



**REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON
15 AUGUST 2023**

SUBJECT: DEVELOPER OBLIGATIONS UPDATE

**BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND
FINANCE)**

1. REASON FOR REPORT

- 1.1 This report asks the Committee to note the update on developer obligations received and spent during the financial years of 2021/2022 and 2022/2023, provides an update on the Developer Obligations Supplementary Guidance (SG) review and seeks approval for the appointment of external consultants to carry out a review of the methodology used to calculate mitigations identified for Education infrastructure.
- 1.2 This report is submitted to Committee in terms of Section III (E) (2) of the Council's Scheme of Administration relating to the review and preparation of strategic and local plans.

2. RECOMMENDATION

2.1 It is recommended that the Committee:

- (i) notes the content of the report and the update on Developer Obligations received and spent during the financial years 2021/2022 and 2022/2023 set out in Appendix 1;**
- (ii) notes the timeframe for the review of the SG; and**
- (iii) approves the appointment of external consultants to carry out a third party review of the education methodology when the revised developer obligations supplementary guidance has been drafted.**

3. BACKGROUND

- 3.1 The Council's current Supplementary Guidance (SG) on Developer Contributions was approved by the Moray Council Emergency Cabinet on 14 May 2020 (Para 6 of minute refers) and then by the Scottish Government, coming into effect on 30 September 2020.

- 3.2 Following the adoption of National Planning Framework 4 (NPF4) on 13 February 2023 which along with the Moray Local Development Plan (MLDP) 2020 now form the Development Plan for Moray a review of the Developer Obligations Supplementary Guidance is currently underway. The deadline for approval of Supplementary Guidance by the Scottish Government is 12 February 2025. The updated guidance will be subject to public consultation and approval by Committee prior to being submitted to Scottish Government for approval.
- 3.3 The Developer Obligations function was taken in house in 2016 which has resulted in significantly increased developer obligations being secured.
- 3.4 The Scottish Government Circular 3/2012: Planning Obligations and Good Neighbour Agreements sets out the following 5 tests that must be met in order to seek Developer Contributions to mitigate the impact of a development:
- Necessary to make the proposed development acceptable in planning terms;
 - Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 - Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
 - Fairly and reasonably relate in scale and kind to the proposed development; and,
 - Be reasonable in all other respects.
- 3.5 Despite the SG being approved by Scottish Government, developers continue to challenge developer obligations in regard to infrastructure capacity, assumptions and mitigations through the appeal process and officers are sharing knowledge on appeal outcomes throughout the country with Council services and NHS Grampian to ensure the Council's SG is robust and defensible and supports timely delivery of development to support need and demand.

4. UPDATE

Developer obligations received and secured

- 4.1 Developer Obligations are secured prior to planning permission being granted either through an upfront payment or in a series of staged payments through Section 75 legal agreements which set out trigger points for payments.
- 4.2 During the 2021/2022 financial year, developer obligations totalling £348,708.93 were received in upfront payments from 31 approved planning applications. In 2022/2023 a total of £202,962.78 were received in upfront payments from 20 approved planning applications. A breakdown of the figures by contribution type for both financial years is given at Table 1 at APPENDIX 1.
- 4.3 During the 2021/2022 financial year £684,420.44 was received from previously approved Section 75 legal agreements and in 2022/2023 a total of

£215,403.49 was received. A breakdown of the figures by contribution type for both financial years is given at Table 2 at **APPENDIX 1**. The figures also include indexation and late payment fees where applicable.

- 4.4 During the 2021/2022 financial year a total of £2,024,104.85 was secured via Section 75 legal agreements. In 2022/2023 a total of £1,707,626.59 was secured. A breakdown of the figures by contribution type for both financial years is given at Table 3 at **APPENDIX 1**. These secured amounts will be received by the Council in the coming years as the triggers are reached.

Affordable Housing

- 4.5 Commuted sums towards affordable housing for developments of 1-3 units are required to meet housing needs in the local housing market area as set out in NPF4 policy 16(e) and in policy DP2 of the MLDP 2020. These contributions are not developer obligations, but the Strategic Planning and Development (SP&D) Team collects, holds and monitors the expenditure of these as well as developer obligations. A breakdown of the figures received and secured toward Affordable Housing is set out in Tables 1, 2 and 3 at **APPENDIX 1**.

Developer obligations spend

- 4.6 The SP&D Team works closely with other Council Services and NHS Grampian to ensure that developer obligations are being spent towards relevant projects within the agreed timescales. Developer obligations gathered from historic contribution types such as Sports and Recreation and Community Facilities and spent on projects within the last two financial years are set out in Table 4 at **APPENDIX 1**.

5. REVIEW OF DEVELOPER OBLIGATIONS SG

- 5.1 The SG has been in place for 7 years and there is a commitment to review the Developer Obligations SG every 2 years. The reviews in 2018 and 2020 primarily took the form of updating figures in line with inflation and making minor amendments that are identified through the operation of the SG. Along with a number of other factors listed below it is considered that a wider review would be beneficial for the following reasons:

- The information required for the Evidence Report for next LDP. Reviewing existing capacities and identifying what future infrastructure is required to support growth and deliver the infrastructure first approach.
- Reconsideration of exemptions to align with NPF4 such as incentivising brownfield development.
- Review of Rates applied to mitigations to reflect inflation and consideration of re introducing a cap on Developer Obligations to ensure the viability and delivery of developments.
- Review of the types of infrastructure we seek Developer Obligations for such as serviced employment land as part of the masterplan areas.

- Renfrewshire Council recently published an external independent review report on Dargavel Primary School where the capacity requirement for the new school had been significantly under estimated for a number of reasons. Whilst Moray Council is in a better position having undertaken a detailed sensitivity analysis on the baseline school roll forecast information over the last 18 months to inform decisions on the Findrassie and Glassgreen primary schools and Elgin High School, a key finding from the report is that Local Authorities should have an independent sense check on their methodologies for Education Infrastructure to ensure that a robust approach is in place for calculating forecasts and contributions.
- As set out above developers continue to challenge the infrastructure capacity, assumptions and mitigations for developer obligations, particularly in regard to education through the appeal process. The proposed review will provide an opportunity to re-examine the data and methodology for calculating contributions towards education infrastructure. This will ensure that we are in a stronger position to respond to developer challenge.

5.2 SP&D work closely with other Services within the Council and NHS Grampian to review the methodology and a significant level of work has been undertaken by officers in this respect. However, there is now a requirement for external expertise to review our education methodology in light of best practice, recent challenges from developers and the Dargavel report.

5.3 Approval is sought for the appointment of external consultants with expertise in that area to carry out a review of the methodology used to calculate mitigations identified for Education infrastructure. This will ensure that a robust framework is in place to avoid future appeals which are time consuming and costly for both parties.

5.4 The timeline for the SG review is to present the draft SG to this committee in Q1 2024, public consultation in Q2 2024, final report to this committee in Q3 2024 and submission to the Scottish Government by the end of 2024.

6. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

Developer obligations will assist in delivering the infrastructure necessary to support the Council's priorities, such as developing a sustainable economy, creating ambitious and confident young people and safer communities.

(b) Policy and Legal

The Developer Obligations Supplementary Guidance forms part of the statutory Development Plan comprising MLDP2020 and NPF4.

(c) Financial implications

The Council may need to provide for any adverse impact on existing infrastructure and facilities resulting from new development should

developer obligations not be sought or the level sought does not cover the costs following viability appraisals.

Mechanisms such as forward funding of infrastructure projects carry an inherent risk associated with the pace and scale of future development and the timescales over which obligations will be achieved.

The cost to appoint external Consultants is estimated at £10k to £15k. A third party review of the key assumptions and mitigations may reduce future appeals which are time consuming and costly for both parties and significantly delays house building. This will be funded through the existing Local Development Plan budget.

(d) Risk Implications

Co-ordination of infrastructure and cross service working are required in order to plan for the infrastructure that supports growth in line with the MLDP 2020 and NPF4 to ensure that Developer Obligations are sought towards the necessary infrastructure items and these projects are deliverable to support the residents of Moray.

If development is not planned for appropriately and supported by the necessary evidence provided by the relevant services, key agencies and community planning partners, then the Council cannot seek Developer Obligations to mitigate the impact of the development or apply the appropriate rate alongside use of good scenario modelling and information sensitivity analysis. If infrastructure is not well-planned and co-ordinated, the Council risks of not meeting the deadline for spending Developer Obligations and having to refund Developer Obligations to the developer with accrued interest. Therefore, the Council runs the risk of having to provide the infrastructure necessary to facilitate development at their own cost and a risk of appeal by developers. There is also a reputational risk to the Council should an appeal be granted in the developers favour.

If adequate resources and staffing are not provided, the Council runs the risk of collecting developer obligations, but not having sufficient staffing capacity to deliver projects which would result in a refund of collected funds.

(e) Staffing Implications

Work on Developer Obligations is carried out within the Strategic Planning and Development Team, supported by officers in Education, Transportation, Housing, Legal, Finance, Development Management, Estates, Lands & Parks, Scottish Water and NHS Grampian. Challenges from developers result in significant staff time to enable the Council to defend their position.

(f) Property

None.

(g) Equalities/Socio Economic Impact

The Equal Opportunities Officer had been consulted and advised that there are no equalities issues arising from this report.

(h) Consultations

Consultation has taken place with the Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth and Development, the Legal Services Manager, the Transportation Manager, the Senior Engineer (Transportation), the Development Management and Building Standards Manager, the Head of Education Resources and Communities, the Equal Opportunities Officer, the Open Spaces Manager, the Chief Financial Officer and the Democratic Services Manager have been consulted and comments received have been incorporated into the report.

7. CONCLUSION

7.1 The report provides an update on the developer obligations service, including contributions received and spent within the financial years of 2021/2022 and 2022/2023.

7.2 The report asks the Committee to note the timeframe for the review of the SG and to approve the appointment of external consultants to carry out a review of the assumptions and mitigations used to calculate developer obligations for education infrastructure.

Author of Report: Katrina Martin, Senior Infrastructure Growth/Obligations Officer

Background Papers:

Ref: