

## Draft Supplementary Guidance 16

# Developer Contributions







## Supplementary Guidance 16

### Developer Contributions

#### Introduction

This Supplementary Guidance on Developer Contributions sets out the types and thresholds of development where financial contributions will be requested, the level of contributions and the range of purposes for which contributions will be sought.

It is intended to provide a transparent, equitable, consistent and accountable approach to negotiating and securing developer contributions and provides a single point where information on the need for potential contributions can be obtained early on in the planning process. The Guidance supports Primary Policy 5 ‘Developer Contributions’ and relates to other Supplementary Guidance as indicated in Table 1 and will require to be kept updated as this Guidance changes.

All development has an impact, and if necessary, financial contributions will be sought from developers to offset that impact. The LDP aims to ensure, as far as practicable, that the burden of additional infrastructure, facilities and services that are related to the development are absorbed by the landowner and developer, and not by the Council or other public service provider.

Existing deficiencies in public services, facilities or infrastructure can be made worse by new development and new deficiencies created. However, contributions are intended to address matters resulting from new proposals, not existing deficiencies.



The principle of proportionate developer contributions is underpinned by Primary Policy 5 and will be secured through a planning obligation (Section 75 Agreement or other appropriate legal agreement) where necessary.

## Primary Policy (PP) 5

Developer contributions will be sought from developers in situations where a development (or combination of developments) creates a need for new, extended, or improved public infrastructure, facilities and services. Contributions will be sought for both critical and necessary infrastructure (as defined in SG16). Contributions, secured through a planning obligation (a Section 75 Agreement or other legal agreement as necessary), will be consistent with Circular 1/2010.

Developer contributions will also be sought for Council priorities such as affordable housing, where appropriate (see Policy 6).

Developers will be required to make a fair and reasonable contribution (financial or 'in kind'), proportionate to the scale and nature of the development, towards these additional costs or requirements, relative to: -

- a) addressing the impact on transport networks in the immediate vicinity of the development, along with cumulative impacts on the network and ensure that there is a realistic choice of modes of access to the development (SG14).
- b) the provision of primary and secondary education facilities to ensure that sufficient school capacity exists to accommodate the development (SG15).
- c) the improvement of existing and / or the provision of new community facilities as required and identified in the Settlement Statements.
- d) the provision of new or improved green infrastructure as justified by the Council's Open Space Strategy (SG02).
- e) the cost of meeting health care infrastructure improvements required as a



consequence of new development, as identified by NHS Forth Valley.

- f) the provision of new or expanded off-site facilities for the provision, storage, collection and recycling of household waste, including Household Waste Recycling Centres (SG19).
- g) the provision of affordable housing where required by Policy 6 and reasonable efforts to secure on-site or off-site provision have been exhausted (SG04).

[The Council will work with the agencies responsible for provision and management of infrastructure, and the development industry, via an Infrastructure Working Group, to establish an equitable system of developer contributions. Requirements will be kept under review through updating the Action Programme. Details of administrative and financial arrangements are included in SG16].

## National Policy and Legislative Framework

Scottish Planning Policy (2010) refers to a range of circumstances where it may be appropriate to secure developer financial contributions: -

- A percentage affordable housing contribution from developers of new housing developments where this is justified by the Housing Need and Demand Assessment and is included in the Local Housing Strategy and development plan.
- For open space purposes, where the Open Space Strategy provides the justification for seeking such contributions.
- To enhance public transport services or infrastructure required to serve a new development, towards an agreed level of service, which would not be provided commercially. The intended approach to developer contributions linked to the



transport implications of a proposed development should be set out in the development plan.

Scottish Government Circular 1/2010: Planning Agreements emphasises the importance of early identification of infrastructure requirements and ensuring financial contributions sought from developers are reasonable and proportionate to the development. The Circular deals with agreements made under Section 75 of the 1997 Act (dealt with below).

The Circular refers to a number of tests, all of which require to be met, in order to seek a planning agreement: -

- Necessary to make the proposed development acceptable in planning terms;
- Serve a planning purpose, and where it is possible to identify infrastructure provision requirements in advance, should be relevant to development plans;
- Relate to the proposed development either as a consequence of the development or arising from the cumulative impact of development in the area;
- Fairly and reasonably relate in scale and kind to the proposed development; and
- Reasonable in all other respects.

Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended by the 2006 Act) has replaced the term 'planning agreements' with the term 'planning obligations'. It provides that a person may either by agreement with the Planning Authority or unilaterally enter into a planning obligation restricting or regulating the use of land in the district of the Planning Authority, either permanently or during such a period as may be prescribed by the agreement or obligation.

S75 Agreements may include financial provisions if considered necessary or



expedient to the purposes of the agreement or obligation. Any agreement or obligation to which the owner of the land is a party may be recorded in the Register of Sasines or registered in the Land Register of Scotland and become binding on all future owners of the land affected by the agreement or obligation. Any breach of the agreement or obligation is enforceable by the Planning Authority.

Section 69 of the Local Government (Scotland) Act 1973 gives authorities the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions. This provision enables agreements to be made which can include financial payments or the transfer of assets to a local authority where this would discharge their functions.

## Infrastructure and Priorities

Table 1 below outlines the type of infrastructure (physical and social) that Primary Policy PP4 considers will be most affected by proposals in the Plan and will require to be managed, enhanced and provided for.

Critical infrastructure refers to water, utilities, access, direct transport facilities and other essentials without which the development simply would not take place (1). On-site works and the design of the development will often be sufficient to ensure adequate provision, but it may also be necessary for developers to contribute to off-site works either directly or through pooled financial contributions. In particular circumstances, certain on and off-site developer contributions towards primary and secondary education provision, towards the wider transport network, recycling and waste facilities, and green infrastructure, could come forward later on in the development (2).

Necessary infrastructure (3) refers to infrastructure that will be required in the longer term to support and enhance the development once established. It includes local community facilities and health care facilities arising as a result of the development.



Other Council Priorities (4) including the delivery of affordable housing and contributions to off-site green infrastructure are also likely to be dependent on various sources of funding. Developer contributions at particular points in the development can assist the delivery of on and off-site provision of affordable housing (See SG04 on Affordable Housing) and green infrastructure projects consistent with national and local Green Networks (see SG02 on Green Infrastructure).

Table 1: Types of infrastructure and other priorities

	Critical		Necessary	Priority
	(1) What needs to be provided at the outset to enable development to commence	(2) What needs to be provided at a particular point in the development (i.e. could be phased)	(3) Infrastructure required to meet longer term needs	(4) Particular Council priority for which developer contributions may be sought.
Transport & Access on-site	✓			
Water / Sewerage	✓			
Utilities – electricity, gas, telephone etc	✓			
Transport and Access off-site		✓		
Education Provision		✓		
Recycling facilities and waste		✓		
Community Facilities			✓	
Healthcare facilities			✓	
Green Infrastructure		✓		✓
Affordable Housing				✓

The blue ticks indicate infrastructure and other priorities likely to require developer contributions.



Table 2 summarises the likely developer contributions that will be sought for particular types of development proposals, which will depend on the scale, location and particular circumstances of the development.

Table 2: Examples of types of developments and likely infrastructure contributions

	Transport & Access offsite	Education provision	Recycling facilities & waste	Community facilities	Green infrastructure	Healthcare facilities	Affordable Housing
Residential	✓	✓	✓	✓	✓	✓	✓
Retail (non-food)	✓		✓	✓	✓		
Retail (food)	✓		✓	✓	✓		
Business (office)	✓			✓	✓		
General Industrial	✓			✓	✓		
Storage & Distribution					✓		
Commercial Leisure	✓			✓	✓		





Table 3: Summary of developer contributions and method of calculation

<b>Developer Contribution</b>	<b>Basis for method of calculation</b>	<b>Supplementary Guidance</b>
<b>Affordable Housing</b>	<ul style="list-style-type: none"> <li>• All new housing development (including conversions) creating 10 units or above.</li> <li>• Required percentage (25% or 50% depending on pressured nature of area) times by total number of units proposed within the development scheme. This is then multiplied by 25% of the median house price for the housing market area.</li> </ul> <p>Exclusions – developments less than 10 units, residential institutions, rural housing subject to occupancy conditions.</p>	<b>SG04 – Affordable Housing</b>
<b>Education Provision</b>	<ul style="list-style-type: none"> <li>• All new housing developments (including conversions) within the Education Core Area (excludes Dunblane).</li> <li>• Amount payable per housing unit depending on the size (number of bedrooms) of the property.</li> <li>• Specific education requirements for the Strategic Development Areas.</li> <li>• Outwith Education Core Area, contribution determined on an individual settlement basis</li> </ul> <p>Exclusions – one bedroom units, particular needs housing built specifically for older people.</p>	<b>SG15 – Education Provision</b>
<b>Community Facilities</b>	As required and identified through the Settlement Statements (future Settlement Strategies) and LDP Action Programme.	<b>No SG</b>



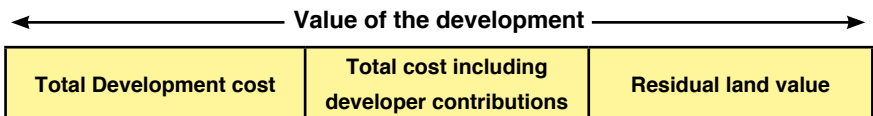
<b>Developer Contribution</b>	<b>Basis for method of calculation</b>	<b>Supplementary Guidance</b>
<b>Transport &amp; Accessibility</b>	<ul style="list-style-type: none"> <li>• Contributions based on total number of trips a development will generate during AM and PM peak periods (0700-1000 and 1530-1830).</li> <li>• Applies to developments within the City Transport Strategy (CTS) package area and also may be applied to developments adjoining the CTS area.</li> </ul> <p>Exclusions - where a development is easily accessible by non-car modes or as a result of implementing travel plan measures, a bond will be held until post development monitoring shows trip rates.</p> <ul style="list-style-type: none"> <li>• In rural areas, based on the public transport demand generated from new development (and the resulting demand responsive transport required).</li> </ul>	<b>SG14 – Transport: Ensuring a Choice of Access</b>
<b>Green Infrastructure</b>	<ul style="list-style-type: none"> <li>• Applies to all residential development, including conversions where on-site provision is not considered appropriate.</li> <li>• Applies to commercial leisure, business, industry and retail development and other types of development where appropriate.</li> <li>• The type and scale of provision and/or enhancement of green infrastructure and levels of financial contribution will vary from site to site and depend on the local context.</li> <li>• Reference will be made to SG02, Development Frameworks, Briefs and Masterplans and the Draft Open Space Strategy and Audit in determining the specific requirements.</li> </ul> <p>Exclusions: Alterations and extensions.</p>	<b>SG02 - Green Infrastructure: Green Network, Open Space.</b>
<b>Healthcare Facilities</b>	As required and identified through the Settlement Statements (future Settlement Strategies) and LDP Action Programme.	<b>No specific SG.</b>



Developer Contribution	Basis for method of calculation	Supplementary Guidance
<b>Recycling Facilities and Waste Management</b>	<ul style="list-style-type: none"> <li>• All new housing development: Fixed amount per house towards the provision of wheeled bins, boxes, food waste containers.</li> <li>• All new housing development creating 50 units, or above, (or 2ha or above): Fixed amount per house towards the cost of upgrading Lower Polmaise Household Waste Centre (off site).</li> <li>• All new housing development creating 50 units, or above, (or 2ha or above) and retail development of 5000 sq.m gross floorspace (or 2ha or above): Bring site provision (land contribution on site) and/or fixed amount per house towards the cost of providing/ upgrading new or existing on or off site facilities.</li> </ul>	<b>SG19 - Waste Management Requirements for Development Sites</b>

## Determining the need and type of contribution

Tables 1-3 set out the type of purposes for which developer contributions will be sought. This will assist early site development viability calculations and the extent to which this impacts on the residual land value. The cost of meeting any developer contributions should feature in any land valuations that determine this residual value is detailed in the figure below.



*Gross development value (total sales income from the development)*  
*Minus total development costs (Construction costs, professional fees, developers profit, finance charges and any developer contributions)*  
 = Residual land value (amount to be paid to the landowner)



The Council's priorities in terms of critical and necessary infrastructure and other priorities will take into consideration the economic circumstances of the development scheme. The particular requirements, timing for payments etc, for individual development schemes will therefore require to be determined on a site-by-site basis. The LDP Action Programme flags up any specific requirements for sites and the ongoing updating of the Action Programme as part of the proposed Infrastructure Working Group will assist the identification and prioritisation of infrastructure and the timing of developer contributions.

