



REPORT TO: POLICY AND RESOURCES COMMITTEE ON 12 FEBRUARY 2019

SUBJECT: DEVELOPER OBLIGATIONS

BY: CORPORATE DIRECTOR (ECONOMIC DEVELOPMENT, PLANNING AND INFRASTRUCTURE)

1. REASON FOR REPORT

- 1.1 To ask the Committee to agree that Developer Obligations funds are used towards the replacement Lossiemouth High School, and changes to the process for spending the funds.
- 1.2 This report is submitted to Committee in terms of Section III (A) (1) of the Council's Scheme of Administration relating to expenditure of budget.

2. RECOMMENDATION

2.1 It is recommended that the Committee:

- (i) notes the content of the report;**
- (ii) agrees the allocation of £20,851 Developer Obligations to the replacement Lossiemouth High School as set out in Section 4; and**
- (iii) agrees the change in the Developer Obligations process to streamline it as set out in Section 5.**

3. BACKGROUND

- 3.1 Developer Obligations are financial contributions sought from developers to mitigate the impact of their development on the community. When a development takes place, there is a need for infrastructure and facilities to accompany it. This can include schools, roads, transportation, healthcare, sports and recreational facilities. Obligations are secured through relevant legal agreements which confirm the purpose for which they have been taken and also govern how they can be spent.
- 3.2 The Developer Obligations service was previously provided by Aberdeenshire Council through a Service Level Agreement (SLA). Contributions at that time were sought towards a wider range of infrastructure items, including libraries, playing fields, indoor/outdoor sport facilities, community facilities and

cemeteries. The SLA was terminated in February 2017, and the service was taken in house to ensure a robust, consistent and transparent approach.

- 3.3 Following the service being taken in house, due to lack of evidence base for certain infrastructure items, such as libraries, community facilities, indoor/outdoor sport facilities and cemeteries, and viability issues arising from developments, the Council could no longer seek Developer Obligations towards these. There are still some funds available for spend that were previously taken in respect of these headings. The Council currently seeks contributions towards education, healthcare, transportation and sports and recreational facilities. The approved Developer Obligations Supplementary Guidance sets out the methodologies used to calculate the level of contributions required and the rates applicable. The Guidance is being reviewed this year and will be reported to Planning and Regulatory Services Committee later this year.
- 3.4 Developer Obligations were initially to be used by the relevant Council Departments, however given appropriate projects were not forthcoming at that time and to ensure that the funds for community facilities, playing fields and indoor/outdoor sport facilities were spent; Community Groups were invited to submit applications for projects that the money could be spent on.
- 3.5 This approach has been reviewed since the service was taken in house and the service has been more proactive encouraging departments to take up the Developer Obligations on projects that meet the purpose for which the money was taken. Officers from Development Plans are currently working with relevant Council Departments to ensure appropriate spend of available contributions.
- 3.6 In the current process for the utilisation of contributions towards community facilities, playing fields, indoor/outdoor sports facilities and library facilities, proposals are reviewed by Officers initially to ensure that these meet the criteria set out by the legal agreements. Spend must be within the terms of the relevant agreement to show monies are being used to address the impact of the developments they were taken for. Projects meeting the relevant criteria are sent to the relevant Ward Members for a unanimous decision. If there is a disagreement, the issue is reported to the next meeting of this Committee.
- 3.7 This approach has been taken since 2016 when a report approved by this Committee on 25 October 2016 (Para 5 of minute refers) gave delegated authority to the Head of Development Services, in consultation with relevant Ward Members, for the allocation of Developer Obligation funds associated with community facilities, playing fields, indoor/outdoor sports facilities and library facilities.

4. PROPOSALS IN LOSSIEMOUTH

- 4.1 The following requests have been received from Community Groups to ascertain whether there are any available Developer Obligation funds to use towards their proposed projects:

- Action Marine Park: new pavilion within the Park
- Seafest Group: 15 folding round tables and a dual-mic system to be used at Seafest

A request has also been received from Education for funds of £20,851, detailed below, to go towards the replacement of elements of Lossiemouth High School incorporating a 3G pitch and community facilities which fits with the purpose that the money was taken and reduces the overall budget cost of the project. The available amounts are not part of the funding agreed for the Lossiemouth High School; however these meet the criteria of spend as set out in the legal agreements and therefore could be used to offset some of the costs that the Council is committed to.

- Playing fields- £1,006
- Community Facilities- £19,845

4.2 A Developer Obligation of £2,151 towards library facilities is also available to spend within the Lossiemouth High School catchment area. This fund was also proposed to be spent towards the community library facility incorporated within the new Lossiemouth High School. However, if the decision is made as part of the saving proposals to close Lossiemouth Library, this amount of £2,151 will have to be refunded to the developers and the same applies to Developer Obligations towards libraries in another catchment area, unless there is a library being operated by a Community Group and accessible to the community.

4.3 If the spend on the Council project is supported, this would result in no Developer Obligations being available to the Community Groups, which has unfortunately led to a disagreement amongst the Heldon & Laich Ward Members.

4.4 It is recommended that taking account of the Council's current financial situation; the available Developer Obligations of £20,851 as detailed above are committed towards the identified elements of the replacement Lossiemouth High School, which meets the purpose for which the money was taken and reduces the budget burden on the Council accordingly. This is based on the current circumstances in that the 3G pitch and community facilities within Lossiemouth High School will be open to the community.

5. PROPOSED CHANGE TO PROCESS

5.1 The Developer Obligations service has been provided in house for 2 years and during this period it has been found that the current practice is causing delays in the spending of these funds which in turn, is causing uncertainty for Community Groups and Council departments when they apply as decisions can take several months. Developer Obligation funds are time limited and delays in their spending could result in money being returned to the developer. Furthermore, it is time consuming and resource intensive to resolve the disagreements between Ward Members.

5.2 Therefore, it is proposed to change the current practice to the requirement for a majority decision amongst Ward Members in order to streamline the process, avoid delays and ensure projects are delivered and funds spent on

appropriate proposals that meet the terms of the legal agreements entered into. Where there are competing eligible projects preference will always be given to those projects being funded and delivered by the Council.

- 5.3 In cases of a split decision within Wards of four Elected Members, Heldon & Laich and Forres, it is recommended to delegate final authority to the Head of Development Services.
- 5.4 **Appendix 1** sets out the proposed process for consulting and seeking support from the Ward Members.

6. **SUMMARY OF IMPLICATIONS**

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

The top priority of the 10 year plan is a growing, diverse and sustainable economy; and infrastructure is needed to support growth and sustainable communities. One of the Corporate Plan priorities is to work towards a financially stable council that provides valued services to communities.

(b) Policy and Legal

Developer Obligations is a Policy (IMP3) in the Moray Local Development Plan 2015, which is proposed to be carried forward as a primary policy PP3 Infrastructure and Services, in the Moray Local Development Plan 2020 to reflect the need for an infrastructure first approach.

An up-to-date, robust evidence base is required to minimise the risk of legal challenges. Monies must be spent for the purpose for which they were taken.

(c) Financial implications

Spending Developer Obligations towards Council owned assets could ease budget pressures and reduce the Council's borrowing, however the spend must be in accordance with the legal agreement setting out the reason for taking the obligation in the first instance.

This report contains the additional expenditure warning. If Developer Obligations are used to fund Community Group projects rather than contributing towards the cost of Council expenditure on projects which are in accordance with the legal agreement underpinning the Developer Obligation, then the Council incurs expenditure in addition to that which is strictly required. In the current financial climate the Council should seek to minimise additional expenditure.

Changing the current process to one of a majority decision will save time in spending developer obligations.

(d) Risk Implications

Should the contributions not be spent for the purpose it was taken by the set deadline, the Council would be open to challenge and required to repay the contribution with accrued interest.

(e) Staffing Implications

Work on Developer Obligations is carried out within the Development Planning & Facilitation Team, supported by Officers in Education, Transportation, Housing, Legal, Finance, Development Management, Estates and NHS Grampian.

(f) Property

None.

(g) Equalities/Socio Economic Impact

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

(h) Consultations

Corporate Director (Economic Development Planning & Infrastructure), Head of Development Services, the Head of Financial Services, Douglas McLaren (Accountant), Educational Resources Manager, Senior Project Officer (Education), the Head of Legal and Democratic Services, the Legal Services Manager (Property and Contracts), the Equalities Officer, the Principal Librarian, the Lands and Parks Officer and Democratic Services Manager have been consulted and comments incorporated into this report.

7. CONCLUSION

7.1 The report asks the Committee to utilise Developer Obligations of £20,851 towards playing fields and community facilities within the Lossiemouth catchment area towards the replacement Lossiemouth High School.

7.2 The report provides an overview of the current process of using contributions towards community facilities, playing fields, indoor/outdoor sport facilities and libraries; and asks the Committee to agree to the recommendation of a majority Ward Member decision to streamline the process and avoid delays.

Author of Report: Hilda Puskas (Developer Obligations Officer)

Background Papers:

Ref: