



**REPORT TO: MORAY COUNCIL EMERGENCY CABINET ON
MAY 2020**

SUBJECT: DEVELOPER OBLIGATIONS SUPPLEMENTARY GUIDANCE

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

1. REASON FOR REPORT

- 1.1 This report summarises the representations received to the consultation on the updated Developer Obligations Supplementary Guidance and asks the Emergency Cabinet to approve the responses provided to these and to delegate authority to the Head of Economic Growth & Development to finalise the Guidance for submission to the Scottish Government.
- 1.2 This report is submitted to the Emergency Cabinet following a decision of Moray Council on 25 March 2020 to temporarily suspend all delegations to committees as a result of the Covid-19 pandemic (para 2 of the draft minute refers).

2. RECOMMENDATION

2.1 It is recommended that the Emergency Cabinet:

- (i) notes the representations received to the updated Developer Obligations Supplementary Guidance consultation;**
- (ii) agrees the responses provided to the representations, as set out in Appendix 1;**
- (iii) agrees the updated Supplementary Guidance as set out in Appendix 2;**
- (iv) notes the tested pupil product ratios and evidence base for NHS Grampian provided in Appendix 3 and 4;**
- (v) delegates authority to the Head of Economic Growth & Development to finalise the Supplementary Guidance in accordance with Section 4 and responses in Appendix 1, taking account of any decisions of the Emergency Cabinet; and**

- (vi) agrees that the updated **Supplementary Guidance** is submitted to the **Scottish Government** and, upon approval, forms part of the **statutory Moray Local Development Plan (MLDP) 2020** when adopted.

3. **BACKGROUND**

- 3.1 The MLDP 2020 Policy PP3 Infrastructure and Services sets out a commitment to prepare Supplementary Guidance on Developer Obligations. Developer Obligations must meet all of the five tests set out in the Scottish Government Circular 3/2012:
- **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 be relevant 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.
- 3.2 Developer Obligations have been dealt with in-house by the Strategic Planning and Development Team since 1 March 2017 when the Council's Service Level Agreement with Aberdeenshire Council to provide the service ended. This has ensured that a robust, consistent and transparent service is provided by the Council and reinforced the need for a strong evidence base to be in place in order to secure developer obligations.
- 3.3 The current adopted Supplementary Guidance (SG) on Developer Obligations was approved by the Planning and Regulatory Services Committee on 5 December 2017 (para 9 of minute refers) and then by the Scottish Government, coming into effect on 1 March 2018. The document sets out the methodology, rates for calculating developer obligations and an agreed action to review the cap.
- 3.4 At its meeting on 10 December 2019 the Planning and Regulatory Services Committee agreed the updated Supplementary Guidance for public consultation (para 12 of the minute refers).
- 3.5 The SG has been in place since 2016 following a significant 2 x 12-week public consultation and has subsequently undergone 2 reviews. The purpose of this current consultation was primarily to update figures and methodology rather than revisiting the principles of infrastructure that developer obligations are sought for.
- 3.6 A 6-week consultation period on the updated Developer Obligations Supplementary Guidance commenced on 6 January and ended on 14 February 2020. The public consultation was advertised in local newspapers, on the Council's website and via social media. Letters/emails were issued to all Community Councils, Associations and Groups, Charities and Trusts,

Developers and Agents, Housing Associations and Key Agencies. Despite offering to attend the Homes for Scotland Northern Region Meeting which was convened to discuss Developer Obligations, no one from the Council was invited to attend. This is contrary to previous versions of the Guidance where officers have been invited to a meeting with developers to discuss the proposed updates.

- 3.7 Twelve representations were received from the Archaeology Service, sportscotland, Barratt North Scotland, Cairn Housing Association, Homes for Scotland, NHS Grampian, Robertson, Savills (for Pitgaveny Farms), Scotia Homes Ltd, Scottish Government, Scottish Environment Protection Agency (SEPA) and Springfield Properties PLC. A summary of these and the proposed Council response is provided in **Appendix 1**. Full consultation responses are available for members on the Councillors Document Section of CMIS.

