



## PLANNING GUIDANCE ON DEVELOPER CONTRIBUTIONS



Inverclyde  
council

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## 1.0 INTRODUCTION

- 1.1** Inverclyde Council is open for business and seeks to attract development and continue to promote Inverclyde as a sustainable area. While new development will deliver significant benefits; including the provision of new homes and jobs, it can also place additional pressure and have adverse impacts on existing resources and infrastructure, such as Affordable Housing provision and the Transport Network. In light of this, the Scottish Government have emphasised the need to plan more effectively for the provision of infrastructure required to facilitate new development. To achieve this, the Council's Regeneration and Planning Service will, where required, seek reasonable and appropriate 'developer contributions' towards the provision of any infrastructure and/or mitigation measures necessary to facilitate new development. This will be done in tandem with the development management process.
- 1.2** Developer contributions will be sought on the premise that the cost of providing the infrastructure and/or mitigation measures needed to facilitate new development, should, as far as practicable, be paid by the developer, not the Council or other public service providers.
- 1.3** It is important to note that contributions will not be sought to resolve existing infrastructure needs as these are not the direct result of new development. In addition, contributions will not be used to justify the approval of a development proposal that contravenes planning policy and is unacceptable on planning grounds.
- 1.4** Developer contributions are not unique to Inverclyde and are sought by most local authorities, in line with Scottish Government policy. They are also widely accepted by the development industry as constituting a legitimate and necessary development cost, which is typically factored into their development appraisals as a matter of course.
- 1.5** This planning guidance sets out the criteria for assessing when developer contributions will be required and the methodology for calculating the level of contribution. It also sets out the process for identifying, negotiating, securing and managing contributions. The guidance is intended to enable the Council's Regeneration and Planning Service to adopt a consistent and transparent approach to this issue and allow developers to be aware of potential contributions.
- 1.6** While this planning guidance is non-statutory, Scottish Government Circular 6/2013 'Development Planning' states that non-statutory guidance can be a material consideration in decision making, i.e. the determination of planning applications.
- 1.7** This guidance is aimed at:
- Developers/landowners considering new projects.
  - Communities and interest groups considering the impact of development on local infrastructure and resources.
  - The Regeneration and Planning Service and Councillors, who will assess and determine planning applications.
- 1.8** The guidance is structured as follows:
- Section 2.0 provides background information, including a definition of developer contributions, the legislative framework and planning policy context. This section also outlines the scope of the advice.
  - Section 3.0 sets out the principles to be followed when using planning obligations, or other legal agreements, to secure developer contributions.
  - Section 4.0 details the criteria for assessing when developer contributions identified in the adopted Inverclyde Local Development 2014 (LDP) will be required and the methodology for calculating the level of contribution.
  - Section 5.0 sets out how any adverse impacts on development viability may be addressed during negotiation and the preparation of legal agreements.

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- Section 6.0 outlines the process by which the Regeneration and Planning Service will identify, negotiate, secure and manage developer contributions, including pre-application discussions and the preparation of legal agreements.
- Section 7.0 provides information on how new development can make a contribution to the Council's Economic and Social objectives, i.e. by promoting employability and the local supply chain.

## 2.0 BACKGROUND

### What are Developer Contributions?

- 2.1** Developer contributions facilitate new development by ensuring that the cost of providing any infrastructure and/or mitigation measures needed to support development is paid by the developer. Scottish Government Circular 3/2012 'Planning Obligations and Good Neighbour Agreements' states that planning obligations, which are used to secure developer contributions, *"have a limited, but useful, role to play in the development management process where they can be used to overcome obstacles to the grant of planning permission"*. In light of the above, developer contributions should be viewed as a mechanism for facilitating development, not inhibiting it.
- 2.2** Contributions can be provided in a number of ways, including financial or other "in-kind" payments, and are typically secured through planning conditions or an appropriate legal agreement, e.g. planning obligation.

### Legal Framework

- 2.3** The Council has powers to regulate planning matters, including the provision of developer contributions, by entering into legally binding agreements under a number of statutes. These include the Local Government (Scotland) Act 1973, the Countryside (Scotland) Act 1967, the Sewerage (Scotland) Act 1986, the Roads (Scotland) Act 1984 and under Section 75 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

### Policy Context

- 2.4** This planning guidance is framed within the context of Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements, Scottish Planning Policy (2014), the Glasgow and the Clyde Valley Strategic Development Plan 2012 (GCV SDP) and the LDP.
- 2.5** Scottish Government Circular 3/2012 'Planning Obligations and Good Neighbour Agreements' sets out the circumstances in which planning obligations, i.e. Section 75 legal agreements, can be used to secure developer contributions and how they can be concluded efficiently.
- 2.6** The Circular states that:
- *"Broad principles, including the items for which contributions will be sought and the occasions when they will be sought, should be set out in the SDP or LDP, where they will have been subject to scrutiny at examination"* (para 32).
  - *"Where the potential need for an obligation emerges during the development management process, planning authorities should assess the case against the guidance in this circular and inform the applicant as soon as practicable"* (para 31).
  - *"Planning authorities should promote obligations in strict compliance with the policy provided in the Circular"* (para 2). Please note that these tests are discussed in more detail in para 3.2-3.3 of this planning guidance, where they are adopted as guiding principles.
  - *"Consideration should be given to the economic viability of proposals and alternative solutions considered alongside options of phasing or staging payments"* (para 2). This is discussed in more detail in Section 5 of this planning advice.

**2.7** *Scottish Planning Policy (2014)* refers to two circumstances where it may be appropriate to seek developer contributions, stating that:

- *"Plans should identify any expected developer contributions towards delivery of affordable housing.... Planning authorities should consider the level of affordable housing contribution which is likely to be deliverable in the current economic climate, as part of a viable housing development. The level of affordable housing required as a contribution within a market site should generally be no more than 25% of the total number of houses"* (paragraph 129).
- *"Development plans should identify any required new transport infrastructure or public transport services, including cycle and pedestrian routes, trunk road and rail infrastructure. Plans and associated documents, such as supplementary guidance and the action programme, should indicate how new infrastructure or services are to be delivered and phased, and how and by whom any developer contributions will be made. Where public transport services required to serve a new development cannot be provided commercially, a contribution from the developer towards an agreed level of service may be appropriate"* (paragraph 275).

**2.8** The SDP updated affordable housing policy at the strategic level. This approach led to an evidence base (GCV HMP Housing Need and Demand Assessment 2011) which justified the introduction of an affordable housing policy in the LDP. In addition, the GCV SDP's 'Sustainable Location Assessment' criterion supports the provision of sustainable transport infrastructure, including sustainable access and active travel, appropriate public transport access and future public transport services.

**2.9** The LDP and associated Supplementary Guidance provide a local planning policy context for developer contributions to be sought in Inverclyde. From an early stage in the preparation of the LDP, the Council worked in close partnership with a wide range of internal and external agencies to establish the infrastructure requirements needed to facilitate the development opportunities identified in the Plan. In light of these discussions, and taking account of the wider national and regional policy context, the LDP has identified that developer contributions can be sought for 'affordable housing' (**Policy RES4**), 'transport infrastructure' (**Policy TRA4**) and replacement open space (**Policy ENV5**). The policy criteria for assessing when these developer contributions will be required are set out below.

## **Policy RES4 - Provision of Affordable Housing** (page 46 in the LDP)

Residential developments of 20 or more dwellings on the prescribed sites in Schedule 6.1 will require developers to contribute towards meeting the affordable housing requirements identified in the Glasgow and the Clyde Valley Housing Need and Demand Assessment for Inverclyde. Provision is to be delivered by developers in accordance with Supplementary Guidance on Affordable Housing Provision through the following means:

- (a) a benchmark of 25% Affordable Housing Contribution or another agreed percentage on specified 'quota sites'; or failing that and in exceptional circumstances:
  - (i) off-site provision within the same HMA/HNDA sub area; or
  - (ii) commuted payments in lieu of on- or off-site provision;
- (b) allocated Registered Social Landlord sites in the effective land supply; and
- (c) Greenfield land release for a negotiated Affordable Housing Contribution, subject to assessment in accordance with the GCV SDP Strategy Support Measure 10 and Policy RES3.

**Policy RES4** is accompanied by **Supplementary Guidance on Affordable Housing Provision**, which states that:

- *"The approach that will be taken in Inverclyde is to seek the provision of affordable housing through Policy RES4 on a selective but consistent basis, on sites identified in Schedule 6.1 of the LDP and where applicable, on all new ('windfall') sites that emerge over the plan period". (para 6.2 of the SG).*
- *"In certain circumstances, for example where there is an outstanding need to meet the affordable housing requirement in the same Housing Market Area, or Local Housing Strategy (LHS) Sub Area, such as Kilmacolm, sites with a capacity of less than 20 may be required to provide a 'quota', to be negotiated along with consideration also, as an alternative, of off-site provision or a commuted payment. The quantity of houses provided elsewhere or the commuted sum in such cases should be at least equal in value to the provision that would have been made on-site if this were possible" (para 5.7). It is also expected that developers will comply with the Council's advice that the 'affordable quota' on sites in this Sub Area (i.e. Kilmacolm and Quarriers village) should be more than the 'benchmark 25%'. The quota agreed will be part of the pre-application negotiation in advance of the submission of a planning application in accordance with this SG" (para 4.15).*
- *"In Greenfield locations, outwith the urban area not identified in the Local Development Plan, where sites are promoted on the basis of an affordable housing requirement, and where this requirement is fully demonstrated and accepted by the Council and considered acceptable in planning policy terms, 100% affordable housing provision will be sought on these sites. This is in accordance with GCV SDP Strategy Support Measure No.10, unless the proposal is associated with the restructuring of an adjoining residential area identified for renewal in the Local Development Plan. In the latter case, the Council will seek to reach an agreement with the developer to reduce the contribution in terms of serviced land and the provision of a lesser number of completed units, having regard to the adjoining area undergoing renewal" (para 5.5)*

**Policy ENV5 - Securing Open Space by Planning Agreements** (extract from ENV5, page 70 in the LDP)

*"Where it is proposed to grant planning permission for a development that would involve the loss of formal, active open space or other recreational facility, the Council will seek to secure suitable alternative provision at another nearby location, where necessary through an agreement under Section 75 of the Town and Country Planning (Scotland) Act, 1997".*

**Policy TRA4 – Developer Contributions** (page 35 in the LDP)

*"Inverclyde Council, as Planning Authority, will, as appropriate, seek contributions from the developer towards pedestrian, cycle, public transport and road improvements, which have been identified as necessary through an associated transport assessment. Where new trunk road infrastructure is required, this should be provided by the developer."*

- 2.10** In addition to the above, Policy ENV3 'Safeguarding and Enhancing the Green Network' and the Supplementary Guidance documents on the Green Network and Planning Application Advice Notes include requirements for alternative green network and new open space provision (see below). Where these requirements can only be met off-site, a developer contribution may be required to secure provision.



## **Policy ENV3 – Safeguarding and Enhancing the Green Network** (page 69 in the LDP)

*"Where development proposals would encroach upon or undermine the green network, alternative routes and green space will be expected to be provided or enabled."*

## **Supplementary Guidance on the Green Network** (extracts from page 14 of the SG)

*"Proposals which would result in the loss or fragmentation of existing Green Network components will only be supported if they contain mitigation measures to replace or enhance the existing provision".*

*"Development of more than 10 houses shall require to contribute to the protection or enhancement of the Green Network. Other types of development will also require to address the Green Network depending upon their scale, location and nature. This will be at the discretion of the Development Management team".*

## **Supplementary Guidance on Planning Application Advice Notes (PAANs)** (Note No.3)

Note No. 3 addresses private and public open space provision in new residential development and, amongst other things, states that:

*"Public open space should be provided at the indicative ratio of 1.64 ha per 1000 population.... It will be the responsibility of the developer to equip the play areas. Children's play areas and kick about areas should comprise 0.32 ha per 1000 population."*

## **Scope of Planning Guidance**

- 2.11** This planning guidance will apply, where appropriate, to development opportunities identified in the LDP and windfall sites, subject to the thresholds set for affordable housing contributions (see Policy RES4 on page 3 of this guidance) and open space provision (see para 4.18 of this guidance).
- 2.12** While this planning guidance is non-statutory, Circular 6/2013 'Development Planning' states that a Council's '*adoption of it [non-statutory guidance] will give it a degree of authorisation and it may be a material consideration in decision making*' (para 148). Where applicable, it is considered that significant material weight should be given to this guidance as it relates to the implementation of statutory requirements in the LDP and associated supplementary guidance.
- 2.13** This planning guidance focuses on developer contributions which are identified in the LDP. While Circular 3/2012 *Planning Obligations and Good Neighbour Agreements* enables contributions to be sought to overcome or mitigate unforeseen impacts arising at the development management stage (i.e. damaging impacts on the environment and/or local amenity), these 'potential' contributions are not addressed by this guidance as they cannot be foreseen at this stage. It is considered more appropriate to use the criteria set out in Circular 3/2012 'Planning Obligations and Good Neighbour Agreements' to identify and assess contributions as and when the need arises at the development management stage.

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- 2.14** It is important to note that during the preparation of the LDP, the Regeneration and Planning Service, in consultation with other relevant Council services, determined that no further education or community facility provision was required to support the scale of development identified in the LDP and the level of windfall development that can reasonably be expected over the Plan period. In light of this, developer contributions are not required towards educational and community facility provision.
- 2.15** It should be noted that the exact level and cost of developer contributions will be identified at the development management stage.
- 2.16** Developer contributions can be secured through planning conditions, planning obligations or other appropriate legal agreement. It is considered that the type of contributions which can be secured by planning condition, and the process for doing so, is well established and does not require further guidance. This planning guidance will therefore focus on those developer contributions which require a legal agreement.
- 2.17** While not related to a statutory requirement, section 7 encourages developers, during the negotiation of a legal agreement, to use the Council's Economic Development teams to make a non-financial contribution by promoting employability and the local supply chain.

## 3.0 GUIDING PRINCIPLES

- 3.1** As mentioned above, Circular 3/2012 Planning Obligations and Good Neighbour Agreements sets out a number of policy tests for determining when a planning obligation will be appropriate. For the purpose of this planning guidance, these tests have been adapted into the guiding principles set out below. In order to comply with the Circular, these principles should be followed when developer contributions need to be secured through a planning obligation. As far as practicable, these principles should also be followed when securing contributions through other appropriate legal agreements.
- 3.2** A planning obligation should:
- be 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, relate to the LDP
  - relate to the proposed development, either as a direct consequence of the development or arising from the cumulative impact of development in the area
  - fairly and reasonably relate in scale and kind to the proposed development
  - be reasonable in all other respects
- 3.3** A planning obligation will generally only be appropriate when:
- it is, as opposed to (planning) conditions, necessary to enable a development to go ahead
  - in the case of financial payments, these contribute to the cost of providing necessary facilities required as a consequence of, or in connection with, the development in the near future

- it is so directly related to the regulation of the proposed development that it should not be permitted without it
- the obligation will mitigate the loss of, or impact upon, any amenity or resource present on the site prior to the development.

### 3.4 The following general principles should also be followed:

- **Developer contributions** will not be used to resolve existing deficiencies in infrastructure provision or to secure developer contributions to the achievement of wider planning objectives, which are not strictly necessary to allow permission to be granted for the particular development.
- **Each development proposal** will be assessed individually and on its merits as to whether a development contribution will be required.
- **Equity** - Developer contributions will be determined in a consistent, equitable and transparent manner, in line with the relevant LDP policies, this planning guidance and Circular 3/2012.
- The Council will always base decisions on infrastructure requirements on the **best available information**.

## 4.0 METHODOLOGY FOR IDENTIFYING AND CALCULATING DEVELOPER CONTRIBUTIONS

### Inverclyde Local Development Plan 2014 and associated Supplementary Guidance

#### Affordable Housing

- 4.1** The level and location of affordable housing contributions is set out in Policy RES4 and Schedule 6.1 of the LDP, and the associated Supplementary Guidance (page 3 & 4 of this planning guidance). It should be noted that in addition to the sites identified in Schedule 6.1, contributions may, where applicable, be sought on all windfall sites that emerge over the plan period, in line with the Supplementary Guidance.
- 4.2** In accordance with the Supplementary Guidance, the Council will seek to secure affordable housing contributions through one or more of the following mechanisms:
- Site-specific provision (including the 'Quota' approach)
  - Off-Site provision
  - Commuted Sum
- 4.3** Given that a planning obligation or other legal agreement will usually be required to secure the provision of these contributions, information on when each contribution may be appropriate and how it will be calculated is set out below. It is important that this information is read in conjunction with the Supplementary Guidance on Affordable Housing Provision, as the SG provides the context, reasoning and justification for the approach taken and details the geographical distribution of affordable housing provision/requirements, and tenures, dwelling types and sizes.



Example of Affordable Housing at Gilmour Street, Greenock

## *On-Site Provision*

**4.4** The Council's preferred approach to meeting affordable housing needs is through on-site provision. The Council will assess the requirement for on-site contributions on those sites identified in Schedule 6.1 of the LDP that have capacity for 20 or more dwellings, when calculated at a density of 30 units per hectare. Applicable sites will be those brought forward from the adopted Inverclyde Local Plan (2005) that do not have the benefit of planning permission for housing development and, those new sites allocated in the LDP. In considering planning applications for developments that would provide a smaller number of units at this density, the Council will assess whether adjoining land has a realistic opportunity of being developed for residential purposes, and therefore whether a contribution should be sought in relation to the total combined development.

**4.5** It should be noted that Policy RES4 does not apply to sites with the benefit of an extant planning permission for residential development, although where a permission is revised or renewed resulting in an increase in the number of dwelling units of 20 or more, the policy will apply and relate to the additional number of units on the site.

## *Quota' approach*

**4.6** The Council's preferred approach to on-site provision is to seek a percentage contribution on 'quota sites', as identified in Schedule 6.1 of the LDP. The use of the 'quota' approach will also apply to relevant new sites, and revisions to extant permissions that increase the total number of dwelling units that come forward during the plan period, particularly in the Greenock and Port Glasgow Waterfront areas, Gourrock, Greenock West End, Inverkip, Wemyss Bay, Kilmacolm and Quarriers village.

**4.7** The contribution from a developer of a market housing site will normally be the provision of serviced land, e.g. a proportion of the site which can be developed by, or for, a Registered Social Landlord (RSL) or other housing provider.

**4.8** It is expected that the land would be transferred to the RSL or other housing provider, in accordance with PAN 2/2010 'Affordable Housing and Housing Land Audits', which states that such land can be transferred at a value relating to its end use for affordable housing or by agreement between the developer and the RSL or other housing provider, at a lower value. In any event, the land should be transferred at less than the value of mainstream housing for sale on the open market. In such cases, a legal agreement will secure the transfer of land and clearly set out trigger points for the transfer.

- 4.9** An alternative to the provision/transfer of serviced land is where the developer provides the affordable dwellings on site. This is called 'Design and Build' and is usually done for a RSL by providing unsubsidised affordable homes on site (see Section 5.0 of the Supplementary Guidance for further details).
- 4.10** Developers may seek the reduction in their affordable housing contribution by demonstrating, to the satisfaction of the Council, that there is sufficient provision of affordable housing within the immediate area, settlement or recognised neighbourhood. Where Scottish Government funding is not available for a site, the Council may agree to the developer reducing the contribution in terms of serviced land and the provision of a lesser number of completed units.

## *Off-site Provision*

- 4.11** While on-site provision is preferred, off-site provision may have a role to play where an alternative suitable site capable of accommodating a benchmark of 25% affordable dwellings in the same HMA is available. Schedule 6.1 of the LDP identifies one such site where this could apply in West Greenock. In such a case, and it would likely be exceptional, the land would be transferred on completion of the houses to a RSL or other housing provider, within a specified timescale. Off-site provision may also be negotiated for sites with a capacity below 20 units, depending on the circumstances.

## *Commuted Payments*

- 4.12** The third form of contribution is commuted payments, where a sum of money is paid in lieu of on or off-site provision. Commuted payments will only be acceptable in very exceptional circumstances, where neither on-site nor off-site provision can be delivered. Where deemed acceptable to the Council, the Regeneration and Planning Service will seek a commuted sum equivalent to the cost of providing the percentage of land required by Policy RES4. In accordance with PAN 2/2010, the value of the commuted sum will be determined independently by the District Valuer, unless the applicant requests otherwise, in which case it will be determined, in accordance with RICS guidelines, by a chartered valuation surveyor suitably experienced in the property type and locality and appointed by mutual agreement between the parties. Failing this, the chair of the RICS in Scotland will adjudicate. Commuted payments may also be negotiated for sites with a capacity below 20 units, depending on the circumstances.
- 4.13** Further information on the procedure for securing commuted payments in lieu of on or off-site provision is provided in Annex 1, which updates and expands upon Annex 4 in the Supplementary Guidance on Affordable Housing Provision.

## Transportation

- 4.14** In line with Policy TRA4, the Regeneration and Planning Service will, as appropriate, seek developer contributions towards pedestrian, cycle, public transport and road improvements, including trunk roads, that are identified as necessary in an associated transport assessment which has been agreed by the Council.
- 4.15** On-site transport infrastructure should be secured through the use of planning conditions. Where the provision of off-site infrastructure is required, developers will be required to undertake the works at their own expense and in accordance with the terms of a Section 56 agreement under the Roads (Scotland) Act 1984.





Realignment of the A8 to facilitate development of the retail park at Port Glasgow

## Open Space

- 4.16** Policy ENV5 'Securing Open Space by Planning Agreements' requires that *'where a development would involve the loss of formal, active open space or other recreational facility, the Council will seek to secure suitable alternative provision at another nearby location, where necessary, through a Section 75 legal agreement'*.
- 4.17** The calculation of this contribution will be based on the environmental and functional quality of the area to be lost and the cost of an equivalent replacement elsewhere in the locality. The specific costs will be determined on a case by case basis.
- 4.18** Supplementary Guidance on 'Planning Application Advice Notes' (Note No.3) requires all developments, except small scale and flatted infill proposals, to provide public open space. Where this provision can only be delivered off-site, a contribution, secured through a planning obligation or other legal agreement, will be required.
- 4.19** The level of contribution will be based on an indicative ratio of 1.64ha of open space and 0.32ha of children's play and kick about areas per 1,000 population (the contribution will include the cost of equipping the children's play/kick about areas). Population estimates will be based upon occupancy rates of two persons per double bedroom and one person per single bedroom. Further information on the maintenance arrangements for open space provision is set out in the Supplementary Guidance.

## Green Network

- 4.20** The importance that is placed on the Green Network is reflected at the strategic level in the Glasgow and the Clyde Valley Green Network and the National Development project in the Central Scotland Green Network.
- 4.21** Policy ENV3 'Safeguarding and Enhancing the Green Network' requires that *'where development proposals would encroach upon or undermine the green network, alternative routes and green space will be expected to be provided or enabled'*. Further information on all Green Network requirements is provided in the Supplementary Guidance on the Green Network.

- 4.22** Where alternative green network routes/space cannot be provided on-site through a planning condition, a contribution can be secured through a planning obligation or other suitable legal agreement. The approach used to calculate replacement open space (para 4.17) will be also be applied to the Green Network.



Play area at Burns Road, Greenock

## 5.0 VIABILITY

- 5.1** While developer contributions are intended to facilitate development by alleviating issues that may prevent a development going ahead, Inverclyde Council recognises that contributions impose costs, which may, in the current economic conditions, have implications for the viability of a development. Circular 3/2012 'Planning Obligations and Good Neighbour Agreements' states that "in developing planning obligations, *consideration should be given to the economic viability of proposals and alternative solutions should be considered alongside options of phasing and staging payments*". In line with the Circular, an applicant may, in agreement with the Regeneration and Planning Service, seek to mitigate the impact of developer contributions by phasing the payment of contributions throughout the construction of the development (discussed further in para 6.9).
- 5.2** If the impact of a contribution cannot be alleviated through phased payments, the onus will be on the developer to demonstrate the negative impact that a contribution would have on the viability of a development. This will require that a full development appraisal be disclosed to the Regeneration and Planning service for assessment. Where the Council consider it appropriate, there may a variation in the contribution requirement.