The developer contributions will be index-linked by reference to the General Building Cost Index as published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or such other index as the Council and the Developer may reasonably agree. The developer contributions will be index-linked from the date the Section 75 agreement or other appropriate legal agreement is concluded until the date the developer contributions fall due for payment.

## Accountability and Transparency

To facilitate a planning application progressing to a favourable recommendation in a timeous manner, it is important that Developers discuss the likely levels of contributions with the Council at the earliest opportunity-see Contact below.

All developer contributions are secured within the relevant accounts within the Council and are clearly ring fenced for the purpose specified in the planning obligation. Each of the relevant Supplementary Guidance set out the parameters for the use of the contributions and the geographical area in which they will be spent. In negotiating the planning obligation through a Section 75 agreement or other appropriate legal agreement, such an agreement will provide that Developers may seek repayment of the developer contributions or that part of the developer contributions that have not been allocated within a certain period of time to the use



for which those contributions were intended. Each Supplementary Guidance will define the timescales generally to be applied. However, those timescales may be varied in the particular circumstances of a development and the requirement for the developer contributions.

The Council has established a record of all developer contributions negotiated and secured through Section 75 agreements and other appropriate legal agreements, and will continue to record and monitor this to ensure payments are received timeously and spent appropriately.

The Council will charge interest on the late payment of developer contributions at the rate of five per centum per annum above the base lending rate from time to time of the Royal Bank of Scotland plc from the date fourteen days after the developer contributions fall due until payment.

In the interests of providing an efficient service, Legal Services may require to undertake early legal work for the negotiation and agreement of the planning obligation, in parallel with considerations of the application by Development Management. The involvement of Stirling Council Legal Services at any stage in the process of dealing with a planning application is not to be construed as inferring planning permission will be granted.

The Developer will be expected to meet all legal fees reasonably incurred by the Council in connection with preparing, negotiating and recording/registration of any Section 75 agreement or other appropriate legal agreement and for securing any payment of developer contributions appropriate to the obligation. Those legal fees will be paid in full by the Developer prior to the issuing of planning consent.



## Roles and Responsibilities

### Developers.....

- Should check this Guidance for potential requirements.
- Should also check for any site-specific requirements stipulated in the LDP Action Programme, Settlement Statements, Development Frameworks, Masterplans or Planning Briefs.
- Are encouraged to discuss matters with the Council prior to the submission of applications for specific development proposals.
- Should establish their preferred mechanism for the negotiation and delivery of any developer contribution (Section 75 agreement or other appropriate legal agreement).
- Should factor any planning obligation requirements into development viability calculations.
- Should present to the Council all the relevant factors together with all supporting financial and other information where the financial viability of the development scheme is considered to be in doubt as a result of a requested planning obligation.

### The Council will....

- Suggest the use of particular types of legal agreements, planning conditions etc appropriate to the circumstances.
- Negotiate and deal with planning obligations in a timely manner, particularly where pre-application discussions on such matters have taken place.
- Consider all relevant factors which may impact on the financial viability of the development scheme.
- Only use planning obligations where they meet the tests set out in Circular 1//2010.



- Develop model Section 75 agreements or other appropriate legal agreements and clauses in order to assist the process of negotiations.
- Issue planning consent only when the Section 75 agreement or other appropriate legal agreement has been signed by all parties, the Council's legal fees have been paid and (if required) the agreement has been recorded in the Register of Sasines or registered in the Land Register of Scotland.
- Monitor contributions, seek payments when due and notify applicants of any change in circumstances that may affect the concluded obligation.

## Contact

The initial point of contact for enquiries relating to the interpretation and negotiation of developer contributions will be the Development Management Officer dealing with or likely to deal with any planning application for the development scheme.

## Further Information

### **Please contact:**

Economy, Planning and Regulation  
Planning Services  
Stirling Council  
Viewforth  
Stirling  
FK8 2ET

Telephone: 01786 442522

E-mail: [LDP@stirling.gov.uk](mailto:LDP@stirling.gov.uk)

[www.stirling.gov.uk/localdevplan](http://www.stirling.gov.uk/localdevplan)

If you need help or this information  
supplied in an alternative format  
please call 0845 277 700.

