

SPF Response to Infrastructure Levy Scotland discussion paper

- 1. Do you agree that the charge should be based on a calculation per square metre of development? Are there any options or issues we have not considered above?**

This appears to be the most sensible model adopted. It would provide clear visibility to developers of the mechanism to inform assessments of development viability at project consideration and inception.

- 2. Should the area of the development be calculated by internal or external measurement?**

It should be based on Gross Internal Area because this is the effective use area for owners and occupiers.

- 3. How should existing property that is demolished or redeveloped be treated in the calculation?**

This would depend on the purpose of the redevelopment. If it is simply to replace an existing building, then we would argue there is no additional strain on infrastructure. It will

be important to encourage redevelopment of our existing buildings, and we should avoid deterring this process.

In England and Wales, we understand that the procedure tends to be that preexisting floorspace in legal use ahead of redevelopment is deducted from the overall floorspace to be considered for CIL.

4. Do you agree that the Levy should be charged as a set amount per square metre?

Similar to our answer to Question 1, this would provide visibility for developers considering a development project at concept stage. It will be important to provide as much certainty and predictability as possible for developers and investors who will likely be setting £100ms against major development projects. That said, developments and their impact vary so provision for flexibility in size of charge or as discussed elsewhere in this discussion paper type of development is important.

5. Is it helpful to use average sale values to set the amount of the Levy? What other methods could be used?

We would have reservations about this method – average sales values could go up or down quickly and unpredictably, and will vary considerably over a period of time.

SPF highlights the need for flexibility that considers regional disparities in land values and market conditions. In areas of lower land value, setting a flat rate might risk making developments unviable. At SPF's meeting with the Scottish Government on ILS, we also

discussed that lower-value developments could be disproportionately affected, undermining projects that might otherwise have brought economic and social benefits to local areas.

6. How can a set amount best reflect local variation in development value? Do you agree that local authorities should set the zones across which the amount is set?

We recognise there will be some complexity in developing a formula that accounts for the local context where market conditions, land values and infrastructure requirements will vary across local authorities. But we do agree there should be a mechanism to account for this local variation. If the levy is to be introduced, we urge for a transparent and predictable calculation method that gives developers an early indication of their expected costs. However, in areas of lower land value, our members have advised that setting a flat rate may risk the viability of the development. Members experienced in CIL south of the border have commented that a zoned approach is sometimes utilised.

7. Should local authorities be allowed to charge the Levy only in parts of their area (or not at all)?

As mentioned, we are hesitant at the potential for an additional levy to be introduced on developers and significantly concerned with the cumulative impact of various levies and legislation on the viability of projects. In some areas, imposing an additional fee may completely stifle smaller-scale developments. We believe the council should have the opportunity to weigh the broader impacts of development such as the wider economic and social benefits it will bring to the local area against the benefits of collecting the

infrastructure levy. Therefore, if the levy is to be introduced, it should be to the discretion of local authorities, allowing them to choose to charge the levy in parts of their area or not at all. A concern for us is ensuring that the levy is proportionate and does not create an uneven playing field. This approach may lead to prolonged discussions about viability on a case-by-case basis. Additionally, our members have pointed out that legal advice would be necessary to ensure compliance with the Subsidy Control Act 2022.

However, our main concern is that councils, facing financial strains, may lack the incentive not to implement the levy, prioritising short-term revenue needs over the long-term viability of development or other public benefits it will bring.

8. How could amounts for commercial and industrial development be set?

It is difficult to see how a standard rate can be set for commercial and industrial development given the wide variation in this tenure.

In addition, whilst we advocate for an approach that ensures a level playing field for all developments, it is hard to see how some commercial and industrial developments justify contributing to infrastructure when they may not directly benefit from the infrastructure being built. Where possible, we suggest that there are incentive based contributions where developers can see how their fees are being used. Again, we are informed by members experienced with CIL that local authorities have applied a viability test to these types of development and discovered that the viability is too low to support a levy, and thus set a zero-rated levy.

9. Would it be helpful for local authorities to have discretion to waive or reduce the ILS in individual cases?

Yes, similar to our response in question 7, local authorities should have this discretion particularly if the development is at risk of not going ahead because of the additional costs borne from the levy. Furthermore, an equitable waiver system enables the consideration of unique circumstances such as higher development costs including materials, labour, land value and the clearance of brownfield sites, or the delivery of public benefits that outweigh the need for the levy.

However, there must be a fair criterion for waiving or reducing the levy for individual cases which provides an accountable mechanism for decision-makers but also a transparent framework which developers can understand and predict the likelihood of obtaining an exemption or reduction in fees.

10. Should the impact of planning obligations and other charges / requirements be considered in this assessment?

SPF members support a transparent and predictable approach to calculating the Infrastructure Levy to give developers early insight into costs, which can be incorporated into their feasibility and viability assessments. The PBA non-linear formula mentioned by the Scottish Government (SG) allows for an adaptable calculation based on different development zones and types, but SPF is concerned about the complexity it might introduce, particularly for smaller developers. Simplicity should be a priority, so developers, especially SMEs, can accurately predict costs without requiring sophisticated financial modelling.

SPF highlights the need for flexibility that considers regional disparities in land values and market conditions. In areas of lower land value, setting a flat rate might risk making developments unviable. At SPF's meeting with SG, we also discussed that lower-value developments could be disproportionately affected, undermining projects that might otherwise have brought economic and social benefits to local areas.

Similar to our concerns expressed on the cumulative cost and negative impact on development viability, we do have a concern that if the levy appears to duplicate existing development contributions toward specific infrastructure requirements, then this will make developments unviable. Thus, it is vital to be clear to define what is the intended scope and rationale of the levy.

11. Do you agree that residential institutions should be excluded from the Levy?

Yes, agree that they should be exempt as they are providing service to the community. There should be clear exemptions for developments that serve essential public functions, such as schools, hospitals, and community facilities or where other forms of subsidy apply, particularly affordable housing. These types of projects provide critical public services and are often funded by the public sector or charitable organisations. Imposing an infrastructure levy on such developments could place an unnecessary financial burden on them and potentially hinder their delivery. Since these projects directly contribute to the well-being of communities and support wider infrastructure needs, they should be exempt from the levy. This ensures that the focus of the levy remains on developments

that generate commercial profit or private benefit, rather than those providing public services or benefits

12. Should the Levy be charged on all or some types of affordable housing?

We acknowledge there will be pressure on infrastructure but the burden of the Levy on affordable housing could potentially conflict with the Scottish Government's ambitious target to deliver 110,000 affordable homes by 2032. The inclusion of these homes within the Levy structure could reduce their overall provision, which would counteract broader government housing policy.

Members have therefore suggested that Affordable housing should not be required to pay ILS, as it will deter future delivery of affordable housing on viability grounds. In England and Wales, relief is granted for affordable housing (rather than no charge being made). For relief to be granted, the affordable housing must meet a set of criteria defined by Scottish Government to reflect different types of affordable housing

13. How should commercial development, purpose-built student accommodation and build-to-rent housing be treated?

Commercial and industrial developments, while important to fund infrastructure, need to be assessed cautiously. For instance, purpose-built student accommodation and build-to-rent developments often have narrow margins, and applying the Levy might discourage investment in sectors where there is already hesitancy to invest due to economic and political uncertainty. At a time when Scotland faces a national housing emergency, serious consideration should be given as to whether introducing this levy will further deter

development in the supply of new build-to-rent homes. It is a tenure that has the potential to dramatically increase the housing supply but has been stifled by the rent control legislation. Adding an additional layer of tax on top of rent controls, section 75, the Building Safety Levy and increasingly tight sustainability regulations such as the Passivhaus Standard will not help to increase the attractiveness of investing in this sector. At SPF's meeting with SG, it was also raised that energy infrastructure shouldn't need to be subsidised by developers. We do not feel it is fair to exclude energy infrastructure providers from the levy when ultimately, they benefit from using some of this infrastructure too.

14. Should renewable energy infrastructure and related development also be subject to the Levy? How might that impact on voluntary community benefits?

At SPF's meeting with SG, it was also raised that energy infrastructure shouldn't need to be subsidised by developers, and that perhaps the energy infrastructure providers should bear some of the infrastructure costs.

15. Do you agree that householder development should be excluded from the Levy?

They should be exempt, many of them would not be on a sufficiently large impact, so yes, we agree householder developments of less than 100m sq should be exempt.

16. Should self-build housing and very small developments be exempt?

Yes, as they will be occupied by those self-builders. There should also be clear exemptions for self-builds, small-scale residential developments (e.g., fewer than 10 units), and developments that might revitalise rural areas. These exemptions would stimulate regeneration and support sustainability goals, particularly in rural regions.

17. Are there any other types of development that should be exempt?

There should certainly be an ability for Ministers to intervene to exempt a particular type of development that is urgently required or perhaps only just starting as a product. There might also be strategic reasons to exempt for example a life sciences complex that is initiated.

Suggestions could include:

- Developments of less than 100 sq.m, unless it is a new house or flat. If it is a new house or flat, ILS should be payable.
- Houses, flats, residential extensions or residential annexes which are built by self-builders, and will be occupied by those self-builders.
- Social housing
- Charitable development
- Buildings into which you do not normally go
- Buildings where you only go intermittently, for inspecting/maintaining plant, machinery etc.
- Any structures which aren't buildings such as pylons

- Any development with a £0 charge as defined in the ILS charging schedule
- Vacant buildings brought back into the same use
- Mezzanine floors of less than 200 sq.m. unless they form part of a wider planning permission providing other works.

18. Should there be exemptions for charities or other types of developer?

Yes, as outlined in our answer to Question 18 this should be an option but perhaps maintained under review. Again, the scale of charity may be an issue and also its broader status and purpose.

19. To what extent should exemptions be set nationally, or at local authorities' discretion?

Generally, our members have suggested that exemptions ought to be clear and thus set nationally. However, local flexibility could be supported by enabling authorities to ability to set zero-rates where a clear local need for a particular type of building is set out.

20. When would be the best time for the Levy to be calculated and paid?

The ILS should be calculated at the point when permission is granted. Each local planning authority should introduce an instalments policy, defining when IL should be paid.

Payment dates should be linked to commencement, although not on commencement, as this is when developer cash flow is at a minimum.

There would clearly be an interaction with the land value on a site. However, it is important as well to recognize that development takes years to produce income in the form of capital or revenue receipts, and therefore payment should be sensitive to developer/investor cash flow. There should also be cognizance of the time that can be taken to discharge planning conditions etc which can have a material impact on development progress.

21. What arrangements could be made in the case of development benefitting from PDRs?

Our members have suggested that PDRs should be treated in the same manner as other planning permissions. It could be that the size and type of development dictates that many should be exempted as PDRs are very specifically authorised. We understand this is the approach generally taken down south PDRs where are often exempt from CIL (& s106).

22. Is any special statutory provision needed to manage arrangements in LLTNPA?

We do not see at this stage that special provision needs to be made. The Loch Lomond and Trossachs NPA is a local planning authority, like others, who should have the discretion to choose to introduce ILS (or not). The particular merits and planning requirements of an application in the context of the LLTNPA should be considered in the normal way.

23. Do you agree that the owner of the land at commencement of development should be liable to pay the Levy?

This is an option that should be considered further but we need to consider in reference to land value impacts, calculation of any charge and delivery of related infrastructure, and cash flow. The landowner-developer-investor relationship is critical to the development being delivered or even considered at all.

24. If not, who should be liable, and how (and when) should they be identified?

As suggested in our earlier answers the question of point of payment must be related to delivery and cash flow. Site ownership and responsibilities will inevitably evolve and become complex in many cases. There will also be questions over common ground and ground lease arrangements potentially. There is also the question of where a site is under redevelopment and not a new privately owned area. For example, much of Scotland's derelict and vacant land sites are under public ownership – would the public sector therefore pay the levy?

25. Should there be specific provisions to prevent liability for the Levy being passed on to homebuyers?

In principle yes, we agree that there should be such a provision but in practice a levy will form part of an overall appraisal and will therefore be factored into the price of new homes or commercial premises. Liability of the Levy should be defined prior to the commencement of development. Commencement should be the trigger for paying ILS. As

argued ILS must respect cash flow considerations and should be paid in instalments between commencement of development and completion. This should all ensure that the liability is not passed onto homebuyers.

26. Should there be a penalty fee if the Levy is not paid on time?

We accept there will need to be enforcement but there should also certainly be a right to appeal – late payment is not always the fault of the taxpayer. The public sector will often have its responsibilities on a development site and can sometimes fail to deliver on time or at all. We do not see it as fair if a developer has to pay the levy if other elements of the development outwith their control are being frustrated, and at times by the very authority that will be seeking the Levy payment.

27. If so, should it be a fixed amount or a proportion of the amount due?

We believe a fixed amount would be appropriate than an amount that could rise to a considerable level for large scale developments.

28. Should the penalty increase over time if the Levy is still not paid?

Subject to our comments on liability then we can see a penalty would need to increase if a considerable time elapses without it being addressed.

29. Should the local authority be able to require development to stop if the Levy is not paid? Would this be effective?

We believe a financial penalty should be sufficient to enforce payment. Only in the most difficult of circumstances should further legal actions such as enforcement action be considered.

30. Do you have any views on offences relating to failure to pay, failure to stop work, or attempting to evade full payment?

Enforcement will need to be a part of any levy but the rights of the payee must also be protected. This is crucial in a sector where the ability to pay may be intrinsically linked to other parties, some of whom may well be the local authority themselves. It would be unfair to apply severe penalties where a developer is not in full control of key parts of the project themselves.

31. Are any changes needed to the definition of infrastructure?

We have no further comments at this stage subject to further policy development. We feel this question is intrinsically linked to the question of what it is that the Levy is seeking to do, and what kind of infrastructure therefore, that authorities cannot otherwise do.

32. Do you agree that the Levy should fund infrastructure identified in the development plan, or should local authorities provide a separate list?

It is essential that the local planning authority defines the infrastructure where ILS will be spent for the reasons of transparency. It should be included in a spatial strategy so that the developers know what infrastructure they will be expected to contribute towards.

33. How could the costs of administering the Levy be covered?

This ought to be made clear in the set-up of the levy and the ILS schemes adopted by the local authority.

34. Do you agree that the local authority should publish an annual report on infrastructure levy income and expenditure?

This is important for the accountability of the use of funds. Yes, we believe it is essential for local authorities to report on income and expenditure. We strongly urge that the revenue collected from the levy is ringfenced for infrastructure only. Developers need to know how their funds will be allocated to assess whether their investments will align with their goals and the broader development of the area. If they see clear benefits, they are more likely to support additional contributions and potentially more development in that area than see it as an additional tax burden.

35. How many years should reporting cover – six, ten, or a different period?

The reporting should cover however long the levy is in place to ensure transparency.

36. Are any other provisions required on accounting or collection of the Levy?

If a levy is to be introduced, our members have advised for an early indication of costs, ideally at the point of planning permission, to provide certainty. This enables developers

to factor in the costs of the levy when negotiating land prices and conducting development appraisals. In terms of the levy's collection, our members have suggested it to be paid at the later stages of development or at the end of key phase completions to account for cash-flow. However, we are concerned that if paid at the end then there could be significant scope for variation if there is a change in market conditions (i.e, high inflation) especially for long-term or multi-phased projects.

37. Are there any other issues to be considered?

The general feedback from the industry has been on the purpose of this levy is not clear. Hence, the question arises if instead of fast pacing such a crucial piece of legislation, that can impact futures developments and investment in Scotland, can the purpose be achieved by s75 that are already established?

In our engagement with SG, our members also highlighted consideration of current market conditions and barriers as the research cited in the discussion paper does not reflect the current health of market post-pandemic, inflation and rising cost of construction. Adding to that, there needs to be a standardisation in all planning authorities for its usage. Recently, we have seen that Moray authority is consulting on a new levy on renewables – if authorities keep creating provisions of new planning areas, this will overlap and could stack up cumulatively to make developments unviable.

We acknowledge and welcome the wider comments in the discussion paper that there should be acknowledgement of other levies such as Building Standard Levy coming

forward and standards such as Passivhaus which will add to development cost. The cost of construction is already high and the capacity of the construction sector in Scotland is already stretched, and we fear that the cumulative impact of introducing more levies is an increased risk of loss of development in Scotland.

There is a need for greater transparency regarding how Levy funds will be allocated. Developers need a clear understanding of what infrastructure their contributions will support. This could foster a sense of partnership between developers and local authorities, as developers would be more likely to support the Levy if they see tangible infrastructure improvements in areas that benefit their developments.

Without clear identification of infrastructure projects, the Levy might be perceived as an additional tax burden rather than a contribution to local improvement. SPF advocates for ring-fencing of Levy funds for specific infrastructure projects, which would increase trust between the private and public sectors. While the Scottish Government has indicated that local authorities will not be legally obligated to ring-fence funds, the SPF believes that identifying key projects would be beneficial.

For example (and following on from the SPF/SEPA meeting), flood protection schemes could potentially be included as projects funded by the Infrastructure Levy. Given the increasing frequency of extreme weather events and the associated flood risks, including flood protection schemes could help protect both existing and new developments. The Infrastructure Levy is designed to help fund essential infrastructure that supports new development but often lacks sufficient public funding or cannot be covered by developer obligations under Section 75 of the Town and Country Planning (Scotland) Act.

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Flood protection schemes align well with the broader goals of the levy, as they are critical infrastructure projects that:

- Support sustainable development by mitigating risks to communities, homes, and businesses from flooding, which is critical given the rising costs of flood schemes like those in Grangemouth and Musselburgh.
- Ensure that developments in flood-prone areas are protected, preserving property values and reducing the costs of damage and insurance.

By including them within the levy framework, there could be a more sustainable source of funding for these critical projects, ensuring that developments in flood-prone areas are adequately safeguarded. This approach would also align with the Scottish Government's infrastructure-first approach, as outlined in NPF4, which prioritises investments in critical infrastructure to support sustainable development.

38. Additional comments are welcome

We would stress again the need to fully identify the purpose of the ILS in relation to the developer contributions already made at a local level through the pre-existing S75 process. Development of both residential and commercial units is already at a low level by historic standards. This levy proposal threatens to duplicate the S75 process and comes at a time of further levies and regulatory measures being applied to development, including additional nondomestic rates burdens when considering listed buildings for example. The cumulative impact of these new levies and regulations could threaten to make a significant number of projects simply unviable to deliver.

A significant concern is the cumulative financial burden that developers face with various existing levies, such as Section 75 obligations, alongside potential new requirements such as the Building Safety Levy. The cumulative effect of these levies, paired with economic challenges such as inflation, rent controls, and post-pandemic recovery, threatens the viability of developments, particularly for residential projects aimed at the broader market, including affordable housing.

Again, at our meeting with Scottish Government on the ILS, we emphasised that these additional costs are often passed down to homebuyers, which could push up property prices at a time when housing affordability is already a significant concern in Scotland. The Infrastructure Levy must be carefully balanced to avoid exacerbating this issue.

Certain infrastructure, like energy networks, which directly benefit utility providers, should not be subsidised by developers. The Levy should not place the burden of funding essential public utilities on developers, particularly when these utilities provide direct commercial benefit to private companies.

SPF is deeply concerned that the property market today is fundamentally different from when the original Infrastructure Levy legislation was drafted and passed. Brexit, the COVID-19 pandemic, and high inflation have collectively impacted project viability, making the development landscape much more fragile. It is important to stress that viability assessments now reflect far greater uncertainty, and the Levy must be carefully calibrated to avoid discouraging investment or stalling much-needed projects.

It is also essential to conduct a current and robust property market assessment before introducing any new legislation. The Scottish property market, particularly in commercial

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and housing sectors, faces challenges not seen in 2019, and SPF strongly recommends that the government update its data to ensure any levy reflects current market conditions. This includes reviewing whether development viability can still absorb additional levies in a post-pandemic economy.

Moreover, at our meeting we pointed out that the economic climate, combined with uncertainty over how and when the Levy would be applied, might make developments less appealing to private investors. There is already a noticeable investment gap between Scotland and other parts of the UK, and SPF urges the government to consider the broader economic impacts before implementing the Levy.

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