposed.</p>
	<p>KCC was pleased to note the requirement that "the listed building has been subject to market testing". However, it would be valuable to developer and community alike if the criteria of failure and success in the test were more clearly laid out.</p>	<p>It is considered that para 4.8 (bullet point 2) of the proposed SG provides clear guidance on when a listed building has been adequately market tested. For example, the SG requires that the building be actively marketed for a minimum period of 6 months, and states that this will normally include the offer of the unrestricted freehold or long leasehold (125 years or more) on the market at a realistic price reflecting the condition of the place, the presumption to retain and restore the asset, and, so far as ownership allows, with an appropriate curtilage.</p> <p>While it is accepted that the provision of assessment criteria would be useful in determining when a listed building within a Garden and Designed Landscape will not be subject to market testing, this is not currently possible as we do not know what justifications will be put forward by applicants. Detailed criteria could be provided in future revisions of the SG, once it has been applied in practice.</p> <p>No amendments proposed.</p>
<p>Duchal Estate</p>	<p>As a general comment, the draft guidance is over complicated and difficult to understand, let alone implement. It is likely to deter rather than attract</p>	<p>While it is acknowledged that enabling development is a complex issue, it is considered</p>

	<p>submissions/applications for enabling development; such is the detail of the draft SG and its appendices.</p> <p>It is advocated that the draft SG be significantly modified (simplified) to create a clear, flexible and straightforward Policy, with an emphasis on negotiation.</p>	<p>that the proposed SG provides clear, concise and relatively straightforward guidance on how compliance with Policy HER6 will be assessed.</p> <p>The SG is not intended to deter or attract enabling applications, merely to provide further information on when enabling applications meet the criteria set out in Policy HER6 of the adopted LDP.</p> <p>It is considered that the SG provides adequate opportunity for negotiation, e.g. in the identification of public benefits, and whether a listed building within a Garden and Designed Landscape should be subject to market testing.</p> <p>No amendments proposed.</p>
	<p>The SG should permit the key objective of maintaining/retaining buildings/structures of National and International importance by treating each proposal on its own merits, set within a broad framework of ‘the minimum number of units required to offset the cost of enabling.’ It is up to the applicant to make a robust and justifiable case.</p>	<p>This simplified approach cannot be adopted as it does not fully align with Policy HER6, which the SG must accord with and cannot go beyond.</p> <p>No amendments proposed.</p>
	<p>Policy HER6 bares no resemblance to the draft enabling policy considered during the local plan procedures and by the Reporter, when the recommendations were made to include such a Policy.</p>	<p>Following consideration of Policy HER7 at examination, the reporter recommended that a new enabling development policy, HER6, be included in the LDP, in order to better align with Scottish Planning Policy.</p> <p>No amendments proposed.</p>
	<p>Paragraphs 4.4 - 4.7 are supported as they reflect a proactive to saving listed buildings et al.</p>	<p>Noted.</p>
	<p>The draft Policy (SG) should not use the Buildings at Risk Register as the primary basis for selecting listed buildings which will be suitable for enabling because</p> <ul style="list-style-type: none"> <li>• Historic Scotland support the stance that it is as important to retain and maintain important buildings prior to them from falling into disrepair</li> <li>• The aforementioned Register is not comprehensive and up to date.</li> <li>• The register tends to focus on derelict buildings as opposed to important</li> </ul>	<p>The Buildings at Risk Register provides an independent, objective and transparent way of identifying listed buildings at risk of being lost.</p> <p>While it is clearly important to retain and maintain important buildings prior to them falling into disrepair, this is the responsibility of the owner, not the Planning Authority.</p>

	<p>buildings which are in need of repair and maintenance.</p> <ul style="list-style-type: none"> <li>• It should be the decision of Inverclyde Council to decide which buildings are of importance to its area and whether such buildings should benefit from enabling policies.</li> <li>• The register ignores such matters as Designed Landscapes and Policies which are as important to the setting of certain buildings as the buildings themselves</li> <li>• The Register also ignores the importance of local history and provenance of certain buildings especially if they are not A+B Listed</li> <li>• Using this Register means that the enabling cost for a number of such buildings is prohibitive, to the extent that the amount of enabling required creates a significant impact either on the subjects or the local area.</li> <li>• The register does not always reflect the importance of the building within the local area</li> </ul>	<p>The Council is satisfied that the Register is comprehensive and up to date as it is maintained by the Royal Commission on the Ancient and Historical Monuments of Scotland on behalf of Historic Scotland.</p> <p>The SG uses the Register to determine a buildings' physical condition. It does not therefore have to consider issues relating to Designed Landscapes, local history and provenance.</p> <p>It is accepted that the requirement for enabling proposals to relate to a listed building(s) identified as a 'moderate, high or critical risk' on the Buildings at Risk Register may require listed buildings in a lower risk category to decay further before qualifying for enabling. In addition, this is likely to result in a greater scale of enabling being required at a later date.</p> <p>In light of this, the SG has been amended so that any category of listed building on the Register is considered to be 'at risk of being lost'.</p>
	<p>Para 4.8.....The criteria ... "The Only Means Possible", is too restrictive. Each case is different and because a property hasn't been marketed or other uses investigated, should not preclude a building from complying with Policy HER6. The problem here is that this criterion does not take into account a building which is occupied and where there are clear historical links with the local area.</p>	<p>Policy HER6 requires enabling proposals to be 'the only means possible'. The SG must align with and cannot go beyond the criteria set out in LDP policy.</p> <p>Market testing and the consideration of various uses are established ways of identifying if enabling development is the 'only means possible'.</p> <p>Occupancy of a listed building does not, on its own, prevent a building from being identified on the Buildings at Risk Register or qualifying for enabling development. It is the physical condition of the building which is the key consideration.</p> <p>No amendments proposed.</p>
	<p>Flexibility is required in assessing public benefit. There should be no</p>	<p>Para 4.15 of the proposed SG notes that the list of</p>

	<p>prescriptive criteria, rather a local assessment of what is considered public benefit. This can only be achieved through discussion and negotiation as importantly each case is different.</p>	<p>potential 'public benefits' is not exhaustive. It therefore provides scope for other benefits to be considered.</p> <p>It is considered that amending the SG to encourage pre-application public consultation will provide the opportunity for public benefits to be fully discussed and negotiated.</p>
	<p>If the applicant is to pay for the Councils chosen "independent" consultant then there should be an agreed cap on this unknown cost.</p>	<p>Following advice from the Council's Legal Service, the requirement for the applicant to pay has been removed from the proposed SG.</p>
	<p>The verification process can be simplified where the council can assess the validity of any proposal/application.</p>	<p>It is appropriate for an independent agency to verify the financial justification as this demonstrates that the process will be both independent, and carried out by professionals with the necessary skills.</p> <p>No amendments proposed.</p>
	<p>ANNEX 1.....The information required in Annex 1 (template development appraisal) is too complex and will be expensive to provide.</p>	<p>The template development appraisal is established practice.</p> <p>No amendments proposed.</p>