

Topic	Contributor	Summary	Responses
General			
Typography	SEPA	Highlight a typographical error on page 10 under Governance “receiving a written notice <i>form</i> the developer requiring” instead of “from”.	Noted and amended.
General	Archaeology Service	Thanks given for the opportunity to comment. Support the proposed revisions.	Noted.
	Homes for Scotland	Welcomes the opportunity to comment on the draft SG and have prepared their response in consultation with members of Homes for Scotland’s Highland & Moray Home Builders’ Committee.	
	Scotia Homes	Welcomes the opportunity to comment on the SG and trusts that the comments made are positive in support of securing the agreed final SG. Scotia Homes remain committed to the delivery of their sites in Moray and wish to work with Moray Council on the delivery of their sites and shared interests. Agrees that new development should not place a burden on existing infrastructure and wish to work with the Council to ensure the deliverability of service provision.	
	Savills (for Pitgaveny Farms)/ Cairn Housing Association/Barratt	Welcomes the opportunity to respond to the draft Developer Obligations Guidance.	
	Robertson/Homes for Scotland	Welcomes the opportunity to provide comment on the revised SG and accepts the need for developer obligations where these are directly linked to requirements arising from specific developments and where these meet the tests of the Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreement.	

	NHS Grampian	<p>Welcomes the opportunity to submit representations on Moray's updated Developer Obligations Supplementary Guidance.</p> <p>Welcomes the inclusion of Health within the Developer Obligations Supplementary Guidance.</p>	Support noted.
Proposed Plan/Policy	Homes for Scotland	<p>Statutory guidance can only make provision for development obligations which are specifically heralded in the Local Development Plan. The SG is intended to be linked to the emerging Local Development Plan.</p> <p>When commenting on policy and guidance on developer obligations we seek to ensure the parameters set out in national guidance and in case law are being adhered to, that home builders can forecast what is going to be asked of them, and the development remains viable.</p>	Agree and the Moray Council Developer Obligations SG is linked to the emerging Local Development Plan setting out further details to support Policy PP3 Infrastructure and Services as set out on Page 32 of the Moray Local Development Plan 2020, Proposed Plan, Volume 1.
Increase in contributions	Homes for Scotland/ Robertson/ Barratt	Observed an increase in the use of developer obligations and inclusion of further burdens to extract contributions from home builders and landowners towards the funding of the infrastructure needed to support growing communities. Objection to the increase in obligations where no or insufficient justification provided.	<p>The rates within the SG have been index-linked to the BCPI Q4, 2019 for the Moray Council infrastructure and TPI Q4, 2019 for NHS Grampian infrastructure to reflect current costs.</p> <p>It is considered that all rates and mitigation measures identified in the SG have a sufficient evidence base and meet the tests. Some mitigation measures, such as technological and transport solutions for Healthcare, included within the updated Guidance, have been reviewed to acknowledge this concern and developer obligations will not be sought towards these at this point of time.</p>

Development Benefit	Homes for Scotland/ Scotia Homes/ Robertson	Highlight the benefits of home building, including council tax revenue, local economy boost, and support for jobs as evidenced in Homes for Scotland's 2015 research report on the economic and social benefits of home building.	Noted. The benefits of housebuilding have been recognised and highlighted to the elected members. The need for a balanced approach to meet housing need and infrastructure requirements in this challenging economic climate has always been stressed.
Payment Timescales	Homes for Scotland	Council to be more flexible in the timescales for seeking payments. Our members advise us the Council currently seeks payments within 14 days, whereas our member companies tend to have 30-day accounts cycles.	Seeking payment within 14 days is considered to be standard practice; all invoices raised by the Council must be paid within 14 days. This has been set out in the SG since October 2016.
Scaling Development	Homes for Scotland/ Scotia	<p>The expectations to pay the full developer obligations are applied to not only major home building projects, but also to small schemes typically delivered by small and financially fragile businesses.</p> <p>We suggest developer obligations should not be sought for affordable homes or for any homes on sites delivering 12 or fewer new homes. A graduated approach should also be taken to sites of between 13 to 25 homes – with a sympathetic approach taken on the stage at which any developer obligations for these smaller sites are deemed payable. This would support the business viability of small-scale home builders and better enable re-stimulation of that part of the home building industry.</p>	<p>Developer obligations should be taken into account when purchasing land and should be reflected in the land value. Therefore, it should not be a burden for housebuilders.</p> <p>The Moray Council Strategic Housing Investment Plan (SHIP) includes a number of smaller sites and the Council is planning to undertake an awareness exercise for smaller scale builders of sites and opportunities arising through the LDP and Moray Growth Deal. The Council would be delighted to discuss this further with Homes for Scotland and to understand what actions Homes for Scotland are undertaking to support smaller scale housebuilders in Moray.</p>
Exemptions	Homes for Scotland	The cost of any exemptions should not be redistributed to the wider development community as this would breach the provisions of the Circular in respect of links to the specific development.	Developer obligations are only sought to mitigate the impact of the development and must relate to the proposed development.
Charitable Exemptions	Finderne Development Trust (FDT)	The FDT are a charitable organisation who will develop infrastructure and community serving	Page 12 of the SG sets out what infrastructure requirements developer obligations will be

		<p>projects, including establishment of centres of affordable and ecologically economic residential housing, business “hubs”, recreational facilities, etc. The FDT aims to be a “deliverer” and /or “facilitator” of community benefit to the area and does not aim to make profit.</p> <p>The FDT notes the exemptions provided in the SG. Concerned that the regenerative and community-focused developments that figure in FDT’s strategic plan, whilst they have certain resonances with the exemptions, would on current definitions fall largely out with that set of exemptions.</p> <p>The regeneration that FDT intends to deliver would not be of “town centres”, but more rural in location and would not exclusively residential. The developments of recreational facilities or rural business hubs, which are undoubtedly beneficial to the local population, do not appear to be exemptions.</p> <p>Urge the council to add further exemptions which would encompass all developments undertaken by the FDT in order to avoid penalising unfairly and inappropriately the operations of charitable developments trusts such as the FDT.</p> <p>It would not be appropriate for a volunteer-led local charity which aims to bring benefits to Finderne to be required to provide developer obligations in addition to expenditure on the infrastructure. Argue that these obligations should be borne by the</p>	<p>sought towards from various development types. It appears that most development that the FDT would undertake, such as business hubs, recreational facilities will only be required to contribute towards transportation if there are any mitigation measures necessary.</p> <p>The residential developments might need to contribute towards education, healthcare, sports & recreational facilities and transportation. These contributions should be reflected in the land value. New residential developments will have an impact on local infrastructure and this will need to be mitigated via developer obligations. All planning applications are considered against the current local development plan policies and the need to provide developer obligations is a policy requirement.</p> <p>Developer obligations must meet the tests of the Scottish Government Circular 3/2012 which clearly sets out that contributions can only be sought where directly related to the development, proportionate, reasonable and necessary. Therefore, the impact that is created by a development could not be mitigated by others.</p> <p>Moray Council is happy to meet FDT and discuss the requirements and process further.</p>
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		loopholes.	
Evidence base			
Discussion between Council Services	Homes for Scotland/ Scotia Homes/ Robertson	<p>Request that information on the discussions between Moray Council teams from Planning and Development, Legal, Finance, Transportation, Education and Housing, the NHS, Scottish Water and Transport Scotland on the review and update of Developer Obligations Supplementary Guidance be provided.</p> <p>The appropriate level of developer obligation is uncertain and not justified on a site specific basis. No information has been published to show that parties have (a) identified precisely what new infrastructure is wanted (b) costed that infrastructure and got plans in place to deliver it or (c) ascertained what portion of the new infrastructure is needed as a direct result of planned development, so that the appropriate level of developer obligation can be sought and justified.</p> <p>Request that this information is provided to comment further.</p>	<p>The Proposed Plan and the SG were both prepared in discussions and partnership with other Council Services and Community Planning Partners. There are no formal minutes available of these lengthy discussions due to the considerable staff time it would take to record these. The resources required to record all discussions would negatively impact on the efficiency of the developer obligations service provided and ultimately the timeframe for determining planning applications.</p> <p>The outcome of these discussions has been to identify the mitigation measures required to support development and this is set out in the Proposed Plan and the SG.</p> <p>The approach Moray Council takes in identifying the relevant developer obligations, which are very site specific, is the same approach taken everywhere else in Scotland. The certainty given by the cap is a very rare case, and the Council is unaware of any other local authority in Scotland that operates a cap. The Council's decision to remove the cap is merely reflecting the position taken by all other local authorities in Scotland.</p> <p>It is considered that the Council holds sufficient evidence base to justify the mitigation measures identified, however some changes have been made to the updated SG to take account of</p>