4. REVISIONS TO SUPPLEMENTARY GUIDANCE

- 4.1 The main issues raised by the representations are summarised below along with proposed changes to the Guidance and other amendments identified in **Appendix 1**.

Evidence base

- 4.2 The respondents suggested that insufficient links have been made between developer obligations and the use of contributions; and whether the Council's approach meets the tests set out in the Scottish Government Circular 3/2012. The SG is considered to be detailed Guidance with a robust evidence base, meeting the tests of the Circular and linked with the Proposed Plan. Further examples and clarifications have been included within the SG and this Committee Report to demonstrate the links.
- 4.3 Consultation responses objected to the perceived newly added requirements for dental chairs and pharmacy; and queried the evidence base for the technological and transport solutions. Developer obligations are already being sought towards dental chairs and pharmacy requirements, the only change has been made was to recalculate the rates for these requirements based on the floorspace requirements and patient numbers; which resulted in a lower contribution rate than in the current adopted Guidance. The use of technological and transport solutions will play a big part in the future provision of healthcare within new and emerging communities, however it is considered that due to lack of evidence from NHS Grampian at this time developer obligations will not be sought towards these methods.

Education

- 4.4 The current pupil product ratio (PPR) of 0.3 for primary schools and 0.15 for secondary schools have been questioned by the respondents. These figures have previously been tested in Moray and proven to be reasonable. A further 6 sites have since been tested with the lowest PPR for primary schools at 0.22 and highest at 0.54; lowest PPR for secondary schools at 0.09 and highest at 0.44. Based on the recent testing of 6 sites across Moray, the average PPR for primary schools is 0.34 and for secondary schools is 0.21. The detailed outcome of this test is set out in **Appendix 3** to this Committee Report. No changes are proposed to the PPRs as set out in the Guidance.

Healthcare

- 4.5 The respondents raised concerns that the healthcare facilities are not presented with a robust audit for examination of existing facilities. A spreadsheet has been developed, and been in existence for several years, by NHS Grampian with the support of Council officers, which identifies the direct link between new developments and healthcare facilities by looking at all allocated sites within the Local Development Plan (LDP), setting out how many patients these sites will generate, what impact that will have on the healthcare facilities, what mitigation measure is required to mitigate this impact and this is updated annually using the Council's housing land audit. An extract of this spreadsheet can be found in **Appendix 4** to this Committee Report.

Transportation

- 4.6 Developers suggested a lack of detail on the delivery of transportation improvements identified and apportionment of costs between each contributing site. Developer obligations are only sought for transport improvements where there is a cumulative impact. As set out in the updated guidance at this time obligations will be sought for developments in Elgin. In Forres developer obligations for interventions on the A940 Grantown Road corridor will continue to be sought, as has been the case since 2008, using proportions based on the number of housing units for each site. The methods for ascertaining the proportional impact of developments in Elgin will continue to be through the use of the Elgin Traffic Model at the time of the planning application. The capacities of sites identified in the Local Development Plan are indicative and developers often come forward with denser developments. Therefore, defining proportions at this stage would not be accurate. Developer obligations form part of the funding of transport network improvements where there is a need to accommodate movement associated with new development and the Council has no influence on the timing of developments coming forward. Therefore, no change has been proposed to the Council's approach.
- 4.7 Transport Scotland raised concerns that the SG only considers transport for the local network. It is acknowledged that there is a need to provide additional information relating to the cumulative impact of development on the Trunk Road network. This work is currently being progressed and detailed information will be shared with Transport Scotland when available. Additional assessments of key junctions, based on the previously agreed capacity modelling parameters, will be undertaken and overall mitigation measures further developed for the cumulative impact of developments. Additional wording has been added to the Guidance to reflect this.

