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SPF Consultation Response

Planning Obligations and
Good Neighbour Agreements
Draft Guidance

Submitted 30 September 2025

SCOTTISH PROPERTY FEDERATION

The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. As a part of the wider British Property Federation, we include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. Our members build Scotland's workplaces, homes, shops, schools and other facilities and the infrastructure that serves them. Our industry is therefore a core component of the Scottish economy.

OUR RESPONSE TO PLANNING OBLIGATIONS AND GOOD NEIGHBOURS AGREEMENT

Thank you for the opportunity to comment on the draft guidance on Planning Obligations and Good Neighbour Agreements. We welcome the Scottish Government's ambition to provide greater certainty for all parties through a more front-loaded, plan-led approach to developer contributions. We particularly support the emphasis on clear policies within new-style Local Development Plans (LDPs), justification for cumulative impacts, and the role of development viability in policy development and negotiations. Our comments focus on areas where further clarity would enhance deliverability, practicalities of embedding development viability, understanding commercial and market realities, reduce delays, and align with the objectives of the National Planning Framework 4 (NPF4), particularly Policy 18 (Infrastructure First).

We have formulated our response based on multiple roundtables with members and feedback from our Planning & Development Committee. We have structured our response as follows: a high-level summary of our key recommendations, followed by detailed points.

RESPONSE SUMMARY

- We ask for clarity on transitional arrangements where replacement Local Development Plans are delayed, recognising that many authorities are unlikely to meet the 2028 target.
- We reinforce the importance of consistency and timeliness in the drafting, negotiation, and registration of planning obligations, to reduce unnecessary delay and cost to all parties.
- We urge the Scottish Government to provide model obligations or standard clauses to streamline practice and increase certainty.
- We specifically call for clear national guidance on viability, including appropriate developer profit benchmarks and indexation start dates.
- Guidance should make clear that indexation must not be applied retrospectively to the date of policy adoption but should instead run from the date of planning permission, the Section 75 agreement, or commencement of development. This approach would ensure compliance with NPF4 Policy 18 (Infrastructure First), which requires infrastructure to be delivered in a way that supports development without undermining viability and deliverability.

OUR RESPONSE

1. Transitional Arrangements – where LDP replacement is delayed

1. The draft guidance appropriately highlights the integration of developer contributions policies into new-style LDPs to provide earlier certainty. However, a significant number of planning authorities have indicated that they are unlikely to meet the statutory 2028 deadline for adoption of these plans. In the interim, supplementary guidance adopted prior to March 2025 will technically continue to apply, but this creates considerable uncertainty where infrastructure contributions are sought under policies that may already be several years old.
2. To avoid confusion, potential disputes, and compromised infrastructure delivery during this prolonged period, the Circular should include clear transitional guidance on how obligations are to be assessed between the expiry of supplementary guidance and adoption of new-style LDPs. This could reference the expectation of partner involvement in Delivery Programmes and specify that contributions should be calculated using the most up-to-date available policies, adjusted for inflation or changed circumstances where justified.
3. Additionally, the Circular should encourage early engagement with developers to align expectations during this transitional phase, ensuring that viability assessments reflect current economic conditions and site-specific constraints.
4. Such provisions would provide confidence to both planning authorities and the development sector, ensuring alignment with the plan-led system outlined in the draft. We suggest adding a new subsection under "Setting out how developer contributions policies should be included within new-style development plans" to address this explicitly, including a recommendation for interim viability discussions to prevent disputes arising from outdated policy frameworks.
5. Further, where Local Development Plans (LDPs) were prepared before the legislative changes but adopted afterwards, they do not incorporate developer contributions as intended. As a result, related guidance can only be issued on a non-statutory basis, without the scrutiny and external examination considered necessary. This creates uncertainty, particularly where the justification for infrastructure contributions is challenged.

2. Consistency and Timeliness in Obligations Drafting, Negotiation, and Registration

6. We welcome the draft's consideration of legal agreement content, drawing on the 2020 Law Society of Scotland report and work by HOPS and SOLAR. However, delays in the negotiation and finalisation of Section 75 agreements remain one of the most frequent

causes of stalled development. These often stem from fragmented internal processes within planning authorities, late engagement of external consultees, and the absence of decision notices in a registrable form.

7. The Circular should place stronger requirements on planning authorities to promote cross-service coordination, early liaison with consultees, and the issuing of decision notices approving modifications in a form capable of direct registration in the Land Register (or Sasine Register where applicable). This would minimise the need for supplementary deeds, reduce unnecessary costs, and accelerate the delivery of consented homes and infrastructure, aligning with the Scottish Government's wider objective of simplifying and modernising planning procedures.
8. We recommend expanding the section on "considerations around the content of legal agreements" to include these practical steps, perhaps as a bulleted list of best-practice expectations for authorities. Commit to time-bound processes for finalising amendments to agreements, addressing the issue of prolonged delays in legal execution

Provision of Model Obligations or Standard Clauses

3.

9. The draft guidance notes expectations for more detailed advice on drafting from ongoing HOPS and SOLAR work, is positive. However, the absence of nationally recognised drafting standards currently leads to inconsistent obligations across authorities, even for similar development types. This increases legal costs, prolongs negotiations, and can result in less effective infrastructure securing.
10. The Circular should therefore encourage the adoption of model obligations or standard clauses at a national level. A nationally available set of specimen clauses covering common issues such as affordable housing, education contributions, and transport improvements would promote efficiency, improve transparency, and reduce disputes. This approach should include a clear timeline for consultation with stakeholders to ensure that such models take into account practical considerations and are in terms which would be of general acceptance to applicants. This would also enhance public confidence in fair and consistent application across Scotland, supporting the draft's goal of greater certainty.
11. We suggest inserting a new paragraph in the legal agreements section committing to the development and publication of such models within 12 months of the Circular's finalisation, with a clear timeline for consultation with stakeholders to ensure practicality and applicability.
12. The Circular should also make clear that it is not appropriate for local authorities to include blanket provisions in Section 75 Agreements which state that if any planning obligations contained in the Agreement are found not to be valid or competent planning

obligations such obligations remain enforceable as if the Agreement were an agreement in common form.

National Guidance on Viability, Profit Benchmarks, and Indexation

4.

13. The draft rightly emphasises the importance of development viability in policy development and individual negotiations, including its role in addressing cumulative impacts. However, the treatment of viability remains inconsistent and frequently contested, leading to unnecessary appeals and delays. Recent decisions, such as the Corstorphine Road case (DPEA ref: POA-230-2012, decision 6 March 2025), illustrate the risks of case-by-case judgments, with developer profits as low as 2.5% deemed acceptable. Profits at this level are not sustainable and decisions such as this reflect a worrying lack of market awareness.
14. **Agreed Profit Benchmarks:** An agreed range of profit benchmarks tailored to different development types, scales, and risk profiles (e.g., 15-20% of gross development value as a starting point for market-rate housing, adjustable based on evidence. Commercial developments would typically be based on profit-on-cost, but a consultation exercise should be used to inform such an approach). This could draw from England's National Planning Practice Guidance (NPPG) on Viability, which notes:
 - *Viability assessments should primarily inform plan-making to ensure policies are realistic and deliverable, with iterative engagement among stakeholders to set requirements that avoid repeated assessments at the decision stage (NPPG Paragraph 002).*
 - *For plan-making, an assumption of 15-20% gross development value (GDV) may be suitable as a developer return, with flexibility for lower figures in lower-risk affordable housing delivery (NPPG Paragraph 018). This level of profit compensates for the risk of the planning and development process, with adjustments for site-specific risks.*
 - *Where up-to-date policies set expected contributions, compliant applications should be assumed viable unless site-specific circumstances justify otherwise (NPPG, reflecting NPPF Policy 59).*
15. **Proactive Viability Discussions:** The Circular should mandate that viability be addressed at the pre-application stage, as hinted in Paragraph 17, with clear expectations for developers to present development appraisals upfront if Developer Contributions are likely to constrain development. This would enable planners, consultees, and developers to prioritise contributions (e.g., education vs. open space) based on viability constraints, avoiding post-hoc disputes. The Circular should also set out strong expectations for local authorities to appropriately manage the costs of infrastructure which is being funded by developer contributions.

16. **Reducing Risk and Delays:** Prolonged negotiation processes (e.g., applications stuck in the system) negatively impact viability. Clearer guidance on streamlined processes could reduce uncertainty and financial risk for developers.

5. Review Level and Mechanisms for Infrastructure Contributions

17. The Circular should explicitly discourage “gold-plating” of contributions (e.g., councils expecting developers to cover excessive procurement costs for infrastructure like schools or roads), ensuring contributions align with NPF4 Policy 18’s focus on deliverability.
18. Developer contributions are intended to mitigate the impact of a proposed development where it creates an additional burden on local services, resources, or amenities. Where such contributions risk making a development unviable, but would deliver wider social benefit, authorities should weigh that wider benefit against the viability challenge. Contributions should remain proportionate to the scale of the development, with recognition that delivering wider benefit may involve a cost to the local authority. Our members strongly advocate for flexibility, urging local authorities to balance viability with policy objectives and avoid rigid “gold-plating” of contributions (for example, disproportionate requirements for schools or roads).
19. The approach to indexation also requires urgent clarification. Current practices vary, with some authorities backdating to policy adoption dates, inflating contributions and undermining viability, contrary to NPF4 Policy 18. The Circular should stipulate that indexation runs from no earlier than the date of planning permission, Section 75 agreement signing, or development commencement, ensuring a fair balance between securing funds and maintaining project viability.
20. We recommend adding a dedicated subsection under the viability section to outline these principles, including specific profit benchmarks, a mandate for pre-application viability discussions, and clear indexation rules.
21. The Circular should require planning authorities to include review mechanisms in Section 75 agreements as standard practice, particularly for contributions tied to infrastructure delivered far in the future. These mechanisms should:
 - Specify clear processes for monitoring the use of contributions.
 - Facilitate repayment of overpayments if infrastructure is not delivered within a reasonable timeframe.
 - Require regular updates from authorities on infrastructure delivery progress.

We welcome the approach in paragraph 99 of the Circular to include these requirements, but we call for expanding on those with a commitment to develop model clauses for review mechanisms as part of the proposed national standard clauses. [Please see Annexure 1 as a sample for style of determination notices]

6.

Resource Constraints and Implementation Challenges

22. We welcome proposals in the circular that promotes positive changes on engagement and communication (e.g., dedicated officers, early discussions) but our members are concerned about local authorities' resource constraints, which could hinder effective implementation. The Circular should acknowledge this challenge and recommend strategies, such as:
- Prioritising resource allocation for cross-service coordination and pre-application discussions.
 - Encouraging authorities to leverage Delivery Programmes to align resources with infrastructure priorities.

The proposed revisions to Circular 3/2012 are a positive step toward aligning developer contributions with NPF4 and modernising planning processes. However, our members urge the Scottish Government to strengthen the guidance by addressing:

- transitional arrangements,
- streamlining legal agreements,
- adopting model clauses (Please find the attached template for this in the main email),
- providing clear viability and indexation guidance,
- mandating review mechanisms,
- clarifying good neighbour agreements, and
- acknowledging resource constraints.

These changes would enhance certainty, reduce delays, and support the delivery of sustainable development across Scotland.

Thank you for your engagement with our members and considering the comments, which we believe will strengthen the guidance's role in facilitating timely, viable development. We appreciate the opportunity to engage and would welcome further discussion - please contact us at spf@bpf.org.uk to arrange.

ANNEXURE 1: STYLE NOTICE OF DETERMINATION

NOTICE OF A DECISION ON AN APPLICATION UNDER SECTION 75A OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

[] Council, the local authority for [] in terms of the Local Government etc. (Scotland) Act 1994 and having its principal office at [] ("the Council") give notice of its decision on an application under section 75A of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") reference number [] ("the Discharge Application") by [], [residing at []]/[incorporated under the Companies Acts with Company Number [] and having its registered office at [] ("the Applicant") for the [discharge/modification] of the planning obligations in connection with planning permission [] contained in the Minute of Agreement entered into under section 75 of the 1997 Act between [] and [] Council and registered against the Land (as hereinafter defined) ("the Planning Obligations");

WHEREAS:

- (1) the Planning Obligations are enforceable against the Applicant, and therefore the Applicant is entitled to apply for this [discharge/modification];
- (2) the Applicant has made a valid application in terms of section 75A of the 1997 Act and regulation 3 of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 ("the 2010 Regulations") for [discharge/modification] of the Planning Obligations;
- (3) the Applicant sought the [discharge/modification] of the Planning Obligation(s);
- (4) the Applicant is the owner of those subjects known as [] and registered in the Land Register of Scotland under Title Number [] ("the Land");
- (4) the Council has given notice to the Interested Parties in accordance with the 2010 Regulations;
- (5) the Council has decided to grant the Application for the reasons set out in Part 1 of the Schedule annexed and executed as relative to this notice; and
- (6) the Applicant's rights of appeal against this decision are set out in Part 2 of the Schedule annexed and executed as relative to this notice.

NOW THEREFORE:

1. the Council has decided that the Planning Obligation(s) shall be [discharged/modified] as stated in Part 3 of the Schedule annexed and executed as relative hereto; and
2. the Council agrees to the registration of this notice for preservation.

IN WITNESS WHEREOF these presents consisting of this and the preceding page together with the Schedule annexed and executed as relative hereto are executed as follows:

Subscribed for and on behalf of the said

THE [] COUNCIL

At [town:]

on [date:]2025

By (Print Name).....

A proper officer

(Sign Name).....

Before this witness:

Signed:.....
Name:.....
Address:
.....

This is the Schedule referred to in the foregoing notice of a decision on an application under section 75A of the Town and Country Planning (Scotland) Act 1997 regarding the [modification/discharge] of the Agreement.

SCHEDULE

PART 1

The Council's reasons for granting the Application are as follows:-
[]

PART 2

If the applicant is aggrieved by the decision of the planning authority to refuse to modify or discharge a planning obligation, the applicant may appeal to the Scottish Ministers under section 75B of the Town and Country Planning (Scotland) Act 1997 within three months from (and including) the date of this notice. The notice of appeal should be addressed to the Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callander Business Park, Callander Road, Falkirk FK1 1XR.

PART 3

The Council hereby [discharges/modifies] the Planning Obligations.

Signed on behalf of [] Council:

.....
By Proper Officer