			concerns raised. Developer obligations towards technological and transport solutions for Healthcare will not be sought at this point of time.
Contribution zone	Scotia Homes	Moray Council appear to be considering a contribution zone approach to collecting funds through developer obligations, however, there appear to be insufficient proven links between the proposed obligations and uses to which they will be provide for.	Moray Council does not use a contribution zone approach. Developer obligations are sought to mitigate the impact of a development and are calculated for each individual development taking account of what infrastructure mitigation is required to address the impact arising from that development.
	Homes for Scotland	Concerns over insufficient links made between developer contributions and uses of contributions, although a contribution zone approach is not appeared to be considered.	The Council`s approach is illustrated in the example shown in Appendix 1 and 4 of the SG. The Transportation worked example for the ETS sets out how the contributions are calculated to specifically address this issue. The mitigation measures identified and sought contributions are monitored through the LDP Delivery Group to ensure correct spend.
Background papers	Scotia Homes	No link is drawn between the emerging guidance and other forms of infrastructure discussed in the plan including education, healthcare and transportation. Concerns the revised SG does not appear to be based upon evidence-based information. SG is not supported by published background papers and this undermines the ability of consultees to comment on its contents and credibility/reasonableness.	The Moray Council SG is considered to be a very detailed Guidance with a robust evidence base, meeting the tests of the Circular and linked with the Proposed Plan and providing further details to support Policy PP3 Infrastructure and Services. The mitigation measures have been identified in the Proposed Plan Volume 1 and Volume 4 Action/Delivery Programme, which the developers were also consulted on. The SG also includes website links to background

	<p>Homes for Scotland</p>	<p>Moray Council has not published any background papers alongside its draft guidance, depriving consultees of the ability to fully understand whether the proposed developer obligations are reasonable.</p> <p>Concerns that the supplementary guidance provides no certainty on there being arrangements in place to deliver the services which Moray Council is seeking to part-fund through developer obligations. This is a vital component of any evidence base for a developer obligations and is a significant concern. The Council is failing to confirm it will be able to put its proposed developer obligations into productive use and fails to demonstrate that its proposed solutions to service-provision issues are reasonable and proportionate. Cannot comment on the reasonableness of developer obligations being sought if cannot see when and on what funds are being spent.</p>	<p>information such as School Roll Forecast, Housing Land Audit, Elgin Transport Strategy, etc.</p> <p>Homes for Scotland usually invite Council officers to their meetings to discuss any concerns relating to developer obligations; which was expected prior to the SG consultation deadline.</p> <p>Moray Council officers would have been happy to meet Homes for Scotland and discuss the proposals set out in the SG, and disappointed at the lack of engagement from Homes for Scotland.</p> <p>As offered previously, Moray Council is happy to share and discuss evidence bases on a site by site basis as it has been done before when requested by members of Homes for Scotland.</p>
	<p>Savills (for Pitgaveny Farms)</p>	<p>While detailed analysis is provided for the methodology of calculation contributions, there are concerns over lack of audited background information on what specific mitigation work has to be carried out to accommodate increased usage of services and infrastructure. Despite asking for audits in the initial consultation on the Guidance, calculations remain in generalised form and particular impacts could have been identified and costed in the intervening 3-4 years.</p>	<p>The rates included within the SG are based on costed interventions, recent build/project costs.</p> <p>The Council is aware of the Elswick court case but the approach taken in Moray is different. The contributions are based on Transport Assessments/Statements and therefore the developer obligations sought for each intervention are reasonable and proportionate to the relevant development.</p>
	<p>Robertson</p>	<p>Request publication of back up data evidencing each and every requirement of contribution in line with recently published Scottish Government Guidance for the Local Authorities and Government advice to</p>	

		other Councils in Scotland.	
Circular Tests	Homes for Scotland/ Scotia Homes/ Robertson	<p>Paragraph 33 of the Circular highlights that where standard charges and formulae are applied to individual developments, they should reflect the actual impact and be proportionate to, the development and should comply with the general tests set out in the Circular.</p> <p>It is not considered there to be enough information available to demonstrate that Scottish Government guidance on developer obligations set out in Planning Circular 3/2012, Planning Obligations and Good Neighbour Agreements have been met by the supplementary guidance or by the individual developer obligations for which it makes provision.</p>	
	Savills (for Pitgaveny Farms)	Concerns that securing specifically calculated financial contributions towards impacted services challenged the statutory tests of fairness, reasonableness and proportionality.	
Proportionality test	Homes for Scotland	Moray Council would need to provide clear evidence that it understands what proportion of the services and associated infrastructure are required as a direct result of the new homes that are being built in Moray. No evidence has been presented to show whether the council has the available data to provide sufficient knowledge and understanding.	
Reasonableness	Homes for Scotland	The council has not provided an appropriate standard of information to support its supplementary guidance which has deprived the stakeholders of the opportunity to properly consider the impact and reasonableness of the proposed guidance and obligations.	

		Further guidance on the reasonable use of developer obligations can be drawn from the Elswick court case, where the planning authority lost the case as they had based its assessment on the proportion of traffic from each new development using the transport improvements and not the traffic from developments as a proportion of the total traffic using the transport improvements.	
Flexibility	Robertson	Request a guidance document with sufficient detail while maintaining flexibility to highlight likely obligations at the start of the development process and allow an appropriate level to be agreed on a site by site basis to protect development viability.	The Moray Council's Strategic Planning and Development team offer free of charge pre application developer obligations advice and preparation of draft assessments. The Council encourages developers to make early contact with the team in order to be able to advise on developer obligations requirements, which then supports the developers in land negotiations and the requirements can be taken into account when purchasing land.
Action Programme	Homes for Scotland	The Proposed Plan states that Table 4 will be updated through the Action Programme and through the Developer Obligations Supplementary Guidance as the infrastructure evidence base is reviewed over time. Concerns that this commitment is too vague and unspecific, and at odds with the approach to the Scottish Government is seeking stipulate- for example in its recent reasoning for refusing to allow the City of Edinburgh Council to adopts its new supplementary guidance.	The Action/Delivery Programme lists all mitigation measures required, sets out the costs and progress made with timescales. The mitigation measures are being monitored at the LDP Delivery Group meetings and the Action/Delivery Programme will be monitored annually.
	Homes for Scotland	Notes that Table 4 (on Page 16) relates only to schools. No link is drawn here (third paragraph of page 16) between emerging guidance and the other forms of infrastructure discussed.	The finalised Action/Delivery Programme was anticipated to be reported to the August meeting of the Planning & Regulatory Services Committee. Committees are now suspended to June and therefore timescale for this will depend on the Covid-19 stance and the decision of the Emergency Cabinet.

<p>Scottish Government role/intervention</p>	<p>Homes for Scotland</p>	<p>Highlight that the Scottish Government has a role in the preparation of the supplementary guidance and intervene from time to time or direct planning authorities not to adopt particular guidance, for example the recent case of City of Edinburgh Council. Scottish Government may be willing to intervene when:</p> <ul style="list-style-type: none"> • An obligation which isn't expressly identified in a statement in the development plan as a matter which is to be dealt with in Supplementary Guidance • An obligation which has not been demonstrated (on the evidence presented) to <ul style="list-style-type: none"> ○ fairly and reasonably relate in scale and kind to the proposed development ○ reflect the actual impacts of, and be proportionate to, the proposed development • Guidance which does not provide sufficient certainty that contributions sought on the basis of it will always be used for the purpose for which they are gathered 	<p>It is considered that Moray Council acted in accordance with the Scottish Government Guidance in the preparation of the SG and all tests are being met.</p> <p>Moray Council is considered to be in a different position from City of Edinburgh Council (CEC). The Scottish Government letter to CEC highlighted a missing link between the LDP and Developer Obligations SG, where their LDP does not mention of seeking developer obligations towards healthcare, but being included within their SG.</p> <p>This is however not the case in Moray, the Moray LDP clearly states and lists all infrastructure requirements that developer obligations will be sought towards with further details being set out in the SG.</p>
<p>Education</p>			
<p>Evidence</p>	<p>Scottish Government</p>	<p>Significant difference in the scale of education contributions sought depending on the mitigation measure. Unclear which mitigation measure is likely to apply to a given development. Suggest that greater clarity of which mitigation measures for education are sought for developments are provided.</p>	<p>Noted and Appendix 6 has been amended to include the mitigation measures and developer obligations figures required towards Education for each allocated site to provide more clarity to developers and clearer link with the Local Development Plan.</p>

		Consideration should be given to update Appendix 6 to take account of the education requirements identified in the MLDP2020 and supporting evidence to provide greater certainty and help demonstrate that the guidance is rooted in the development plan.	
School Estate Strategy	Scottish Government	Appendix 6 of that document indicates that a School Estate Strategy identifying education infrastructure needs was/is in preparation and would be reported to the Council in mid-2018. The School Estate Strategy is also referred to in the Council's proposed LDP, Table 4 of which sets out the education infrastructure required to support the level of development proposed in the plan.	<p>It is acknowledged that work on a comprehensive School Estate Strategy has been delayed due to resource issues. However the Council's Children and Young People's Services Committee meeting on 4th March 2020 considered and agreed a report on an "Approach to Developing a Learning Estate Strategy". This sets out a new approach to developing a long term strategy for the learning estate. The Committee also agreed to additional staffing resource to prepare and deliver the longer term strategy.</p> <p>The Strategy will address the need for significant investment to provide new capacity in growth areas and to bring schools up to a standard of condition and suitability that enhances the learning environment. The report sets out a proposed approach and guiding principles to be adopted in the delivery of a learning estate strategy for Moray. The guiding principles mirror those of the national strategy and the approach recognises the framework of policies and strategy that already exists to deliver leadership and the quality of educational experience aspired to.</p>
	Homes for Scotland	The revised guidance does not appear to be based on the School Estate Review as a Council-wide assessment of school property, building conditions, capacities and strategic plans for new build and extensions, which was advised in 2016 as being imminent.	
	Scotia Homes	The School Estate Review is outstanding and request that this is provided as a background to the SG, with a rationale for contributions on a site-specific basis, having regard to the policy requirements of the Scottish Government having regard to Circular 3/2012.	
	Savills (for Pitgaveny Farms)	It is a distinct failing to not have the School Estate Review completed in time for this Guidance as it was committed before adoption of the current guidance two years ago.	
	Homes for Scotland/Robertson	Understand that the School Estate Strategy is under review and full analysis of the Council schools requires greater assessment although this was the	

		<p>same text provided within the 2018 SG.</p> <p>Home builders expected to be advised of the plans for new schools, school closures, amalgamations, replacements and extensions, through the School Estates Review prior to the update of the supplementary guidance.</p> <p>Question whether a revised strategy for school estate which may include the amalgamation of adjacent schools has been established as within the SG the size of new primary schools have increased from 232-464 pupils to a 650 school capacity within a 2.5 hectare site. No school in Moray currently operates to this scale.</p> <p>If this is the case the calculations for Developer Obligations are significantly different from those in the Supplementary Guidance, since a large element of any such new schools would constitute “replacement” – for which funding streams are different.</p> <p>Lack of clarity whether migration of pupils to new schools reducing existing schools capacity is taken into account.</p> <p>Considered appropriate to impose a moratorium on education developer obligations until the review is concluded.</p>	<p>This work will take several years to complete as it will involve staff recruitment, statutory procedures and extensive community engagement.</p> <p>In the meantime the current methodology of using annual housing land audits, school roll projections and the education mitigation measures identified in the Proposed LDP and SG for rezoning, extensions and new schools will be used.</p>
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<p>School Roll Forecast</p>	<p>Robertson</p>	<p>Unclear what role school projections have in the assessment of impact and calculation of contributions. Requires guidance on estimated pupil generation and actual impact of this on school roll projection. Requires greater clarity on the approach taken to identify impacts on school roll projections resulting from new developments and that from existing development and wider influences on rising roles. Concerns that the SG does not provide sufficient evidence to demonstrate the impact of new development on the school roll and therefore is insufficient to demonstrate that the contributions sought are proportionate to scale of impact.</p>	<p>Developer obligations will be sought towards improvements required for primary and secondary schools when the school reaches 80% physical capacity for primary schools or 90% capacity for secondary schools, and therefore calculations are based on the current School Roll Forecast (SRF).</p> <p>The SRF takes account of new developments and figures, shown under “Housing” in the SRF, are derived from the Housing Land Audit or any interim update of it. The SRF is updated every 6 month to ensure that it is accurate.</p>
<p>Sale of Redundant Properties</p>	<p>Homes for Scotland/Scotia Homes</p>	<p>Calculations for contributions for the income which the council would derive from the sale of redundant properties should be included and discounted.</p>	<p>The mitigation measures identified in the current SG do not involve any income for the sale of redundant properties. If that changes in the future then the Council will consider how that issue should be reflected in the SG.</p>
<p>Functional Capacity</p>	<p>Homes for Scotland/Robertson/Scotia Homes</p>	<p>The SG proposal that 80% capacity for Primary and 90% capacity is extremely low and not justified. For example, a 450 capacity primary school would require contributions when its roll reaches 360, the difference of 90 places equating to 300 new homes. In the context of history rates of new building in Moray, this is not justified and homebuilders would be paying for several years of space capacity.</p> <p>Request that this is increased to 90% and 95%, respectively.</p>	<p>Developer obligations are required to mitigate the impact of the new development when a primary school reaches 80% physical capacity and a secondary school reaches 90% capacity. The trigger for secondary schools remained unchanged and is considered to be reasonable given the time period required for completing the mitigation measure. The mitigation measures are needed in the towns with most development so build out rates are faster.</p> <p>In terms of primary schools, the physical capacity shows how many pupils can be accommodated in the school, whereas the functional capacity is the maximum number of</p>

			<p>pupils that the school can accommodate taking into account the organisational needs of the school and in particular the age distributions of the pupils; and this figure is reviewed annually.</p> <p>The trigger for primary schools has been changed from 90% functional capacity to 80% physical capacity, which has been tested to be roughly the same trigger point. 80% physical capacity at a primary school roughly equates to 90% functional capacity, however it depends on the size of the school. For example, when Bishopmill Primary School reached 81% physical capacity the functional capacity was 94%. In certain primary schools, the difference between the two figures could actually be higher, Newmill Primary School is shown as 92% functional capacity, when the physical capacity is only 70%.</p> <p>It is considered that the physical capacity is more reliable because there are less variables, which provides more certainty to developers.</p>
<p>Sequential test procedure</p>	<p>Homes for Scotland/ Scotia Homes</p>	<p>Suggest that the out-of-zone policy is subject to more stringent controls being applied to schools which are identified in the supplementary guidance schedule for potential obligations, together with the suggestion for the use of a sequential test procedure.</p> <p>To clarify the most reasonable and cost-effective way to mitigate impacts on schools, suggests the Council adopt a sequential test procedure:</p>	<p>The Scottish Government under the Education (Scotland) Act 1980 requires local authorities to allow out of zone placements. Similarly to other local authorities, Moray Council has also started capping the school roll for certain schools to ensure that children within the catchment area can be accommodated. For example, Elgin High School has been capped to a maximum of 180 pupils, whereas Elgin Academy was capped to a max. 210 pupils.</p>

		<ul style="list-style-type: none"> • Step 1 A catchment review, to establish whether a neighbouring school(s) could assist in accommodating increasing pupil numbers • Step 2 An examination of the potential to extend existing facilities • Step 3 Identify the location and scale of any new school <p>Step 4 If a new school is required, to establish if it is to include replacement of existing school</p>	<p>However, there is an appeal process, where this Council exercise could be overruled.</p> <p>The approach to mitigation measures to address the impact of new developments will be part of the Learning Estate Strategy.</p>
<p>Out-of-Catchment Placement Requests</p>	<p>Homes for Scotland/Robertson</p>	<p>Concerns were previously expressed that Moray Council continues to accept out-of-zone placements into schools that are nearing capacity, when the LDP has allocated land for immediate development within the school catchment.</p> <p>Request evidence as to how out of school catchment pupils affect the capacity of a school. Developments are adversely affected and effectively subsidising the school estate.</p> <p>Suggest that the out-of-zone policy is subject to more stringent controls being applied to schools which are identified in the supplementary guidance schedule for potential obligations. And suggest restricting or ruling out out-of-catchment placing requests when a school reaches capacity. It is understood that other Councils place a cap restriction on out of catchment placements. This requires a robust process on the actual school capacity through detailed analysis and forms that roll projections through the Housing Land Audit.</p>	

<p>Serviced school site</p>	<p>Homes for Scotland/ Robertson</p>	<p>Concerns over lack of justification and seek clarity on proposal for a developer to provide land at nil value for educational purposes, and other developers within the catchment are also required to provide a proportionate contribution towards the land. Is this reimbursed to the original developer or is there a reduction mechanism of other factors to cater for these aspects? This double counting is unjust and should be revised. No justification provided for the collection of these additional land value payments from other developers. If these proportionate payments required to equalise the financial burden of the developer having to transfer and service the school site, then these should be transferred to the them. This is not the case, and the requirement for these additional funds, prescribed use and whether or not it meets the tests is not transparent.</p> <p>Suggest that land is purchased from the developer by the Council and all developers contribute towards land and building costs.</p>	<p>A serviced school site at nil value is required from a development where the pupils generated by the development require a new school. Where this is not the case and the pupils generated by the development would not fully take up the new school, the Council pays the proportion of the land value that is not attributable to the development; and later recoups this land value paid from other developers who generate pupils that are zoned to the new school.</p> <p>Further clarification to the text on Page 13 of the SG has been added.</p>
<p>Land value payment</p>	<p>Homes for Scotland</p>	<p>Assumed that the requirement for the land value payment is intended to apply to the developer of the houses that are expected to generate new pupils, rather than the pupils themselves (as per Page 13).</p>	<p>Developer obligations will apply to the developer of the houses that are expected to generate new pupils and clarification to the text on Page 13 has been added.</p>
<p>Pupil Product Ratio</p>	<p>Homes for Scotland/ Scotia Homes</p>	<p>The pupil product ratios for secondary (0.15) and for primary (0.3) are retained in the supplementary guidance, and defined as reasonable, but lack of referenced evidence. Evidence from the Housing Land Audit and the School Roll Forecasts show that the total school population in Moray (secondary and</p>	<p>The pupil product ratio (PPR) of 0.3 for primary and 0.15 for secondary schools has been previously tested in Moray and proved to be an accurate reflection of pupils generated by new developments. A further 6 sites have since been tested with the lowest PPR for primary schools</p>

		<p>primary) has remained static at around 12,000 for the last 7 years, despite the construction of over 2000 new homes.</p> <p>Suggest that the methodology is devised to measure new-build occupancy and test the overall accuracy of the pupil product ratio figures.</p>	<p>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. Therefore, no changes have been proposed to the updated SG.</p> <p>Detailed outcomes of the testing have been added to the Committee Report as Appendix 3.</p>
Healthcare			
Healthcare provision	NHS Grampian	<p>Healthcare facilities are presently under pressure and will require either internal alteration, expansion or the provision of new facilities in order to mitigate the impact arising directly from new residential developments. It is therefore essential that developer contributions are secured for existing facilities and for land for the development of new facilities.</p>	Supporting comment is noted.
Evidence	Scottish Government	<p>Unclear whether the transportation and technological solutions are required as a direct result of new development rather than to resolve existing deficiencies in provision. Further evidence should be provided to justify this and demonstrate that they are reflective of, and proportionate to, the impact of new development – as required by Circular 3/2012.</p> <p>Helpful that Appendix 6 of the SG indicates the level of contributions that developers will be expected to make towards healthcare but unclear whether the rates currently specified in the draft correspond to:</p> <ul style="list-style-type: none"> • The requirements for new and improved 	<p>A spreadsheet, that has been developed and has been in use for a number of years by NHS Grampian with the support of Council officers, identifies the direct link between new developments and healthcare facilities by looking at all allocated sites within the LDP, setting out how many patients these sites will generate, what impact that will have on the healthcare facilities, and what mitigation measure is required to mitigate the impact. The spreadsheet is updated annually to reflect the updated housing land audit figures. Extracts of this have been provided to developers on a case by case basis; and where there has been any</p>

		<p>healthcare facilities identified in Table 5 of the proposed MLDP2020.</p> <ul style="list-style-type: none"> The rates associated with different mitigation measures identified in the supplementary guidance. <p>Welcome reassurance regarding the extent to which there is read-across between the supplementary guidance under consultation and the proposed MLDP2020. Aberlour Health Centre will require reconfiguration according to Table 5 of the MLDP2020, but Appendix 6 of the SG guidance suggests that for LDP sites within Aberlour, a contribution of the cost of permanent accommodation will be required.</p>	<p>potential change to a mitigation measure the Council and developer has agreed a pause and review clause to be included within the s75 legal agreement.</p> <p>An extract of this spreadsheet has been added to the Committee Report as Appendix 4.</p> <p>Developer obligations do not fully cover the cost of infrastructure required to mitigate the impact of new developments and NHS Grampian applies for further funding from the Scottish Government. The process for this application is out with the control of NHS Grampian or the Council. The process is lengthy with multiple steps and no defined timescales for consideration from the Scottish Government once applying for funds towards mitigation measures.</p>
Evidence	Savills for Pitgaveny	Health Care Facilities are not presented with a robust audit for examination of existing facilities, committed extensions to facilities, with identified funding plans by either NHS Grampian or private providers.	<p>Typos in Appendix 6 of the SG have been corrected.</p>
Policy PP3	Homes for Scotland	Policy PP3 does not make specific reference to dentist chairs or community pharmacies. Suggested that Policy PP3 does not provide an appropriate level of clarity on the fact the Council intends to use developer obligations for this purpose. The policy can't be used to justify this aspect of the Guidance.	Policy PP3 Infrastructure and Services sets out that developer obligations will be sought towards healthcare and that the SG will provide further details to support this policy. The SG sets out that healthcare facilities can include General Medical Services (GMS), Community Pharmacies and Dental Practices; which is exactly the same requirement as the current approved SG.
Policy PP3	Homes for Scotland/Robertson	Page 18 of the guidance seeks payments towards the purchase of new technology and vehicles, and suggests for larger developments, a commercial unit may require to be made available at nil rental cost	

		for an agreed timeframe, which is an unknown factor on the requirements. These are not mentioned within the LDP.	Contributions towards Community Pharmacies and Dental Chairs are not new, additional requirements. The healthcare section of the SG has been amended to provide further details and evidence for seeking developer obligations as previously requested from developers. To provide a more transparent approach, the updated SG includes a separate section for Dental Practices and Community Pharmacies within the healthcare facilities section, which sets out the required floorspace for new premises and reduced figures to be sought towards mitigation, acknowledging that mitigation measures towards these type of facilities could cost less than extensions/reconfigurations to GP Practices or new build GP Practices. Some GP Practices might be privately owned, however the use of developer obligations is considered to be acceptable as these facilities provide NHS services to the residents and the contributions will be used to create further capacity within the premises in order to provide NHS services. If these premises are sold, the Council and NHS Grampian will ensure that the owner of a private practice will not benefit from developer obligations used on the premises and contributions used for extension of premises will be required to be refunded to NHS Grampian.
Dental Chairs/ Pharmacy	Homes for Scotland/ Robertson/ Scotia Homes	Concerns over lack of evidence. Concerns that contributions sought towards health contributions, especially dental chairs and pharmacies will subsidise the private sector. It is not reasonable to ask home builders to pay for their provision, especially where no evidence has been provided to link the desire for additional dentist chairs in Elgin and/or Forres to the fact that new homes are being delivered in these areas. Home building brings new families to an area, increasing the business case for these services.	
Dental Chairs/ Pharmacy	Homes for Scotland	Dentistry and community pharmacies have been newly identified as intended recipients of funding. It is not stated in the action plan that developers of sites listed as relevant to the need for new dental seats and pharmacies will be asked to contribute funds.	
Technology/Vehicle	Scottish Government	Unclear whether the costs associated with the technological or transport solutions referred to in	The Council is aware that NHS Grampian is exploring new and innovative ways for providing

		the supplementary guidance are reflected in the updated contribution rates for healthcare infrastructure.	healthcare services to overcome some of the challenges the healthcare sector is currently facing, particularly in delivering healthcare in rural areas and in addressing climate change by reducing travel and associated carbon emissions.
Technology/ Vehicle/ Commercial Unit Provision	NHS Grampian	<p>The way in which healthcare is being delivered is changing and a more flexible approach is therefore required. The use of technology and transport solutions will play a big part in the future provision of healthcare within new and emerging communities.</p> <p>Welcomes the inclusion of digital & transport solutions by way of developer obligations for healthcare within the Infrastructure & Facility Requirements section of the guidance as this will improve access to health facilities in rural areas and have a positive impact on travel to reduce the number of car journeys.</p>	<p>However, these proposed methods are currently in their infancy and not yet costed, therefore, these will continue to be referenced in the SG to draw attention to them as possible future uses, but no developer obligations will be sought towards these at this time.</p>
Sheltered Accommodation	NHS Grampian	<p>Concerns that Sheltered and Extra care accommodation are listed under exemptions and will not contribute to Healthcare facilities. Patients from these premises require more GP visits and appointments within NHS facilities adding pressure on practices that are already stretched and struggling.</p> <p>If nursing homes are to be seen as preventing admission then primary care teams will have to step up their input. These teams and GPs will require a base to work from to support these patients.</p> <p>Require more information on the level of care proposed at such facilities as the skill level and</p>	<p>Further evidence base will be required in order to consider seeking developer obligations towards sheltered and extra care accommodation. Therefore, no change has been proposed at this time.</p>

		experience of the care home staff can play a vital role. Consideration should be given for the inclusion of healthcare contributions for sheltered housing and extra care developments.	
Contribution Amounts	NHS Grampian	<p>NHS Grampian will require considerable investment to not only provide the physical infrastructure required but also to provide the required level of staffing to operate the facility. It is often the case that developer obligations do not fully cover mitigation measure costs.</p> <p>Consideration should be given to the inclusion of a single figure contribution per residential unit rather than the separate figures for permanent accommodation and internal reconfigure sums indicated as costs to reconfigure can be similar to new or extending facilities.</p>	It is acknowledged that developer obligations do not cover the full cost of infrastructure required to mitigate the impact of new developments, but in order to satisfy the Circular tests, developer obligations sought from developments must be proportionate to the impact that needs mitigation. Therefore, no change has been proposed to the updated SG.
Transport			
Apportionment of Cost	Homes for Scotland	The apportionment of costs between each contributing site and other funding sources are not given for transport projects outlined in the Elgin Transport Strategy. This lacks certainty on delivery as timescales are “dependent on available funding”, for many of these projects the action plan reports no progress.	The majority of TSPs identified in the settlement statements are directly associated with the provision of new vehicular and pedestrian/cycle infrastructure to serve a particular development site. These TSPs will be conditions of development and not subject to Developer Obligations.
Evidence	Scotia Homes	Lack of detail available on when the proposed transport improvements are intended to be delivered and insufficient link between a new development and the need for a new service.	Developer Obligations would only be sought for improvements where there is a cumulative impact of development due to a number of sites.
Timescale for Provision	Homes for Scotland	Note the lack of detail available on when the proposed transport improvements are intended to be delivered.	As set out in the updated guidance at this time obligations will be sought for developments in Elgin. In Forres developer obligations for

<p>TSPs</p>	<p>Homes for Scotland</p>	<p>The Transport Proposals (TSPs) identified in the settlement statements, but having now seen the SG it seems clear the appropriate supporting data is missing.</p>	<p>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. Supporting data for the TSPs in other settlements is therefore not required.</p> <p>The method for ascertaining the proportional impact of developments and obligations to locations where there will be a cumulative impact on the road network will continue to be through the use of the Elgin Traffic Model at the time of the planning application. The capacities of sites in the Local Development Plan are indicative and developers will often come forward with denser developments which exceed these capacities. Defining proportions at this stage does not allow flexibility for some sites increasing the number of houses at the planning application stage by a significant proportion.</p> <p>Timescales are indicated in the Action/Delivery Programme as dependant on available funding. Developer Obligations form part of the funding of transport network improvements where there is a need to accommodate movement associated with new development. Moray Council has no influence on the timing of developments coming forward and therefore certainty on the timing of S75 payments.</p> <p>Moray Council's Medium to Long Term Plan</p>
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			<p>acknowledges that it must allow for investment in the Council's asset base in accordance with the Local Development Plan and other Council Strategies, including transport infrastructure.</p> <p>As is the case with other significant items of capital spend it will be a matter for the Council to prioritise projects in order to achieve a sustainable level of spending.</p> <p>There has already been some progress on the interventions identified in the Elgin Transport Strategy, including the delivery of the traffic signals at Hay Street/South Street. Moray Council has the opportunity to progress with Active Travel based interventions through the Cycling Walking and Safer Streets Government Grant which has been significantly increased for the year 2020/21. This ring fenced grant is likely to remain a future source of funding as it supports the aim of the new National Transport Strategy to make sure that public transport and active travel are the preferred choice for people making short journeys.</p>
Elgin Traffic Model	Homes for Scotland/Robertson	Unaware of the publication of the Elgin Traffic Model. If there has been an update this should be published for consultation.	The Elgin Traffic Model has been updated to a 2018 base using new traffic counts, journey time data and origin-destination data. The traffic model is a tool and not supplementary guidance or a strategy. It therefore does not require consultation. The model has been constructed in line with Transport Analysis Guidance and best practice. Copies of the Local Model Validation

			Report which sets out the data used to construct the model can be made available upon request.
Dial-a-Bus	Homes for Scotland	New and unexpected use of Developer Obligations. Assume the council's intention to enable development to take place in locations that would otherwise be considered unsustainable – although funding is provided by service users.	Seeking and securing Developer Obligations towards the provision of commercial bus services has taken place in Moray over the years for a number of historic developments and will continue to do so. This is no different to Developer Obligations for commercial bus service provision where passengers are also charged to use the service. It recognises that a fixed route timetabled bus service may not be the most appropriate mode of public transport where there is lower population density. This also ensures that new developments can be served by public transport in keeping with the aim of the National Transport Strategy to make sure that public transport and active travel options are the preferred choice for people making short journeys.
	Robertson	Request clarification why developers contribute to "dial-a-bus" services when individuals are charged for this service.	
ETS	Robertson	Note that ETS does not provide an evidence base for current capacity of the junctions and that development mitigations should only be based on the threshold level over and above the current situation. Requires a full data source to enable this to be reviewed in accordance with Scottish Government legislation.	The Development Planning and Management Transport Appraisal Guidance (DPMTAG) states that where available existing relevant quantitative evidence should be used to strengthen qualitative appraisals. Existing data which can be used as evidence for where there are capacity constraints includes traffic modelling and capacity assessments from historic Transport Assessments. Mitigation proposals should be developed where possible to address the cumulative impact of developments.

			<p>The method for ascertaining the proportional impact of developments and contributions to locations where there will be a cumulative impact on the road network will continue to be through the use of the Elgin Traffic Model at the time of the planning application.</p>
<p>Cumulative Impact</p>	<p>Transport Scotland</p>	<p>SG only considers transport for the local network. Unaware of the potential cumulative impact on the strategic road network a result of the LDP’s spatial strategy, as have not seen the conclusions of the DPMTAG based appraisal, which included modelling of the Council’s preferred strategy. Unaware if any mitigation measures are necessary to deliver this strategy, including funding and delivery. This information should be included within this document.</p> <p>Highlighted in the document that where any development has the potential to change the volume or nature of traffic using the Trunk Road Network further consideration will be required in discussion with the Council’s Transport Development Team and with Transport Scotland and that this further consideration may result in planning conditions and/or additional mitigation requirements related to the strategic transport network. Disappointing that the LDP has not identified if there is a specific potential impact to the trunk road network and outlined if transport infrastructure is required to deliver the plan strategy.</p>	<p>The need to provide additional information relating to the cumulative impact of development on the Trunk Road network is acknowledged.</p> <p>Work is progressing in relation to providing more detailed information relating to predicted modelled traffic flows at key junctions on the Trunk Road network within Elgin which will be shared with Transport Scotland once it is available.</p> <p>In agreement with Transport Scotland, and utilising previously agreed capacity modelling parameters as requested, additional assessments of key junctions will be undertaken and overall mitigation measures further developed for the cumulative impact of developments, taking cognisance of the needs of pedestrians and cyclists as the National Transport Strategy aims to make sure that public transport and active travel options are the preferred choice for people making short journeys.</p>

		<p>Consideration of cumulative impacts should be identified in the LDP. Current approach of determining developer obligations through an agreed Transport Assessment/Transport Statement which addresses impact of individual planning applications, resulting in lack of clarity on transport implications for the development as cumulative impact is not considered, in particular requirement for any mitigation necessary prior to the implementation of the A96 upgrade. May result in planning application consultation timescales extending beyond the statutory period in order to reach agreement on appropriate measures that mitigate development impacts on the trunk road network, causing unnecessary delays in the planning process. May also result in confusion on the potential infrastructure improvements required to deliver the proposed allocations within the LDP, particularly with regard to the trunk road network.</p>	<p>Additional wording has been added to the SG to reflect this.</p>
Blue-Green Infrastructure			
Transparency	SEPA	<p>Note that the updated guidance aims to provide certainty and sets out a transparent and consistent approach to infrastructure and facility requirements and are supportive of this.</p>	<p>Supportive comment is noted.</p>
Policy	SEPA	<p>Proposed Local Development Plan Policy PP1 Placemaking includes as a fundamental principle “Integrate multi- functional active travel routes, green and open space into layout and design, to create well connected places that encourage physical activity, provide attractive spaces for people to interact and to connect with nature” and under (iv) Open Spaces/Landscaping “Provide</p>	<p>Noted.</p>

		accessible, multi-functional open space within a clearly defined hierarchy integrated into the development and connected via an active travel network of green/blue corridors that are fully incorporated into the development and to the surrounding area, and meet the requirements of policy EP5 Open Space and the Open Space Strategy Supplementary Guidance and Policy EP12 Managing the Water Environment and Drainage”.	
Open Space	SEPA	Welcome addition of Open Space to the Infrastructure & Facility Requirements section on Page 11, although “Open Space” has not been added to the Sports & Recreational Facilities heading of the summary table on Page 12.	Noted and amended.
Sport pitches	Sportscotland	<p>It is positive that the SG is considering quality and quantity of pitches (since quality issues can be slightly overlooked). If there is an opportunity for other sports facility types to be considered in this way, we would welcome this approach.</p> <p>Note that Page 20 states: “The sportscotland national average for synthetic grass pitches is 0.7 pitches per 10,000 population. Moray currently meets 0.8 pitches per 10,000 population.” This may be from an older Facilities Planning Model. Based on the 2018 Facilities Planning Model; there are 0.5 pitches per 10,000 population in Moray; compared to the national average of 0.9 pitches per 10,000 population.</p>	<p>Supportive comment is noted.</p> <p>Text on page 20 has been amended to take account of the 2018 Facilities Planning Model.</p> <p>The Council is looking to build an evidence base to be able to take developer obligations towards further sports and community facilities in the future.</p>
Blue/Green Networks	SEPA	Consider developer obligations an opportunity to enhance blue-green networks. Would welcome additional bullet point to the list of Infrastructure & Facility Requirements on Page 12, or addition an	Developer Obligations will be sought towards infrastructure items with a robust evidence base. Blue and green infrastructure requirements currently have a lack of evidence

		<p>existing bullet point to relate to blue/green infrastructure, with further consideration detailed in the SG.</p>	<p>base to substantiate the need. The requirement for blue-green infrastructure is considered to be a policy requirement, not a developer obligation as it needs to be built into the development as part of good placemaking. Costs will vary depending on each development, and therefore it is difficult to attribute a cost for developer obligations. If SEPA wish the Council to consider including this requirement as a developer obligation, a robust evidence base including contribution rates and methodology for seeking developer obligations must be provided by SEPA.</p> <p>A developer has the right to appeal to the Directorate of Planning and Environmental Appeals (DPEA) if the planning authority refuses to modify or discharge an obligation within a section 75 agreement. If there is a lack of information to substantiate the need for such a facility, then it is likely that the appeal will be upheld and the Council may have costs awarded against them for acting unreasonably.</p> <p>Requirements to enhance the blue-green infrastructure are covered within the policies of the emerging Local Plan.</p>
<p>SUDS</p>	<p>SEPA</p>	<p>Wish consideration to be given to adding “Addressing infrastructure with identified surface water flooding issues by retrofitting Sustainable Drainage Systems (SUDS)” to the bulleted list under Transport on Page 14.</p>	<p>Retrofitting SUDS would not relate to new developments and therefore this would not meet the tests of the Scottish Government Circular 3/2012.</p>
<p>Affordable Housing</p>			

<p>General</p>	<p>Robertson/ Scotia Homes</p>	<p>Suggest that obligations should not be sought or be reduced for affordable homes as this is an obligation in itself and it is to meet wider Government objectives to an already existing community to whom services are being provided.</p> <p>Question whether the benchmark for affordable housing will increase to reflect the new level of developer obligations or whether this will be an increased cost for the private element of a scheme.</p>	<p>New developments have an impact on local infrastructure that requires mitigation including private and affordable housing.</p> <p>All RSLs when providing affordable housing have to ensure that developer obligations are considered when having sites valued and developer obligations are reflected in their purchase price.</p>
<p>Governance</p>			
<p>Unspent Funds</p>	<p>Scotia Homes</p>	<p>Request criteria identifying arrangements for the event when repayment of developer obligation remain unspent and how this should be recompensed. In the absence of criteria in the SG, on how payments are returnable if funds have not been spent within specified criteria/time periods.</p>	<p>Page 10 of the Guidance sets out the process for refunding unspent developer obligations.</p>
<p>15 Year Timeframe</p>	<p>Homes for Scotland/ Scotia Homes/ Robertson</p>	<p>Object to the proposed changes to rules surrounding the repayment of developer obligation funds which remain unspent.</p> <p>15 years is an unreasonably lengthy timescale for public authorities to spend on services they argue are crucial to sustainable development happening now or in the near future. The timescale should remain at 10 years from date of planning permission being granted.</p> <p>Payments should be made refundable if funds have not been spent within 10 years of being paid.</p> <p>Paragraph 24 of the Circular refers to contributions being made towards facilities required “in the near</p>	<p>Rules relating to the refund of unspent developer obligations for larger developments have not been changed, and have been recorded in legal agreements, where applicable, signed by both the Council and developers.</p> <p>For smaller applications such as a single house in the countryside the onus has been placed on the applicant to seek repayment of funds from the Council, as monitoring these types of developments is resource intensive for officers and negatively impacts on the efficiency of the developer obligation service.</p> <p>Moray has a slower build-out rate, therefore the 15 year timescale is deemed to be reasonable to</p>

		<p>future". The Council`s proposed approach doesn't reflect that provision. A site the size of Findrassie for example could see contributions paid over a 10-year period with no compulsion for Moray Council to spend the contributions for 25 years.</p>	<p>allow adequate time for the Council and NHS Grampian to be able to spend funds given the timeframe required to construct larger infrastructure items.</p> <p>Some other local authorities operate with longer timescales for refunding unspent contributions, such as Highland Council with 20 years for developments between 1 and 49 houses; or City of Edinburgh Council, where contributions relating to education infrastructure could be spent by the Council within 30 years from the date of construction of the new school.</p>
Viability/Cap			
Cap	Savills (for Pitgaveny Farms)	<p>Moray is a relatively small market for housebuilding (which is by far the main contributor to Obligations) and it is understood with reluctant acceptance that the cap was an attempt to balance the viability of new development with the need to help fund services and infrastructure. It provided some financial certainty and reduced the conflict of protracted negotiations. Its removal will undermine confidence in investment.</p>	<p>The majority of developer obligations are sought from residential development as this type of development will generate an increase in population and have a direct and cumulative impact on the infrastructure identified in the SG.</p> <p>The current cap of £6,500 per residential unit applies to the financial contributions to be made towards healthcare, education, transportation and sport & recreational facilities.</p>
Cap	Homes for Scotland	<p>The cap reflects the Council`s awareness of the vital need to balance the need for new homes against the desire to raise funds to cross-subsidise the delivery of infrastructure, including public services.</p> <p>The Council is clearly aware of the sensitivities surrounding significant developer obligations asks in an area with limited land options as Page 9 of the current guidance refers to the need for viability awareness. Nothing has changed in recent times to</p>	<p>The reason for the introduction of the cap was to allow time for the land values to adjust to the level of developer obligations required. Despite having a cap in place since 2017, there has been no evidence to suggest that the land values have adjusted or started adjusting, and as a result, the Council is bridging the funding gap in infrastructure. Developer obligations rarely</p>

		<p>make this anything less of a reality.</p> <p>Firm view is that the cap should remain in place.</p>	<p>cover the full cost of a mitigation measure required, but in Moray due the introduction of the cap, the funding gap is even larger and with the current budgetary pressures that the Council is facing, the Council is no longer capable of bridging the funding gap to this extent. The viability assessments undertaken suggest that the funding gap can be closed by removing the cap and increasing the level of developer obligations secured while continuing to deliver much needed housing in Moray.</p> <p>The Council's intention was to prepare a Whole Plan Viability Study for the emerging Local Development Plan to inform the review of the cap. Unfortunately, this was unsuccessful due to the size of Moray, small amount of landowners and therefore the lack of information available on land values/land deals.</p> <p>As far as Moray Council is aware none of the other local authorities in Scotland operate a cap. Since the introduction of the cap, viability assessments submitted have not been transparent and the national press has reported on record profits for some Moray based housebuilders.</p> <p>The current SG sets out that the cap applies to December 2019, and therefore the review of the cap was known to all stakeholders since August 2017.</p> <p>In addition to this, Council officers were informing developers of the cap being reviewed,</p>
Cap	Homes for Scotland/ Savills (for Pitgaveny Farms)	<p>The cap is also misleading as it only represents contributions made towards education places, community facilities, healthcare and transport. It does not take into account the cost imposed by applicants who have to provide a serviced site for a school in addition to financial contributions.</p>	
Cap removal	Scottish Government	<p>Adopted guidance justifies the cap on viability grounds, suggests that landowners need to adjust their land value expectations to reflect the scale of planning obligations being sought in Moray. However, it also recognises that if values are too low, landowners may not be incentivised to bring forward land for development, which may threaten the Council's planning ambitions. According to the adopted supplementary guidance, the cap reflects lands values, sales values and development costs and is based on a viability appraisal recently undertaken in Elgin. The adopted guidance indicates that a detailed Whole Plan Viability study is being carried out and this will inform a review of the cap.</p> <p>It would be useful for the supplementary guidance (under consultation) to set out the basis for the removal of the CAP.</p>	
Cap removal	Robertson	<p>Disappointed the CAP has been completely removed without consultation.</p> <p>Cap was introduced through dialogue with District Valuer, who in their report dated November 2015, provided evidence of the challenges that higher</p>	

		<p>contributions would have on prevailing land values. Unaware of evidence provided by the DV or any other body to inform the Council on the impact of their decision to remove the cap. Concerned about the financial implications that the removal of the cap will create going forwards for development in Moray.</p>	<p>potentially increased or even removed when discussing larger developments and providing developer obligations advice. Developers were advised to be mindful of the review when discussing land deals and build flexibility into any agreement between them and landowners which allow an adjustment of the land deal once the review has been undertaken.</p>
Cap removal	Homes for Scotland	<p>Shocked by the press release issued by Moray Council on 10 December 2019, provocatively titled “Councillors scrap cap of developer obligations”. The unanimous decision to remove the cap was taken by councillors in a closed session and stakeholders had been given no warning that the cap was due to be discussed, or that a consideration was being given to changing it or removing it entirely.</p>	<p>The developers are encouraged to make early contact with the Council so the level of developer obligations required can be advised and be taken account of when purchasing land. This service is offered free of charge by the Council to the developers to support the delivery of sites.</p>
Cap removal	Homes for Scotland/ Scotia Homes	<p>Request that the cap removal should form part of the draft SG to be subject to consultation given that the removal of the cap will significantly affect the viable delivery of sites, previously costed on the basis of this cap.</p> <p>All preparations underway to deliver new homes on the sites Moray Council has supported in its draft LDP will have been based on the cap. Many, if not all the sites previously deemed viable will have to be reviewed in light of this stark and unilateral policy change. This will have an impact of the deliverability of the LDP and on the effectiveness of sites currently in the housing land audit.</p>	<p>Developer obligations should be taken into account when purchasing land and the land value should reflect this policy requirement. The Council however is taking a pragmatic approach and will enter into negotiations where viability is an issue.</p> <p>Additional text within the updated SG has been included to provide justification for removing the cap.</p>
Cap removal	Springfield	<p>Understand the difficult position the Council is in and accept that the removal of the cap is being adopted in an effort to address some of the</p>	<p>Noted.</p>

		Council's current challenges.	
Viability	Springfield	<p>Concerns over viability if the removal of the CAP applies to land holdings which are already consented, either directly or at the time of a future planning application to remix an area. This land was contracted at a value which reflects the current cap and development would become unviable should a higher charge apply. This would have implications for the continuity of housing delivery and employment in Moray.</p> <p>Sustainable growth is what both Springfield and Moray Council would like to see, therefore optimistic that the Council will take a pragmatic view to introducing the removal of the cap and not apply this on historically contracted land.</p>	The cap will apply to planning applications validated on or after the date of adoption of the Guidance. In terms of major developments with s75 legal agreements, simply remixing the area without changing the total number of houses on site will only require a modification to the legal agreement to take account of the subsequent planning applications and link them to the original permission.
Viability	Scotia Homes	Appears to be an increase in developer obligations. These potential financial increases, together with new services not included in the 2018 SG, relating to for example dentistry and community pharmacies, will all exacerbate development viability. The 2019 SG could result in allocated sites being jeopardised in terms of viability.	<p>Developer obligations should be reflected in the land value when negotiating land for developments and should not be a burden to house builders.</p> <p>The rates set out in the SG have been index-linked to reflect current costs. The only additional infrastructure item that has been added to the Guidance is a Local Authority provided bus service.</p>
	Homes for Scotland/Robertson	Concerns over financial pressure for companies who have recently concluded missives based on the provision of the cap and concerns that these transactions will now come under financial pressure unless an agreed solution can be identified and implemented.	It is presumed that all missives recently concluded relate to current planning applications already in the system, which will not be affected by the removal of the cap.
	Homes for Scotland	The announcement of the removal of the cap completely pulls the rug out from under Moray's home building sector.	
	Savills (for Pitgaveny	It has proved difficult to accommodate the burden	An additional exemption has also been

	Farms)	of obligations with the viability of the development between initial consultation, adoption of the Guidance, and operation up to 2020.	introduced within the SG to exempt town centre redevelopment of existing buildings for residential use and redevelopment of opportunity sites identified in Town Centre Masterplans adopted as a material consideration by the Council to encourage the re-use of vacant floor space and redundant buildings within the town centre.
Viability	Cairn Housing Association	Concerns that sites will become unviable unless the site qualifies as an exemption for “brownfield/town centre”. It would be considered whether there remained any merit of being an active RSL developer in Moray in light of the contribution expectations. Strongly recommend that the Members revisit the application of the guidance to the affordable sector as Cairn Housing Association view the measures as not affordable within the public sector.	All RSLs when providing affordable housing have to ensure that developer obligations are considered when having sites valued and developer obligations are reflected in their purchase agreements. Moray Council Housing Service follows this practice and all the affordable housing developments that are provided by the Council take account of developer obligations when purchasing land. This practice has been shared and discussed at the Investment Group Meeting with all RSLs who are active in Moray.
Viability/Land Values	Savills (for Pitgaveny Farms)	Strong possibility that land for development will not be released onto the market as house builders are likely to pass on the cost of developer obligations onto the landowner than increase the selling price of houses. This will become a complex calculation against the existing value of the land and its potential for long-term productivity. This is pertinent to Moray due to its rural nature where the housing market has limited scale but the	Developer obligations should be reflected in land values and therefore house builders are not expected to absorb the costs of developer obligations. In cases where land would not be released at a lower land value, the Council offers a viability process and if relevant information, set out in Appendix 5, is provided and should a variation be considered acceptable, the Council will enter

		costs of infrastructure are as costly as an urban area.	into negotiations with the developer to ensure that the economic growth of Moray continues.
Viability Assessments/Process			
General	Springfield	Comfortable that in the future Section 75 negotiations, development viability assessments will be the failsafe mechanism by which a workable settlement is reached following the removal of the cap.	Noted.
General	Robertson/ Savills (for Pitgaveny Farms)	Concerns the removal of the cap will result in a significant increase in contentious viability assessments, adding to development costs and delay or discourage projects.	<p>Agree that the current process is time consuming as the required information is not all submitted up front, and the DV needs to make assumptions in order to be able to review the development viability.</p> <p>With the removal of the cap, it is likely that more viability assessments will be submitted to the Council as part of the planning process. Therefore, the process in dealing with viability assessments has been streamlined to avoid delays in the planning process.</p> <p>The Applicant Viability Data (AVD) form and guidance notes listing all information required have been included within Appendix 5 of the SG and have been developed in conjunction with the DV based on recent viability assessments and policy guidance for preparing and reviewing viability assessments. Some flexibility has been left in the process to allow developers submitting a viability assessment in their preferred format as a hardcopy and “live spreadsheet” with working formulas alongside the AVD form, which contains all the necessary</p>
	Homes for Scotland	<p>Because of the cap, home builders only very occasionally had to use the viability process. Improvements require to be made to the process as it will become more commonly used. Developers recently undergone the process suggest that improvements will need to be made.</p> <p>The Council will need to have a fair, accessible method in place of dealing quickly and efficiently with viability claims. Current arrangements are not fit for purpose.</p>	
Process	Savills (for Pitgaveny Farms)	Request a commitment to a more efficient viability assessments procedure before the change is effected. A procedure will have to be introduced which includes impact on the price of the land, and allow a reasonableness test to be extended to the owner and the potential developer through independent arbitration.	
Template	Robertson/ Homes for Scotland/ Barratt	Request that a standard form of viability assessment is introduced, which is partially noted within Appendix 5 through could vary drastically and more	

		<p>details should be provided to ensure that all parties are working from the same base line. It would be encouraged that the Council discuss a solution with Homes for Scotland to enable an industry wide formulae.</p> <p>Suggested that Moray Council works collaboratively with the home building industry to design and implement new arrangements for reviewing viability assessments. A template approach is suggested to be a sensible option. These arrangements should be in place and tested in advance of the new LPD being adopted.</p> <p>Proposed 30 April 2020 as a deadline for the Council to work with Homes for Scotland towards the production of a template for viability assessments. May wish to comment in more detail on Appendix 5 as this is progressed.</p>	<p>information that the DV will require to enter into the ARGUS software used to review viability assessments efficiently and promptly. Alternatively, for those who are unsure what format to use, the AVD form could be used as a template and submitted as a hardcopy and “live spreadsheet” with working formulas.</p> <p>Some recent viability assessments received lacked important information, calculations were not accurate, were provided in a confusing format and it took lengthy discussions to understand the data provided, which took up significant time from both the DV and Council officers.</p> <p>It is considered that Appendix 5 provides a clear guidance to developers when preparing viability assessments and the onus is on developers to provide clear information to avoid lengthy discussions and ensure this process is not time consuming and does not add delays to the planning process.</p> <p>The opportunity was given as part of the consultation to test and comment on the Applicant Viability Data (AVD) form and Guidance notes, but no comments directly related to these or request for further discussion during the 6 week consultation to influence Appendix 5 have been received. Therefore, no changes are proposed to this section of the SG.</p>
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Fee	Scottish Government	Would be useful to set out what this “set fee” payable to the Council is for. It should be considered by the Council whether there is legislative provision of this charge.	<p>The viability assessments are reviewed by the District Valuer and Council officers to scrutinise them. This recently has taken up a significant amount of officer time due to the poor quality of the viability assessments received, which is an additional task to the workload of the officers. It is considered that this additional task should be reimbursed by the 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, this fee has been removed from the updated Guidance.</p> <p>Developers are still required to pay the DV fee for an independent review of the viability assessment. The fee for the DV service is identified on a case by case basis as this depends on the size of the development and complexity of the case. The DV works on an hourly basis and therefore time required to be spent on a viability assessments could only be judged once seeing the viability assessment.</p>
	Homes for Scotland	The cost of the viability appraisal service should be reviewed as the Council is knowingly pushing more developments along this route. Clarification is sought as to the statutory power under which the Council is charging a fee for viability assessments on top of the DV charge, and justification for the level of charge should be provided.	
	Robertson	Note that Moray Council will charge a fee on top of planning application fee to administer the viability assessment. Propose that fees should be agreed for all types of application, currently the fee for District Valuer’s service is on a case by case basis.	
Appeals	Homes for Scotland	An increase in section 75a appeals is another foreseeable consequence of the removal of the cap.	Developer obligations should be reflected in land values and if a development is considered to be unviable, the developers can submit a viability assessment to the Council. A legal agreement should not be entered into if the developer obligations set out are considered to be unviable as this results in abortive work that is time consuming for both the developer and the Council.

Delegated authority	Homes for Scotland	Suggest that (if parameters for delegation are pursued) parameters should not be based on a blanket 'up to £50,000' rule, but on an amount per plot.	Council officers have delegated authority to negotiate developer obligations up to £50,000; and planning application with value exceeding £50,000 will be reported to the meeting of the Planning and Regulatory Services Committee for consideration. This process will however be kept under review.
Land Values	Homes for Scotland/ Robertson	Essential that the viability assessments reflect the reasonable expectations of landowners to ensure that they are rewarded with a reasonable return or they will not sell and the Housing Demand will not be met with consequential impacts on the economy.	The Council acknowledges the need to balance the developer obligations requirements with the continuing development in Moray to support economic growth. Therefore, need for housing and the reasonable expectations of landowners will be taken into account when reviewing viability assessments.
Land Values	Homes for Scotland	Would be helpful to agree an approach to costs (for District Valuer calculation purposes), and to establishing residual land values. It would reduce conflict and frustrations of home builders so they can recognise and agree the outcome of DV reviews; and if different parties were in agreement on what residual land values were likely to support the release of land for home building.	
Proof of land deal	Homes for Scotland/ Barratt	Object to the requirement on page 38, under Guidance Notes and Checklist for Planning Applicants to supply proof of the land deal e.g. missives and disposition where land has already been purchased. This is in addition to the requirement for a Policy Compliant Financial Viability Appraisal, however if the FVA is policy compliant, this should be sufficient. This is not a requirement of the RICS guidance note.	The RICS Guidance Note sets out that "Site value should equate to the market value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan". The Guidance Note also sets out that "A viability appraisal is taken at a point in time, taking account of costs and values at that date. A site may be purchased some time before the viability assessment takes place and circumstances might

			<p>change. This is part of the developer`s risk. A developer may make unreasonable/over optimistic assumptions, which means that it has overpaid for the site. “</p> <p>If a developer argues that they should not pay developer obligations, which is the current policy requirement, because the land was purchased historically, it is considered to be reasonable to see evidence of the land purchased. It is however for the DV and Council officers when reviewing the viability assessment in accord with the RICS Guidance Note to consider the relevance of the actual purchase price and whether any weight should be attached to it.</p>
<p>Guidance on viability</p>	<p>Barratt</p>	<p>Template for viability assessments should be included within the draft SG, produced in tandem with the development industry and based on RICS guidance and good practice from elsewhere in the UK. Note that Appendix C of RICS GN 94/2012 is used as a guide to the contents of a viability assessment; whilst this note has subsequently been updated Financial viability in planning: conduct and reporting (May 2019) the current note does not contain this appendix.</p> <p>Barratt append the Home Builders Federation HBF Local Plan Viability Guide Version 1.2 (September 2019). Similar to the RICS Guidance referenced in the draft SG, the principles contained are relevant to assessment of development viability on both sides of the border.</p>	<p>RICS Guidance Note GN 94/2012 is currently being reviewed to reflect the changes in the National Planning Policy Framework (NPPF) 2018 as updated in February 2019 and Planning Policy Guidance (PPG) 2018 as updated in May 2019. The RICS Professional Statement Financial Viability in planning: conduct and reporting (May 2019), which has also been referenced in Appendix 5, focuses on reporting and process requirements, whilst more explicit detail on development viability in planning and providing greater clarity on reporting will be dealt with in the forthcoming second edition of the RICS Guidance Note Financial viability in planning. In the meantime, until the publication of the second edition, GN 94/2012 will be used.</p>

			The referenced document prepared by the Home Builders Federation relates to local plan viability, which is testing the viability of the sites within the Local Plan. The Council's viability process and Appendix 5 refer to a site specific viability issue, when a development is deemed to be unviable due to the level of developer obligations required.
Confidentiality	Homes for Scotland/ Barratt	Page 8 of the draft SG refers to viability claims being brought to the attention of the Council, which is assumed to mean councillors. Information contained in a viability assessment is highly confidential and commercially sensitive, object to any process whereby this information would be referred to anyone other than the necessary and suitably qualified and experienced officers for professional review, including elected members.	The confidentiality of the viability assessments received are respected and assessments are only shared with the DV and 3 Council officers, who are directly involved in the scrutiny of them.