## 6.0 THE PROCESS FOR IDENTIFYING, NEGOTIATING, SECURING AND MANAGING DEVELOPER CONTRIBUTIONS

- 6.1** The identification, negotiation and securing of developer contributions will take place in tandem with the Development Management process.

### Identifying Developer Contributions

- 6.2** It is expected that the scale and type of development likely to require developer contributions will be the subject of pre- application discussions with the Regeneration and Planning Service. During these discussions the Regeneration

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and Planning Service will, through reference to the LDP and this guidance etc, identify any infrastructure and/or mitigation measures which need to be provided. Where these contributions cannot be secured on-site through planning conditions, the applicant will be informed of the need for a planning obligation or other legal agreement. Pre-application discussions should reduce any uncertainty around contribution requirements and speed up the planning application process.

- 6.3 Where pre-application discussions have not taken place, a planning application will be assessed for 'developer contributions' on the basis of the LDP, this planning guidance, a site visit and consultation with relevant Council Services and external agencies. Any contribution requirements will be reported back to the applicant at the earliest opportunity.
- 6.4 It should be noted that where a contribution requirement relates directly to more than one development, e.g. an upgrade of local road infrastructure, the costs will be shared on a pro-rata basis.
- 6.5 The identification of developer contributions will provide the starting point for negotiations between the Regeneration and Planning Service and the developer.

## Negotiating Developer Contributions

- 6.6 Negotiation with the developer will be undertaken to agree the level of contribution and identify Heads of Terms. Negotiations will be carried out by the Regeneration and Planning Service in consultation with any other relevant Council services, e.g. Property and Housing. All financial contributions will be index linked to the date that the Heads of Terms are agreed; usually against the Retail Price Index.

## Securing Developer Contributions

- 6.7 In the first instance, the Council will seek to secure contributions through the use of planning conditions. These will usually be appropriate where infrastructure requirements and/or mitigation measures are to be provided on-site.
- 6.8 Where a legal agreement is required, e.g. for off-site provision, the Council's preference is for contributions to be paid in advance of planning permission being granted. This will be secured through a Section 69 agreement, under the Local Government (Scotland) Act 1973, which provides that, "*a local authority shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions*". Section 69 agreements are relatively quick and straightforward to complete and generally facilitate a faster conclusion to the application process than a Section 75 equivalent. A Section 69 agreement will outline the terms under which the contribution has been made and secure the contribution for its intended use. However, Section 69 agreements cannot be registered against the title to the application site. In light of this, the Council will only enter into this type of legal agreement where the relevant contribution is to be paid in full, prior to the issue of a planning permission.
- 6.9 As a responsible and responsive local authority, Inverclyde Council recognises that phasing contribution payments can significantly ease cash flow pressures experienced early in the development process and, in extreme cases, be the determining factor in the viability of a development. In these circumstances, a Section 75 agreement may, where appropriate, be used to defer the payment of a contribution to a date, agreed by both parties, after the grant of planning permission. Alternatively, another form of security over land will be considered.
- 6.10 Applicants may, under Section 75, propose a unilateral planning obligation in respect of land which they own or control. However, it should be noted that where a unilateral obligation does not sufficiently address/secure all the contributions relating to a planning proposal, the Regeneration and Planning Service will seek to enter into a planning obligation (or other appropriate legal agreement) with the applicant.



- 6.11** While the Heads of Terms will be identified during negotiation and prior to the determination of the application, no formal legal agreement will be entered into until the Council is disposed to grant the planning permission, subject to the successful completion of an agreement. Once this has taken place, the agreed Heads of Terms will be referred to Legal Services to put an appropriate agreement in place. Once an agreement is in place (and in the case of Section 75 agreements, registered in the Land Register of Scotland), planning permission may be granted.
- 6.12** All legal and administrative costs incurred in the production of a legal agreement will be borne by the developer. Developers will be informed of all associated costs prior to an agreement being drawn up as the cost of drawing up an agreement varies, depending on the scale of the development and the complexity of the agreement required.

## Managing Financial Contributions

- 6.13** The management of financial contributions will be carried out in accordance with the terms of the associated legal agreement. Agreements will stipulate not only the service, infrastructure or facility to be provided or enhanced, but also the relevant Council service provider, the time-frame within which the work is to be undertaken and cost indexing. Developer contributions will be held by the Council in a separate earmarked reserve.
- 6.14** The Council will monitor development contributions on a regular basis.
- 6.15** Where a developer contribution has not been disbursed within the timeframe set out in the legal agreement, this will result in the return of the contribution by the Council.

## **7.0 PROMOTING ECONOMIC AND SOCIAL REGENERATION OBJECTIVES**

- 7.1** When entering into a legal agreement, developers will be encouraged to engage with the Council's Economic Development Team, in order to maximise the opportunities to support economic and social regeneration objectives, particularly employability and the local supply chain. The Council's Economic Development Team can help secure benefits at the construction phase of all types of development, without any financial contribution.
- 7.2** The following model clauses have been adapted from those proposed by the Scottish Government in relation to a development which was expected to create employment in its operational phase.
- Community Benefit Clauses will promote and develop training and education opportunities in disciplines to be employed within the application site with specific objectives, an action plan and monitoring arrangements.
  - Prior to commencement of the Development, the Applicant shall agree Community Benefit Clauses in consultation with the Council.
  - During the construction of the Development the Applicant will take reasonable steps to ensure that full and fair employment opportunities are given to residents within Inverclyde before advertising for staff.
  - During the construction of the Development the Applicant will take reasonable steps to ensure that full and fair opportunities in relation to Construction contracts and sub-contracts are given to suppliers of goods and services trading or having a depot within Inverclyde before advertising for the supply of goods and services.
  - The Applicant will notify the Council of (1) the nature of the goods and services which they intend to procure for the purpose of carrying out the development and (2) businesses with a principal base or depot within Inverclyde that may reasonably be able to tender for the supply of the specified goods and services.
  - The Applicant will provide advice to prospective tenderers regarding contract procedures, standards and requirements.
  - The Applicant will record relevant information in relation to these obligations on a monthly basis for submission to the Council on a six monthly basis starting with the date of commencement of development. Such information will be agreed as part of the Community Benefit Clauses.

- The Applicant will notify all job vacancies to Job Centres, a schedule of which Centres will be agreed as part of the Community Benefit Clauses, before advertisements are placed elsewhere to determine if suitable local labour is available prior to the employment being offered elsewhere.
- The Applicant will provide a contact person to liaise with the Council in relation to the implementation of these obligations and the Community Benefit Clauses.

**7.3** In order to facilitate the above, the Council will seek to enter into a partnership with the developer. The Council's workforce development team can help developers to understand and meet their regular recruitment needs and to develop the appropriate service package. The Council's employability team will provide a single point of contact to develop and co-ordinate this service.

## **8.0 SUMMARY**

**8.1** Developer contributions are an accepted and widely used mechanism for ensuring that the cost of providing the infrastructure and/or any mitigation measures needed to facilitate new development is, as far as practicable, paid by the developer, not the Council or other public service providers.

**8.2** The LDP and associated Supplementary Guidance provides a local planning policy context for developer contributions to be sought in relation to affordable housing, transport infrastructure, off-site open space provision and the replacement of open space/green network lost through development.

**8.3** This planning guidance aids the implementation of these policy requirements by setting out the methodology and process for calculating, negotiating, securing and managing developer contributions. In addition, the guidance provides information on how the Council can support applicants to make a significant contribution towards the local supply chain and employability.

**8.4** The planning guidance is intended to enable the Regeneration and Planning Service to adopt a consistent and transparent approach to developer contributions and allow developers to be aware of potential contributions.

**8.5** This planning advice should be read and applied in conjunction with the relevant LDP policies, Supplementary Guidance and Circular 3/2012 Planning Obligations and Good Neighbour Agreements.

## ANNEX 1 Council Procedures for Securing Commuted Payments in lieu of On or Off-Site Affordable Housing Provision

The information provided below augments Annex 4 of the Supplementary Guidance on Affordable Housing Provision, specifically points 7 and 10. The additional information provided in this Annex is highlighted in italics.

- (1) The Council will undertake to ensure that housing providers assist in the delivery of affordable housing, where considered necessary and appropriate, by applying the policy guidance contained in this SG.
- (2) The Council's Regeneration and Planning Service and the Housing Team in the Safer and Inclusive Communities Service will work in partnership with third parties, including the Scottish Government, other public agencies and housing providers, to secure the delivery of affordable housing.
- (3) The Council will work with the Scottish Housing Regulator, public sector agencies and housing providers to establish an open and transparent system of recording and maintaining priority client groups, as defined by statute and in accordance with good practice, as the basis for allocating qualifying households to the available affordable housing stock.
- (4) The Council will work with the public sector agencies and housing providers to maintain up to date records of the requirement for sites to deliver affordable housing, by category of affordable housing provision (after PAN 02/2010). Housing need and demand will be identified through the HNDA, as updated, and through regular updates of the LHS together with monitoring of the requirements generated by the approved three-year Strategic Local Programme (SLP)/Strategic Housing Investment Plan (SHIP).
- (5) The Council will engage early in the development process with developers and housing providers to discuss identified housing needs in the area, agree on the suitability of development proposals contained in a Masterplan/development brief for the site for meeting local housing need, and advise on the availability of subsidy and other resources, to deliver affordable homes.
- (6) The Council will negotiate with developers and housing providers on any necessary legal agreements for the provision and retention of affordable housing as a prerequisite of Planning Permission being granted.
- (7) The Council will re-examine publicly-owned sites and other sites that become surplus on a regular basis, with a view to possibly making these available for affordable housing, at a value appropriate to such use, in accordance with the requirements of the most up to date Scottish Government SLP and SHIP Guidance.

*Since the adoption of the LDP (August 2014), the Council has made available a number of surplus sites to RSLs on a 'Single Party Negotiation' basis, to help secure and make provision for affordable housing need in Inverclyde. It is anticipated that the Council will continue to do so, depending upon the scale of housing need at the time and the rate and pace of development being completed /expected to be completed within the timeframe of the relevant SHIP.*

- (8) The Council will consider the use of Compulsory Purchase powers to secure development opportunities for additional new affordable housing, where a suitable housing provider underwrites the acquisition costs, including within the designated New Neighbourhoods and Areas of Potential Change identified in the LDP.
- (9) Unless otherwise indicated, the LDP's Spatial Strategy and the relevant policies in the Housing and Communities chapter of the Plan, will take precedence over the policy guidance in this SG.
- (10) The Council recommends that all prospective housing developers make early contact with the Regeneration and Planning Service to ascertain whether this SG will apply to their development proposals.

*"Specifically in relation to Part (a) (ii) of Policy RES4, i.e. 'commuted payments in lieu of on- or off-site provision', the following approach will be used to negotiate and agree a mutually acceptable developer contribution to off-set an on-site provision of affordable housing. For the avoidance of doubt, the procedure outlined will only be used upon a failure to agree a mutually acceptable sum, having had the site independently valued in accordance with RICS guidelines, as described in SG, paragraph 4.21.*

## PLANNING GUIDANCE ON DEVELOPER CONTRIBUTIONS

*Under such circumstances, the Council, through its Property Assets Manager (or other suitably qualified relevant officer), will seek a mutually acceptable developer contribution in the form of a commuted payment by undertaking negotiation with the developer(s) on the following:*

- (a) Basing the commuted payment on the cost of purchasing land elsewhere in the Authority (preferably on the basis of a mix of similar sites in the same HMA/HNDA sub area for the purposes of Affordable Housing, i.e. at less than market value), to provide the equivalent number of affordable housing units required to satisfy the planning condition explicit in Policy RES4 (a)(ii).*
- (b) Unless otherwise agreed, the benchmark of 25% Affordable Housing Contribution (AHC) will be the basis of the calculation for the commuted payment. Depending on the particular circumstances, the Council may wish, or be prepared, to modify this benchmark figure either upwards or downwards.*
- (c) The cost of purchasing land will be on a 'per plot cost' basis, based on the provision of Affordable Housing units, taking into consideration, for example, whether the provision is likely to be in the form of terraced, semi-detached, 'cottage-style' houses, etc. or flatted accommodation.*
- (d) On reaching agreement on the above basis, further negotiation and agreement should be sought on the method of payment, whether 'up-front' as one payment or more likely, a mutually agreed phased payment.*
- (e) The means of securing the commuted payment is likely to be through a planning agreement, and having taken the advice of the Head of Legal and Property Services (or other relevant senior officer), the form of that planning agreement will be agreed with the applicant.*
- (f) Any grant of planning permission where a commuted payment is involved will be subject to the applicant concluding an Agreement, most likely for this type of developer contribution, under Section 69 of the Local Government (Scotland) Act 1973 or Section 75 of the Town and Country Planning (Scotland) Act 1997, in order to secure the provision of a bond to cover the cost of the provision of affordable housing off-site in accordance with LDP Policy RES4 (a)(ii).*

*There will be an understanding that at each stage of the negotiation, the Property Assets Manager or equivalent will keep the relevant Planning Officer dealing with the planning application (or other senior officer) apprised of progress in order to avoid any unnecessary delays in determining the planning application.*

*The AHC will be held in the Council's Affordable Housing Fund (currently the responsible officer is the Head of Safer and Inclusive Communities, with responsibilities for the Council's Strategic Housing Function, including LHS, SHIP and SLP), and in the event of the AHC not being spent within 5 years of the payment of the developer contribution, or if phased the date of the first staged payment, then the relevant sum will be returned to the developer(s) concerned.*

*It will be the responsibility of relevant officers on having secured a developer contribution, and in particular the relevant 'senior housing officer' to ensure that the Planning Officer is kept informed of the use to which the AHC is being put and to inform the latter in good time if there is a likelihood of the AHC not being fully spent or of an underspend on the nominated SHIP/SLP site(s).*

*At the time of the grant of planning permission, it would be good practice to provide the developer(s) of an indication of the likely spend profile of the AHC and the likely site or sites it will contribute to in the Authority."*



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