Affordable Housing

- 4.8 Respondents suggested that developer obligations should not be sought or should be reduced towards affordable housing as this is an obligation in itself and it is to meet wider Government objectives; and whether there is any merit of being a Registered Social Landlord (RSL) developer in Moray in light of the contribution expectations. Affordable housing is a policy requirement, not a developer obligation and the need for it is set out in the Scottish Planning Policy. When providing affordable housing, it has to be ensured that developer obligations are considered when having sites valued and developer

obligations should be reflected in land values. Moray Council Housing Service follows this practice and all the affordable housing developments provided by the Council take account of developer obligations when purchasing land.

Governance

- 4.9 Respondents objected to the 15 year timescale for spending developer obligations and requested clear criteria of how unspent developer obligations are being refunded to developers. Moray is considered to have a slower build-out rate and therefore the 15 year timescale is deemed to be reasonable to allow adequate time for the Council and NHS Grampian to be able to spend funds given the timeframe required to construct larger infrastructure items. The 15 year timescale is considered to be reasonable in comparison to other local authorities` timescales for spending. The process for refunding unspent developer obligations is set out on Page 10 of the Guidance.

Cap/Viability

- 4.10 Respondents objected to the removal of the cap and requested that the cap removal should form part of the consultation. The consultation responses suggested that no evidence was provided for this change in the Council`s position from the one set out in the current adopted Guidance. The reason for the introduction of the cap was to allow time for land values to adjust to the level of developer obligations required and provide a transition period for developers and landowners, however since the introduction of the cap in 2017, there has been no evidence to suggest that the land values have adjusted. By continuing to maintain an artificial CAP, the Council is bridging an even larger funding gap in infrastructure due to the cap, which is no longer sustainable due to the budgetary pressures the Council is facing. Where there are viability issues the Council will negotiate an appropriate level of developer obligations to ensure the continuing growth of Moray. The removal of the cap was a Committee decision and therefore did not form part of the consultation. Additional wording has been added to the SG to provide explanation for the removal of the cap.
- 4.11 Concerns were raised as the viability of the allocated sites within the Proposed Plan were all based on the cap, and the removal of the cap will have an impact on the deliverability of the Proposed Plan and on effectiveness of sites. Developer obligations and policy requirements at the time of the application must be met; and should be taken account of when purchasing land. The review of the cap at the end of 2019 was clearly articulated to developers through the current SG.

Viability Assessments/Process

- 4.12 The respondents were concerned about the viability assessments becoming a standard part of the planning process causing delays and adding to development costs. A more efficient process for viability claims and a template approach have been suggested by Homes for Scotland. The process of dealing with viability assessments has been reviewed and amended as set out in **Appendix 5** of the Guidance. The viability assessments previously received had been submitted in different formats and did not include all the necessary information, which added to the period of time for their scrutiny and determination of planning applications. It is considered that the level of details included within **Appendix 5** and the list of information required to be submitted with a viability assessment, will provide clear guidance to the

developers as to what needs to be included within a viability claim. Receiving all this information upfront will also reduce lengthy discussions and allow Council officers and the District Valuer (DV) to review and scrutinise the viability assessments quicker and more efficiently, reducing any unnecessary delays in the planning process. The Applicant Viability Data (AVD) form as set out in **Appendix 5** could also be used as a template for those who are unsure how to set out the information required. The AVD form and guidance notes were prepared by the Council in conjunction with the DV based on recent viability experience and policy guidance.

- 4.13 Comments queried the reason and the legislative provision of the introduction of a set fee to cover officer time spent scrutinising viability assessments. The poor quality of some viability assessments received have taken up a significant amount of officer time to scrutinise these, which is additional to the workload of the officers, and therefore it was proposed in the draft version of the guidance that this cost should be reimbursed by developers. However, as per Scottish Government advice, dealing with viability assessments is considered to be one of the statutory functions of developer obligations, which should be covered by the planning fees. Therefore, it is proposed to remove this fee from the Guidance. However, developers will still have to cover the cost for the District Valuer to scrutinise viability assessments.
- 4.14 Head of Economic Growth & Development has delegated authority to negotiate a variation in developer obligations up to the value of £50,000. Planning applications, where the variation in developer obligations value due to viability assessment exceeds £50,000, will be reported to the Planning and Regulatory Services Committee for their consideration. This process will be kept under review.

5. **Next steps**

- 5.1 If the proposed changes arising from the responses in **Appendix 1** are agreed, officers will make the required changes and submit the final version of the Guidance set out in **Appendix 2** to the Scottish Government for a period of 28 days for their consideration before it is adopted by the Council on the same day as the MLDP 2020 and forms part of the statutory MLDP 2020.

6. **SUMMARY OF IMPLICATIONS**

(a) **Moray 2026: A Plan for the Future and Moray Corporate Plan 2015 – 2017**

Developer Obligations will assist in delivering 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 will form part of the statutory MLDP 2020.

(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.

(d) Risk Implications

The Council should aim to provide certainty to developers over the level of developer obligations required. Excessive demands for obligations could constrain development in Moray and failure to achieve sufficient obligations for infrastructure requirements resulting from a development will place an additional strain on public services. Under the current financial pressures, it is not financially sustainable for the Council to continue to bridge the funding gap to the current extent and as an option; developers could submit viability assessments if they consider the level of developer obligations render their development unviable.

Complaints and objections to the level of developer obligations could cause delays to the development management process and could affect the performance standards for both Development Management and Strategic Planning & Development.

The Council may need to be more proactive in acquiring land, the use of CPO and developing sites if the housing market were to stall due to land values being lower.

(e) Staffing Implications

The removal of the cap is likely to increase the amount of viability appraisals received, which will require significant officer time to scrutinise and verify these via the District Valuer.

Officer time from Strategic Planning & Development will be required to organise and run awareness raising workshops/events targeting the public and local solicitors. The removal of the discount for small scale developments and affordable housing requirement are likely to increase the time in dealing with complaints and the workload of the Local Review Body could significantly increase.

Officer time from Education, Housing and Transportation Services is required in the preparation of the review of the Supplementary Guidance as well as with the ongoing developer obligations work.

Adequate staffing at Legal Services is required to support developer obligations officers to spend secured developer obligations and to draft s75 legal agreements to avoid unnecessary delays in the process. This is currently an issue within Legal Services as a result of pressure from competing priorities. As a result of this pressure, the officer time at

Strategic Planning & Development has increased in dealing with legal agreements to ensure consistency.

(f) Property

The level of developer obligations must be taken into account when purchasing and selling land. Higher developer obligations should be reflected in the land value.

(g) Equalities

The Equalities Officer has previously advised that an Equalities Impact Assessment for the Developer Obligations Supplementary Guidance will not be required. Equality Impact Assessments will be needed for individual developments identified in the Table of Infrastructure Requirements set out in **Appendix 6** of the updated Supplementary Guidance in order to ascertain what mitigating actions are required for the various protected groups.

(h) Consultations

Depute Chief Executive (Economy, Environment & Finance), Head of Economic Growth & Development, Chief Financial Officer, Douglas McLaren (Accountant), Paul Connor (Principal Accountant), Legal Services Manager, Transportation Manager, Senior Engineer (Transport Development), Development Management and Building Standards Manager, Housing Strategy and Development Manager, Environmental Protection Manager, Estates Manager, Head of Education, Equal Opportunities Officer and Lissa Rowan (Committee Services Officer) have been consulted and comments incorporated into this report.

7. CONCLUSION

7.1 The updated Developer Obligations Supplementary Guidance was approved for a 6-week public consultation in December 2019. Twelve responses were received raising concerns on evidence base, removal of the cap, viability of sites and the process on dealing with viability assessments. Responses to these are set out in Appendix 1 to this Committee Report.

7.2 This report asks the Emergency Cabinet to approve responses to the representations made and that the final version of the Guidance is submitted to the Scottish Government for 28 days for approval prior to adoption as part of the statutory Moray LDP 2020.

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Background Papers:

Ref: