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Dear Development Plans team,

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
NOTICE OF INTENTION TO ADOPT SUPPLEMENTARY GUIDANCE – DEVELOPER
OBLIGATIONS**

I refer to your correspondence of 15 and 19 December 2017 certifying notice of Moray Council's intention to adopt the above supplementary guidance.

Scottish Ministers give notice that the supplementary guidance 'Developer Obligations' may not be adopted until modifications specified in Annex A to this notice have been made. These modifications are required to ensure consistency with Scottish Planning Policy and legislation.

For the avoidance of doubt, prior to adopting this document as supplementary guidance, your Authority should satisfy itself that it has met the requirements set out in the Town and Country Planning (Development Planning) (Scotland) Regulations 2008.

In particular, we would bring to your attention the need to comply with section 27(2) of the above regulations, which state that supplementary guidance adopted and issued under section 22(1) of the 1997 Act (in connection with a particular local development plan), may only deal with the provision of further information or detail in respect of the policies or proposals set out in the plan and then only provided that those are matters which are expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance.

Yours sincerely,

Lorna Aird
Planning Officer

ANNEX A – MORAY COUNCIL – DEVELOPER OBLIGATIONS - SUPPLEMENTARY GUIDANCE

MODIFICATIONS TO BE MADE

Modification of Planning Obligations – p3, paragraph 2

Current text:

‘Developer obligation assessment reports will be reviewed where there are delays in developing a site and requirements no longer reflect infrastructure impact, costs or policy. Multiple applications to extend the timescale of a development can result in obligations which do not reflect the impact of a development. Given the introduction of Section 75 of the Town & Country Planning (Scotland) Act 1997 it is important to ensure that obligations meet current tests and policy requirements. This may result in the amendment to particular obligations either up or down or obligations being taken where previously no obligations were sought. An application for the whole or part of a site that already has consent will be subject to this Guidance.’

Modification:

Replace current text with:

‘Developer obligation assessment reports will be reviewed where there are delays in developing a site and requirements no longer reflect infrastructure impact, costs or policy. Multiple applications to extend the timescale of a development can result in obligations which do not reflect the impact of a development. Given the introduction of Section 75 of the Town & Country Planning (Scotland) Act 1997 it is important to ensure that obligations meet current tests and policy requirements. Agreement may, by application under section 75A, be sought for the amendment of particular obligations either up or down or obligations being taken where previously no obligations were sought. An application for the whole or part of a site that already has consent will be subject to this Guidance.’

Reason:

To accord with Section 75A (1) of the Planning etc. (Scotland) Act 2006 which states that a planning obligation may not be modified or discharged except by agreement, between the planning authority and a person against whom that obligation is enforceable, and in accordance with sections 75A and B.

The current wording implies that the Council has the power to amend obligations up or down, but this can only be done by agreement with the applicant through a section 75A application. The amendment is necessary for the avoidance of doubt and to ensure that the Council are not conferring on themselves a power that they do not have.

Payment of Legal Fees - Appendix 2

Current text:

(The Council will) issue planning consent only when the Section 75 agreement or other appropriate legal agreement has been signed by all parties, the Council’s legal fees have been paid and (if required) the agreement has been recorded in the Register of Sasines or registered in Land Register of Scotland.

Modification:

Replace current text with:

Issue planning consent only when the Section 75 agreement or other appropriate legal agreement has been signed by all parties, ~~the Council’s legal fees have been paid and~~ (if



required) the agreement has been recorded in the Register of Sasines or registered in Land Register of Scotland.

Reason:

The current text implies that that the applicant will have to pay the Council's legal fees, and that consent will not be issued unless this is done. There is no provision in planning legislation at present for Councils to make a charge of this kind.

Transport Scotland – Impact on Trunk Roads

Chapter 4 Infrastructure & Facility Requirements - P 17 – Elgin – After Para 1

Modification:

Add the following text;

“The transport elements considered within this developer obligations guidance only apply to the local road network. Where any development has the potential to change the volume or nature of traffic using the Trunk Road Network (A95 and A96) further consideration will be required in discussion with the Council's Transport Development Team and with Transport Scotland. This further consideration may result in planning conditions and/or additional mitigation requirements related to the strategic transport network.”

Reason:

At present the guidance implies that Transport Scotland have responsibility for considering the interventions on the trunk road network that may be required to support development. As the Trunk Roads Authority Transport Scotland do have a review and approval role in the process but it is the responsibility of developers and/or the planning authority to come forward with appropriate appraisals, mitigations and means of delivery. This additional paragraph aims to highlight this by clarifying the scope of the guidance and potential additional considerations in relation to the Trunk Road network.

Section 4 Infrastructure & Facility Requirements - P 17 - Elgin – Para 5 (immediately after the bullet list)

Current Text:

“At this stage, whilst improvements to the A96 trunk road are included within the ETS, assessment of development impact on the trunk road network is a matter for Transport Scotland, including the recommendation of any planning conditions and mitigation measures associated with the trunk road infrastructure. Developers are advised to contact Transport Scotland at an early stage to discuss any proposed development with a potential material impact on the trunk road network.”

Modification:

Delete above text and replace with:

“As noted previously, the transport elements considered within this developer obligations guidance only apply to the local road network and further discussions will be required where there is a potential impact on the Trunk Road. While indicative improvements to the A96 are included within the wider Elgin Transport Strategy the Council acknowledges that further and more detailed engagement on rationale for specific interventions, consideration of trunk road safety, impact on strategic traffic movements and design in accordance with Scottish Transport Appraisal Guidance and Design Manual for Roads and Bridges.

Reason:

Assessment of development impact on a trunk road is not the responsibility of Transport Scotland so the statement in the original paragraph is incorrect. This issue was highlighted at the draft guidance stage, but has not been fully addressed. The suggested changes remove the incorrect statement and clarify the current position with regard to the Elgin Transport Strategy.

