



REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON 3 AUGUST 2021

SUBJECT: DEVELOPER OBLIGATIONS SERVICE UPDATE

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

1. REASON FOR REPORT

- 1.1 This report asks the Committee to note the update on developer obligations received and spent during the financial years of 2019/20 and 2020/21; agree minor operational changes in the process, changes in transport trip rates and agree the updated commuted sums for affordable housing.
- 1.2 This report is submitted to Committee in terms of Section III (E) (2) of the Council's Scheme of Administration relating to the review and preparation of strategic and local plans.

2. RECOMMENDATION

2.1 **It is recommended that the Committee:**

- (i) notes the content of the report;**
- (ii) notes and agrees the table of exemptions as set out in Appendix 1 of this Report;**
- (iii) notes and agrees the change in transportation trip rates as set out in Section 4.6 and Appendix 2 of this Report; and**
- (iv) notes and agrees the commuted sums for affordable housing as set out in Section 5 and Appendix 3 of this Report.**

3. BACKGROUND

- 3.1 The need for better co-ordination of infrastructure planning was recognised in the Planning (Scotland) Bill that emphasises a strong commitment to an infrastructure first approach. This approach has been reflected in the Moray Local Development Plan (LDP) 2020 by bringing forward the previous policy, IMP3 Developer Obligations to a primary policy to highlight the importance of

well-planned and co-ordinated infrastructure. Policy PP3 Infrastructure and Services requires a strong evidence base in order to secure Developer Obligations.

- 3.2 The Council's first Supplementary Guidance (SG) on Developer Obligations was approved by this Committee on 14 June 2016 (Para 13 of minute refers) and then by the Scottish Government coming into effect on 14 October 2016. The subsequent update, introducing a maximum cap of £6,500 per residential unit, was approved by this Committee on 5 December 2017 (Para 9 of minute refers) and was adopted on 1 March 2018 after approval of the Scottish Government.
- 3.3 The current SG was approved by the Moray Council Emergency Cabinet on 14 May 2020 (Para 6 of minute refers) and then by the Scottish Government, coming into effect on 30 September 2020. This Guidance removed the discount for small scale developments and the maximum cap of £6,500 per residential unit as there was no evidence showing that the land values started adjusting to the level of developer obligations required, which was the aim of introducing the cap in the first instance, and it was no longer sustainable for the Council to continue to bridge the funding gap in infrastructure. The SG will be reviewed every two years to keep it up to date and relevant.

4. UPDATE

Developer obligations received

- 4.1 During the 2019/20 financial year, developer obligations of £74,747.77 were received from 96 approved planning applications; whereas this figure was £262,230.46 in the 2020/21 financial year from 78 approved planning applications. Table 1 below provides a summary of developer obligations received within the last two financial years both as up-front payments and payments via S75 legal agreements relating to previously approved larger developments. The significant increase in developer obligations last financial year is primarily the result of the introduction of Policy DP2 Housing of the LDP 2020, which sets out that planning applications of 1-3 dwellings must provide a commuted payment towards affordable housing. Table 2 below provides a breakdown of developer obligations received by contribution type.
- 4.2 A significant amount of S75 payments were received in the past two financial years relating to previously approved large developments due to triggers set out in the legal agreements being reached. On top of the developer obligations agreed previously within the s75 legal agreements, these figures also include indexation as per legal agreements and late payment fees where applicable. Table 1 also provides a summary of developer obligations secured via s75 legal agreements. These secured amounts will be received by the Council in the coming years as the triggers are being reached.

Timescale	Consultations received	DO Paid	Received	S75 payments received	TOTAL	Secured via s75s
2019/20	324	96	£74,747.77	£844,435.43	£919,183.20	£4,273,345.14
2020/21	305	78	262,230.46	£85,183.65	£347,414.11	£3,022,905.84

Table 1. Developer obligations received and secured

	2019/20	2020/21
Affordable Housing	£2,500	£138,583.33
Healthcare	£45,424.40	£73,035.47
Education	£23,875.30	£49,856.13
Sports & Recreation (3G pitch in Forres)	£604.20	£755.53
Transportation	£2,343.87	-
TOTAL	£74,747.77	£262,230.46

Table 2. Developer obligations received (excluding s75s)

- 4.3 During the 2019/20 financial year, 13 s75 legal agreements were prepared and signed for larger developments resulting in securing developer obligations of £4,273,345.14. Last financial year, 2020/21, developer obligations of £3,022,905.84 were secured via 7 signed s75 legal agreements. Breakdown of these secured developer obligations by contribution type are set out in Table 3 below.

