

Developer Obligations Frequently Asked Questions



moray
council

What are developer obligations?

Developer obligations are contributions sought from developers to mitigate the impact of their development on the community. When a development takes place there is need for infrastructure and facilities to accompany it. This can include a wide range of infrastructure and facilities (e.g. schools, roads, public transport) depending on the scale and location of the development. Developer obligations are intended to ensure that developers make appropriate provision for any pressure on existing infrastructure and facilities, or supply additional infrastructure and facilities to negate the impact of the development on the local community.

Guidance on developer obligations?

Guidance on developer obligations is set out in the Scottish Government Circular 3/2012: Planning Obligations and Good Neighbour Agreements (Revised 2020). A copy of this document can be found at www.gov.scot/publications/planning-circular-3-2012-planning-obligations-good-neighbour-agreements-revised-2020/

Further information is provided in the Council's Supplementary Guidance on Developer Obligations. A copy of this document can be found at <http://www.moray.gov.uk/downloads/file134184.pdf>

Does Moray Council have policies on infrastructure requirements, developer obligations and affordable housing?

Yes, policies relating to developer obligations are contained within the Moray Local Development Plan 2020. Policy PP3 Infrastructure and Services; Policy DP2 Housing; and Development Policies set out these requirements. Copies of these can be found at www.moray.gov.uk/MLDP2020

For developer obligations, requirements are assessed against policy PP3 Infrastructure and Services of the adopted Moray Local Development Plan 2020 (MLDP2020) and Supplementary Guidance (SG) on Developer Obligations which was adopted on 30 September 2020. The Developer Obligations SG can be found at

<http://www.moray.gov.uk/downloads/file134184.pdf>

Who deals with developer obligations in Moray?

Developer obligations are dealt with separately to Development Management, all queries should be directed to the Developer Obligations Team. Developers are encouraged to contact the Developer Obligations Team at an early stage to ascertain if a financial contribution or affordable housing provision is required and, if so, what the likely level would be. Assessment reports are issued by the Developer Obligations Team who is responsible for advising the Development Management Case Officer when agreement has been reached and the detail of the obligations sought.



Moray Council DEVELOPER OBLIGATIONS

Who do developer obligations apply to?

The Developer Obligations Team is consulted on all planning applications and in liaison with other Council Services and NHS Grampian prepare an assessment which sets out the contributions that are required to mitigate any negative impact the proposed development has on existing infrastructure. The assessment issued sets out the methodology as to how the obligations were calculated.

Do I have to pay developer obligations if I want to sell the land after receiving a planning permission?

The planning consent is attached to the land and when land is to be sold on, the level of developer obligations paid by the applicant should be taken into account. Developer obligations must be agreed and secured before a planning application can be determined.

How are developer obligations secured?

Individuals with single unit applications

- Upfront payment prior to the release of planning consent; or
- Phased payment agreements, which are tied to the applicant who has signed the agreement and do not run with the land.

Applications of 2 units or above

- Upfront payment: the majority of financial obligations are met through upfront payments [for major developments, under Section 69 of the Local Government (Scotland) Act 1973] prior to the release of the planning

decision notice and this would be a personal agreement between the developer and Council in line with the assessment report.

- Transport contributions may also potentially be secured by an agreement under Section 48 of the Roads (Scotland) Act 1984. This agreement may be entered into for works such as junction upgrading, installation of traffic lights and pelican crossings, traffic calming measures etc. to deal with the effects of new development.
- Section 75 legal agreement: Where larger obligations are required then a legally binding Section 75 agreement would be required which may secure contributions which are paid at agreed points during the development and runs with the land. If the developer sells the site the new owner takes on the responsibility of meeting the obligations.

How do I make an upfront payment and who should I contact?

The Developer Obligations Team will advise the agent/applicant when the developer obligation is required to be paid and the methods of payment.

What can you seek developer obligations for?

When the Council considers what obligations there may be for a particular development they must refer to the Local Development Plan and also apply all five 'tests' which are set out in national government legislation (Circular 3/2012) over the page.



5 Tests for developer obligations

Scottish Government Circular 3/2012 (Revised 2020) sets out 5 tests to be applied when planning obligations made under Section 75 legal agreements are sought.

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

Which Types of Development necessitate Developer Obligations?

Developer obligations will be sought for the following types of development:

Residential Development: a new residential unit.

Commercial Development: where floor space is 1,000m² and above, or the site area is more than 1 hectare.



Other applications where the Council or NHS Grampian consider the proposal to merit consideration of developer obligations.

What is funded through developer obligations?

Developer obligations will be sought for the following infrastructure and facilities:

- Education
- Transportation
- Healthcare
- Open Space, Sports & Recreational Facilities

Education

Where a development brings more children to an area and the school is projected to exceed 80% physical capacity for primary schools or 90% capacity for secondary schools, contributions are sought to create additional capacity within the school. Contributions could be towards a new build, extension, reconfiguration of existing space or rezoning.

In larger developments, where the development as a whole or as a part of the masterplanned area generates the need for a new school, the developer will be required to provide an appropriate sized, serviced land for the school, which is 2.5ha for a primary school, at nil value.

Transport

Small scale developments located within a rural area with no access to bus services will be required to pay contributions towards the Council's Demand Responsive Transport Service (dial-a-bus). For major developments, a Transportation Assessment is required to be carried out and mitigation measures identified accordingly.

The developer will be expected to deliver the infrastructure and measures at their cost and for cumulative impact through a proportionate contribution towards transportation interventions identified in the Elgin Transport Strategy or other location specific transport plans which may be agreed by the Council.

Transport infrastructure requirements and costs will vary from site to site. Developers are encouraged to contact the Council's Transport Development Team as early as possible in the development process to ascertain the likely transport infrastructure requirements that will be sought in order that these can be factored into early site development viability calculations.

Health Facilities

Healthcare facilities can include General Medical Services (GMS), Community Pharmacies and Dental Practices. Contributions will be sought where the capacity of the existing facility is exceeded as a result of the proposed development and will be directed towards healthcare facilities serving the residents from the development. Contributions may be sought for a new build facility, permanent extension or reconfiguration of internal space to provide additional capacity.

Sport and Recreational Facilities

The Supplementary Guidance sets out provision for contributions towards a provision of an enclosed, floodlit synthetic turf (3G) pitch in Forres.

What other contributions must be considered?

Affordable Housing

Although not a developer obligation, Affordable Housing is a requirement under Policy DP2 Housing of MLDP 2020 which requires that 25% of the total number of units in new developments must be provided as affordable housing.

For developments of between 1 and 3 units, a commuted sum will be sought for 25% of the average market value of a serviced plot. The commuted sums required in each local housing market area can be found here:

http://www.moray.gov.uk/moray_standards/page_94665.html

For developments of 4 units or more 25% of the total number of units in new developments must be provided as affordable housing. This is preferably to be delivered on site, but in certain circumstances a financial contribution in the form of a commuted sum is allowed to the Council to deliver affordable housing elsewhere.

When is money from developer obligations available?

Small scale developments are required to pay the requested developer obligations upfront prior to the release of the planning consent, or at the stages of development agreed to through a phased payment agreement. Major applications usually enter into a S69 agreement, which requires upfront payment or S75 agreement where payments are made on a phased basis. The triggers for S75 payments are generally the completion of certain amount of units.



Can developers modify the Section 75 legal agreement?

A developer can apply to the Council to modify or discharge an obligation within a Section 75 legal agreement and has a subsequent right of appeal to the Directorate of Planning and Environmental Appeals if the authority refuses the application. These applications are assessed against the relevant development plan policies and five tests. If a new planning application on a site under development is submitted this has no impact on the existing Section 75 agreement unless a new planning permission is granted with an associated Section 75 that amends the original agreement.

What if developer obligations seem unreasonable?

Developer obligations should be taken account of when purchasing land. For individual applicants, the Council offers a phased payment option to phase the required financial contributions over time.

For larger developments, in order to assess the financial viability of a development, the developer is required to undertake a development viability assessment and include all requested information, which can be found in Appendix 5 of the Council's Supplementary Guidance on Developer Obligations. The developer should allow for a certain level of obligations in their development appraisal and the inclusion of infrastructure requirements in the Development Plan and Supplementary Guidance assists in providing certainty early in the process. For a developer, uncertainty equals risk so they are keen to determine costs as early as possible.

Further Information

For further information please contact a member of the Developer Obligations Team at: DeveloperObligations@moray.gov.uk

