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| **Highland Council Draft Developer Contributions Supplementary Guidance – Homes for Scotland Response** |
| 09 March 2018 |
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**Introduction**

Homes for Scotland (HFS) is the representative body for the home building industry in Scotland, representing some 200 member organisations from home building, RSL, planning and architecture professions as well as supply chains who together help deliver around 95% of all new homes built for sale each year, including a significant proportion of affordable homes. HFS is committed to improving living in Scotland by providing this and future generations with warm, sustainable homes in places people want to live.

We welcome the opportunity to respond to the Draft Highland Council Developer Contributions Supplementary Guidance (SG) and would also welcome an opportunity to engage further with you after the close of this consultation period for another meeting to discuss the implications of the draft SG on the delivery of homes in the Highlands.

**Question 1 – Do you have any comments on the aims and purpose of this guidance?**

1.1 It would be useful within this section, within or near Table 1.1, to make reference to Affordable Housing, and the contributions it will make. Whilst there is a section on Affordable Housing itself, it is not clear from this table at the beginning what contributions will be required for Affordable Housing. With different approaches across Scotland to this, it would be helpful to have a signpost upfront in the document.

1.2 The policy context and aims of the guidance are clear within the Introduction section of the SG.

**Question 3 – Do you have any other comments on how to use this guidance?**

3.1 Whilst HFS agrees that developer contributions should be “factored into development appraisals prior to land deals and commercial decisions being taken” and that this is matter of course for the home buildering industry, as set out in Paragraph 1.10 on page 5, it should be noted that some land deals will have already been agreed prior to the implementation of this SG, and therefore appropriate phased implementation should be put in place to ensure that the viability of developments is not impacted as a result of this guidance coming into force.

3.2 We support the inclusion of the sentence in paragraph 1.13 confirming that this SG will not be applied retrospectively to an existing planning application, however we consider that the guidance should not be used for Section 42 applications or variations to consent since, as set out above, the options over land, or other land deals will already have been carried out using previous guidance.. As set out in the table under Paragraph 1.17, the authority will have confirmed contribution requirements at the stage of the submission of the planning application. We believe this should crystalize the contributions sought for that site at that stage and not be increased at a later date. This could potentially have a significant impact on viability of sites, and impede the delivery of homes in the region

3.3 With regard to paragraph 1.19, we suggest that a common sense approach should be taken to the number of bedrooms within any property on a case by case basis.

3.4 We suggest that further detail is added to paragraph 1.25 to add clarity to the exemptions and variations listed. For example, an explanation of “developments not likely to result in resident children” should be provided.

**Question 4 – Do you think our proposals allow for a fair assessment of the impact of proposed contributions on development viability? If you do not, please tell us why, or suggest an alternative.**

4.1 HFS considers that if an independent viability assessment is carried out, this should inform the Council’s decision on the developer contributions to be sought. Paragraph 1.33 on page 9 states that “contribution variations remain at the Council’s discretion” which seems to undermine the process, time and cost of undertaking an independent viability assessment if the authority can then disregard the assessment’s findings.

**Question 6 – Do you agree with the methodology for calculating school contributions and associated land costs?**
**Question 8 – Do you agree with the flexibility proposed in the use of school contributions to manage the school estate?**
**Question 9 – Do you have any comments on our approach to assessing the impact of development on schools and determining the requirement for contributions as set out in Appendix 2?**

6.1 It is important, particularly given therecent Elsick Supreme Court decision, that all contributions sought comply with planning legislation and that interventions towards which contributions are sought have a clear and direct link with the development. Circular 3/2012 “Planning Obligations and Good Neighbour Agreements” sets out a number of policy tests in Paragraph 14. It is not clear from the draft SG as to whether the methodology complies with these tests.

6.2 There is mention in Appendix 2 of a new secondary school in Inverness, and the need to potentially amend catchments for primary and secondary provision. This section is not transparent enough, and risks being contrary to the tests of the Circular if contributions are to be pooled, with the chance of contributions being put towards an intervention for which a particular development has no (or only trivial) direct link to.

6.3 Paragraph 2.6 of the draft guidance, on page 13 is of particular concern to the home building industry. We question the legitimacy of the Council seeking to “invest the contributions received within any primary or secondary school within the corresponding secondary school catchment area […] to manage the capacity and catchment areas for new and existing schools” which could result in primary school contributions towards schools which are not within the catchment area of the development in question, if secondary school catchments (which are far wider) are to be used.

6.4 Furthermore, we do not consider that the combining of all five Inverness secondary school catchment areas into one single catchment areas for the purposes of the guidance for both primary and secondary contributions is compliant with the tests set out in the circular. We consider this would disregard three of the necessary tests as contributions would not necessarily relate to the proposed development, fairly and reasonably relate in scale and kind to the proposed development, or be reasonable in all other respects (tests 3-5 as set out in paragraph 14 of Circular 3/2012).

6.2 We consider that the guidance should be amended to be far clearer on the exact implications for allocated sites in terms of education infrastructure requirements. Rather than simply providing a link to the pupil projections, the guidance should be clearer on exactly what interventions are expected. A table setting out the requirements for each existing school, and any new school, and the allocated sites which will contribute to these interventions (based on the catchment areas of the new developments and indicative capacities for each site set out in the LDP).

**Question 7 – Do you agree that affordable homes should contribute to school costs?**

7.1 HFS agrees that affordable homes should contribute to school costs as they generate pupils in the same way that market homes do.

**Question 10 – Do you agree with the methodology for calculating contributions for community facilities?**

Healthcare

10.1 Paragraph 3.6 of the draft guidance suggests that contributions may be sought for healthcare facilities. HFS has a consistent position that healthcare contributions should not be sought through developer obligations as the NHS as an organisation is funded through central government funding, and the burden should not be placed upon the home building industry to cover the cost of centrally funded facilities.

10.2 We further query the lack of detail within the draft guidance. If the Council seeks to introduce healthcare contributions, these should be set out in a transparent way within the guidance and not added at a later date. We suggest that paragraph 3.6 is removed to be reconsidered at a future date with

10.3 In addition, again related to healthcare contributions and their legitimacy, we would also refer to a recent appeal decision at Ocean Drive, Edinburgh (appeal reference PPA-230-2201) by Port of Leith Housing Association, Notice of Intention issued 21 September 2017, and decision notice issued 5 January 2018) for a number of other points. Within the Reporter’s Notice of Intention for the Ocean Drive planning appeal, the Reporter comments that “*the fact that primary healthcare is not a council-provided service results in difficulty in demonstrating compliance with circular 3/2012*” (para 61, page 12). Regarding the cost of healthcare to be provided by developers within the area in question for the particular application before him, the Reporter goes on to state that “*there is no evidence on whether that proportion represents a fair and reasonable relationship in scale and kind to the various residential developments that are anticipated […] it may, but it may not*” (para 61, page 12). Therefore, whilst we maintain our objection to the principle of seeking healthcare contributions, we consider that where healthcare contributions are to be sought, these should clearly set out the direct relationship between the development and the intervention. This is not provided within the draft SG on Page 15.

10.4 The difficulty is then the issue that the planning authority cannot determine a GP surgery catchment area or indeed whether a new surgery as a private business will be formed at all, which raises questions about the ability of the planning authority to adequately meet the tests of Circular 3/2012. This point is also picked up by the Reporter in the Ocean Drive planning appeal case where he states “clearly it is not for the council to establish a new surgery. Nor is it for the council to establish the new surgery’s practice boundary (ie catchment area).” (para 62, page 13). The Reporter in this case determined that the contributions sought do not meet the “scale and kind” test of Circular 3/2012. HFS considers that the Reporter’s conclusions in this appeal set a precedent and should be taken into consideration in the redrafting of the SG.

Other Community Facilities

10.5 Given that a number of community facilities are now incorporated into schools, how are community facilities required accurately calculated to ensure that there is not an element of duplication of contributions between education and community facility requirements? Further information should be provided on this.

**Question 11 – Do you think it would be reasonable for the Council to introduce a requirement for a proportion of private open market housing to be wheelchair liveable?**

11.1 HFS does not support the introduction of a requirement for a proportion of private open market home to be wheelchair liveable. The vast majority of new homes provided by HFS members are adaptable to become accessible properties. Barratt Homes North, for example, confirms that all of its homes are compliant with the Housing for Varying Needs Standards. Clarity is required from the authority as to what is to be expected of developers here. Would the wheelchair liveable homes be required as well as the 25% affordable housing requirement, and would these homes be required to be above the Housing for Varying Needs Standards requirements, therefore potentially impacting the viability of the site and deliverability of homes?

11.2 We suggest that this section of the draft guidance is removed as it does not provide specific requirements that are evidence based. This could be revisited at the next refresh/redraft of the guidance.

**Question 12 – Do you agree with the approach to affordable housing?**

12.1 HFS suggests that the benchmark costs referred to in paragraph 4.14 and set out in Table 4.2 should be index linked and subject to annual review to remain fair and take account of changes in Building Regulations, other regulatory standards, revisions to RSL specification requirements and increased Developer Contributions.

12.2 We consider that the Council should provide clarity on paragraph 4.20 with preference for a fixed commuted sum as is widely used by other local authorities. The present proposal is not clear.

12.3 We suggest that clusters of only 15 rented dwellings as set out within this section of the draft guidance is very small and in some cases unviable in terms of construction projects in isolation. Again, a common sense approach should be taken on a case by case basis on this, rather than being overly prescriptive in the guidance, allowing flexibility in approach to suit different circumstances and sites.

**Question 13 – Do you agree with the standard requirements for transport infrastructure?**

13.1 The homebuilding industry understands the requirement to mitigate against any impacts of new development, including transport infrastructure. Further detail could be provided by the planning authority to ensure clarity in the standard requirements for transport infrastructure and to allow upfront understanding of the required contributions for allocated sites.

**Question 14 – What aspects of the cumulative transport contributions proposal do you agree and disagree with?**

14.1 HFS does not consider that the cumulative transport contributions section should form part of the SG if it is not fully worked up with clear requirements, zones and costings to comment on. As and when these are available, these should be consulted on to allow opportunity for all interested parties to comment.

14.2 It is essential that any contribution zones are clearly set out to meet the policy tests of the Circular, ensuring that any contributions are fairly and reasonably related to the specific development in scale and kind. Contributions should not be sought where a Transport Assessment shows that there is minimal or no link between the intervention and the development in question.

**Question 19 – Do you agree with the approach to delivering public art as an integral part of development?**

19.1 HFS supports the placemaking aspirations of the Highland Council, and sees the value that public art can add to a development to help to integrate the development into the existing environment and add to the sense of place. However, we do not support the level of contribution set out within the draft guidance of 1% of the capital budget of a development. For most major developments this will be a significant cost. The majority of this money could be better spent on other aspects of the development, and such a high level of contribution will not be required to achieve the aspirations of this contribution.

19.2 We query the compliance of paragraph 8.3 with the necessary tests of Circular 3/2012 where it states, “there is potential for the council to collect contributions for public art from several development projects for the delivery of public art in the wider area”. A proportionate contribution should be made to public art either on site, or in an area directly related to the development. Contributions of 1% of the capital cost of a development towards delivery of improvements in the wider area is a disproportionate level of contribution, and risks lack of compliance with the Circular tests.

**Question 22 – Do you have any other comments on payments and the administration of contributions?**

22.1 HFS considers 20 years to be far too long a time-frame for refunds from infrastructure contributions if they have not been used. 5 to 7 years is a far more standard timeframe. Given that larger developments will be phased in their development, the last payment may be several years after commencement of development, and with a further 20 years on top, it may be outwith many timescales for funding of infrastructure, and indeed officer and developer career lengths.

22.2 We are concerned about the use of BCIS as the indexation, where CPI/RPI are the generally accepted approaches. The use of BCIS is a departure from this, and is a concern as it does not align with house price increases, and is a volatile index that increases and decreases. We question how this will operate if not all parties have access to the BCIS index, which is not publicly available as it has a cost implication. It is also important that original sums are based on tender prices to ensure it is appropriate to use the index in the first place.

22.3 We query the inclusion of 5% of all contributions to be used towards effective administration and management of contributions. This will amount to millions of pounds, and should not be used for administration or management purposes. We request that this is removed from the blue box in page 37.