	2019/20	2020/21
Affordable Housing	£200,000.00	£104,000.00
Healthcare	£993,990.10	£1,331,318.65
Primary Education	£1,807,369.34	£1,247,886.29
Secondary Education	£960,050.00	£165,528.00
Sports & Recreation (3G pitch in Forres)	£7,735.70	£74,701.40
Transportation	£304,200.00	£99,471.50
TOTAL	£4,273,345.14	£3,022,905.84

Table 3. Developer obligations secured via s75s

- 4.4 A developer obligations consultation response is aimed to be provided within 15 days of the consultation date for local applications and within 4 weeks of the consultation date for major applications. A 90% performance indicator (PI) has been set and these have been continuously high for the local applications. Lower PIs were experienced for the major applications during the last couple of quarters. This is due to the senior officer in this specialist post being on maternity leave and maintaining high level of performance indicators on complex cases could not be achieved whilst training inexperienced staff.

	PI Target	Achieved PI (local applications)	Achieved PI (major applications)
2017/2018 Q1-Q4	90%	94.5%	87.5%
2018/2019 Q1-Q4	90%	98.5%	100%
2019/2020 Q1-Q4	90%	90.3%	66.7%
2020/2021 Q1-Q4	90%	94.7%	33.3%

Table 4. PIs

Developer obligations spend

Overall

- 4.5 The Strategic Planning and Development Team works closely with other Council Services and NHS Grampian to ensure that developer obligations are being spent towards relevant projects within the agreed timescales. Developer obligations spent within the last two financial years are set out in Table 5 below.

Contribution Type	2019/20	Breakdown	2020/21	Breakdown
Affordable Housing	£2,600.00	Tomintoul and Glenlivet Development Trust to progress an affordable housing project	£9,325.00	Affordable Housing at Elgin South
Dial-a-bus	-		£6,251.00	Dial-a-bus
Roads	7,590.00	Passing place within the Keith ASG	-	
Community Facilities	£1,606.66	Purchase of broadband equipment and installation in Forres Town Hall	£93,187.78	Enhancement works at Elgin Town Hall + Inclusive Play Park at Moray Sports Centre
Healthcare	£4,199.80	Internal Reconfiguration works at Linkwood Medical , Elgin and Rothes Medical	£426.56	Internal Reconfiguration works at Linkwood Medical , Elgin
Education	£482,591.69	Linkwood Primary School	-	

Library	-		£1,340.00	Mobile spinners at Keith and Speyside libraries
Indoor and outdoor sport facilities	£2,195.71	Additional gym equipment for fitness suite at Milnes High School	-	
Playing Fields	-		-	
Total	£500,783.86		£110,530.34	
Refunds	£309.60	Application withdrawn	-	
	£491.76	Duplicate payment	-	
	£149,980.00	Unable to deliver work as per s75 criteria and timescales	-	

Table 5. Developer obligations spent

Buckie Developer Obligations

- 4.6 A significant amount of developer obligations of £406,861 were received from the Tesco store development in Buckie in 2010, with slow progress to spend the contributions until 2019. In the beginning of 2019 community groups in Buckie were invited to apply for developer obligations to be spent on projects that would benefit and help to improve the town. At the same time UK based artists were also invited to submit their ideas of a gateway feature that would showcase the heritage of Buckie, again paid for by developer obligations.
- 4.7 The project was put on hold last year due to Covid-19, and Tesco agreed to extend the timescales for spending the developer obligations until June 2022. The work on this project will reconvene this year and the Council is on track for spending the remaining obligations as set out in Table 6, by the extended deadline. A similar exercise will also be carried out in Forres later on this year, aiming to spend £50,901 available towards community facilities by giving the opportunity to community groups to submit their ideas for spend.

	<i>Received</i>	<i>Spent</i>	<i>Remaining</i>	<i>Breakdown</i>
<i>Transportation</i>	£186,861.00	£186,861.00	£0	Bus Service Traffic signals at High Street/Cathcart Street junction
<i>Town Centre initiatives</i>	£175,000.00	£164,954.33	£10,045.67	Various town centre improvements
<i>Gateway</i>	£25,000.00	£25,000.00	£0	Costs relating to the gateway feature
<i>Woodland</i>	£20,000.00	£7,185.75	£12,814.25	Landscape architect design Contamination study Hall hire for public consultation Trees, ties and compost Bark
TOTAL	£406,861.00	£384,001.08	£22,859.92	

Table 6. Buckie developer obligations summary

Exemptions

- 4.8 Since the adoption of the current SG, some additional operational exemptions, currently not addressed in the SG, from developer obligations and affordable housing contributions were allowed and this Committee has presented the earliest opportunity to agree these. Based on the current SG, developer obligations are sought for all planning applications, even those with extant consent if previously not paid towards this policy requirement. Developer obligations should be taken off the land value and in the light of the increased level of developer obligations due to the removal of the discount for small scale development and the introduction of policy DP2 Housing, it was considered unreasonable to ask small scale planning applications with extant consent, where the land value is fixed, to contribute towards policies PP3 and DP2. These policy requirements can be taken into account when purchasing land for fresh planning applications, but historic small scale developments have fixed land values and as the viability process do not apply to them, it is considered reasonable to exempt them from policies PP3 and DP2 during this transitional period. These exemptions are set out in **Appendix 1** of this Report.

Simplified agreements

- 4.9 The increased level of developer obligations and the introduction of policy DP2 Housing of the LDP 2020 caused difficulties in making upfront payments for some single house applicants. Previously, the only way to phase developer obligation payments was via s75 legal agreements, tying contributions to the land, which does not suit single house developments as the cost for setting up a S75 legal agreement is not proportionate to the developer obligations required for a single house application. The increased level of contributions are a result of a new policy requirement and to allow time to adjust to this policy requirement, an option to phase developer obligation payments via a simpler and more cost-effective method has been introduced. Since its introduction, the Council has entered into 7 simplified agreements with individual applicants.

Transportation trip rates

- 4.10 The residential trip rates as set out in **Appendix 3** Table 1 of the current SG have been used in Transport Assessments for new residential developments in Elgin since 2003 (a time when developer obligations for the cumulative impact of traffic on the network were negotiated). The trip generation rates are derived from a national database of surveys called TRICS (Trip Rate Information Computer System). Reviewing these trip rates against current data from TRICS, and a survey of the Hamilton Gardens development in Elgin, shows that the rates do not reflect current trip making behaviours and their continued use leaves the Council open to challenge. The trip generation rates used within both the 2015 and 2018 Elgin Traffic Models for all residential developments when forecasting future years` traffic are also lower than those within the SG. These rates are set out in Table 7 below. This variance should have been picked up but has only recently become apparent. This report provided the earliest opportunity to agree the necessary amendment to ensure consistency between the two sets of figures. As set out

in para 4.12 below, the variation has only affected two developments-the impact of which is detailed further below.

Source	Vehicle Trip Generations Rates per dwelling					
	AM Peak			PM Peak		
	Arrivals	Departures	Total	Arrivals	Departures	Total
Developer Obligations Supplementary Guidance	0.168	0.532	0.700	0.596	0.297	0.893
2015 and 2018 Forecast Traffic Modelling	0.140	0.390	0.530	0.350	0.190	0.540
Hamilton Gardens Traffic Survey	0.120	0.480	0.600	0.430	0.200	0.630

Table 7: Trip Generation Rates

- 4.11 It is therefore proposed to lower the trip rates currently set out in the SG to those used in the Elgin Traffic Model for future year traffic forecasts. This report asks the Committee to approve the updated Table 1 in **Appendix 3** and the worked example in **Appendix 4** of the current SG reflecting the lower trip rates as set out in **Appendix 2** of this Report.
- 4.12 To date there have been two planning applications which have developer obligations for transport interventions in Elgin secured using the rates in the SG, Findrassie (planning reference: 17/00834/PPP) and Bilbohall (planning reference: 20/00905/APP). A review of the obligations secured shows that applying the revised trip rates would have no impact on the amount of developer obligations secured from the Findrassie development as this development was subject to the maximum cap of £6,500 per residential unit as was appropriate at the time of determination of this application, and the full amount of developer obligations required for transport interventions was not secured. However applying the revised lower trip rates to the Bilbohall development would result in a reduction in the level of developer obligations being sought in respect of that application.
- 4.13 In order to treat all developments consistently, which is an important aspect of determining developer obligations towards the cumulative impact of development on infrastructure, the developer obligations sought for the Bilbohall development will need to be reduced to reflect the revised trip generation rates. This will result in a reduced developer obligation figure being received as set out in the relevant section below. The S75 legal agreement has already been signed for this development, but developer obligations relating to transportation could easily be reduced via a modification to the existing S75 agreement.

5. **AFFORDABLE HOUSING**

- 5.1 Commuted sums towards affordable housing for developments of 1-3 units are required to meet housing needs in the local housing market area as set out in policy DP2 of the LDP 2020. These contributions are not developer

obligations, but the Strategic Planning and Development Team collects, holds and monitors the expenditure of these as well as developer obligations.

- 5.2 The commuted sum towards affordable housing was agreed by Housing Service as £16,000 in lieu of each unit of affordable housing many years ago. It was considered that in light of policy DP2 and for a more robust position, an update of this figure will be required, which is in line with practice at other local authorities. The Cairngorms National Park Authority has carried out a similar exercise recently.
- 5.3 Moray Council commissioned the District Valuer Service in April 2021 to undertake a valuation of a serviced affordable housing plot and identify the average value for an affordable housing plot in Moray along with values for affordable housing plots in the 5 housing market areas. The Cairngorms Housing Market Area is excluded from this valuation as planning applications within this area are considered against the Cairngorms National Park Local Development Plan, Developer Obligations and Housing Supplementary Guidances. Therefore, a value of £17,000 per affordable housing plot will be used within this area as identified by the District Valuer as part of a valuation report undertaken for the Cairngorms National Park Authority.
- 5.4 Based on assumptions agreed between the Strategic Planning and Development Team and the District Valuer, the proposed affordable housing plot values for each local housing market area are summarised in Table 8 below. The full valuation report can be found in **Appendix 3** of this Report. It is recommended that when assessing planning applications against policy DP2 Housing, below commuted sums to be applied in each housing market area.

Local HMA	Commuted sums
Buckie	£18,500
Elgin	£22,500
Forres	£19,750
Keith	£18,500
Speyside	£16,500

Table 8: Proposed affordable housing commuted sums

- 5.5 It is proposed that if the commuted sums detailed in Table 8 are approved by the Committee, these will apply to all relevant planning applications validated on or after the 4 August 2021.

6. SUMMARY OF IMPLICATIONS

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

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

(b) Policy and Legal

The Developer Obligations Supplementary Guidance forms part of the statutory LDP2020.

(c) Financial implications

The Council may need to provide for any adverse impact on existing infrastructure and facilities resulting from new development should developer obligations not be sought or the level sought does not cover the costs following viability appraisals.

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

The signed S75 legal agreement for the Bilbohall development includes a figure of £161,427.72 towards transport interventions, and with using the revised trip generation rates this figure will be reduced to £98,533.88, which will be received via instalments that are based on completion of units. The difference between the two trip rates only became apparent recently and to be open and transparent, it is proposed to modify the signed S75 legal agreement in order to use trip rates that reflect the current trip making behaviour. Therefore, the legal fees relating to the modification of this legal agreement will be borne by the Council.

The revised residential trip generation rates will result in lower levels of developer obligations sought towards traffic interventions in Elgin going forward however the revised trip rates more accurately reflect current trip making behaviour.

(d) Risk Implications

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

If development is not planned for appropriately and supported by the necessary evidence provided by the relevant services, key agencies and community planning partners, then the Council cannot seek Developer Obligations to mitigate the impact of the development or apply the appropriate rate. If infrastructure is not well-planned and co-ordinated, the Council risks of not meeting the deadline for spending Developer Obligations and having to refund Developer Obligations to the developer with accrued interest. Therefore, the Council runs the risk of having to provide the infrastructure necessary to facilitate development at their own cost.

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

(e) Staffing Implications

Work on Developer Obligations is carried out within the Strategic Planning and Development Team, supported by officers in Education, Transportation, Housing, Legal, Finance, Development Management, Estates, Lands & Parks, Scottish Water and NHS Grampian.

(f) Property

None.

(g) Equalities/Socio Economic Impact

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

(h) Consultations

Depute Chief Executive (Economy, Environment & Finance), Head of Economic Growth & Development, Head of Financial Services, Deborah O`Shea (Principal Accountant), Legal Services Manager, Transportation Manager, Senior Engineer (Transportation), Development Management & Building Standards Manager, Acting Housing Strategy & Development Manager, Senior Housing Officer (Strategy), Estates Manager, Head of Education Resources & Communities, Senior Project Manager (Learning Estate), Open Spaces Manager, Equal Opportunities Officer and Lissa Rowan (Committee Services Officer) have been consulted and comments incorporated into this report.

7. CONCLUSION

7.1 The report provides an update on the developer obligations service, including contributions received and spent within the financial years of 2019/20 and 2020/21; and asks the Committee to note the progress to date on the Buckie Tesco developer obligations.

7.2 The report asks the Committee to approve some minor operational adjustments; table of exemptions as set out in Appendix 1 of this report; the change in transportation trip rates as set out in Appendix 2 of this report and the commuted sum payments for affordable housing as identified by the District Valuer Service and set out in Appendix 3 of this report.

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Background Papers:

Ref: