

Planning Circular 4/2025

Planning Obligations and Good Neighbour Agreements

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1 Introduction

1. Planning is a powerful tool for delivering change in a way which brings together competing interests so that decisions reflect the long term public interest. Those decisions include where development should be located and whether it should be subject to additional requirements or constraints, in order to create and maintain successful places.
2. Planning obligations can support planning policy by removing obstacles to the grant of planning permission and facilitating the delivery of necessary infrastructure alongside other development.
3. This Circular sets out the circumstances in which planning obligations can be used, the tests to be complied with, and how planning authorities should demonstrate that the tests are met. It provides guidance on how agreements creating planning obligations can be concluded effectively and efficiently, and sets out the procedures for modification or discharge of planning obligations, and for appeal to the Scottish Ministers.
4. The Circular should be read alongside other guidance on relevant issues, such as local development planning, local place plans, and housing land audits, as well as the National Planning Framework (NPF4). Different areas of guidance will be relevant depending on the issues which planning obligations are intended to address in individual cases.
5. This Circular also provides guidance on good neighbour agreements, including arrangements for modification or discharge and appeal.
6. This Circular revokes and replaces Circular 3/2012, which was last updated in November 2020.

2 Legislation

7. This Circular details Scottish Government policy on the use of planning obligations, including unilateral obligations, and good neighbour agreements made under section 75 and section 75D respectively, of the Town and Country Planning (Scotland) Act 1997. References to 'the Act' and to sections are to the provisions of the 1997 Act, as amended by the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019.
8. Sections 75, 75A, 75B and 75C deal with planning obligations. Section 75 sets out the framework for planning obligations. It provides:
 - the scope and purpose of a planning obligation
 - that a planning obligation may contain conditions
 - that a planning obligation may be entered into unilaterally or by agreement with the planning authority
 - that a planning obligation (to which the owner of the land to which the obligation relates is a party) may be registered in the Land Register of Scotland or the General Register of Sasines, making a planning obligation enforceable by the planning authority against future owners or occupiers of the land
 - powers for planning authorities to enforce the terms of an obligation through direct action
9. Section 75A creates a process whereby a person against whom a planning obligation is enforceable may seek to have the obligation either modified or discharged. This can be achieved through a formal application to the planning authority or by agreement, without such an application. Where a formal application is made under section 75A, section 75B establishes a right of appeal to the Scottish Ministers. This arises where the planning authority refuses the application or fails to determine it within two months. Section 3.4 of this Circular provides more detail on modification and discharge of planning obligations, and section 3.4.5 deals with appeals.
10. Section 75C addresses the liability of former and incoming owners for compliance with a planning obligation. In particular section 75C(1) sets out that, unless the agreement or unilateral obligation containing the planning obligation states otherwise, a previous owner may be held severally liable with the current owner for any work that should have been carried out or monies that should have been paid under the terms of an obligation. Section 75C does not apply to planning obligations created by agreements entered into before 1 February 2011¹.
11. Sections 75D-75G relate to Good Neighbour Agreements (GNAs). The sections follow a similar approach to those relating to planning obligations, with section 75D setting out who can enter into a GNA and what it can cover. Sections 75E and 75F set out, respectively, the framework for applications to modify or

¹ [The Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Order 2010](#)

discharge a GNA and for any subsequent appeal to the Scottish Ministers. Section 75G deals with continuing liability of former owners. Section 4 of this Circular provides more detail on GNAs.

12. Sections 35 and 36 of the Planning (Scotland) Act 2019 have not yet been brought into force. When they are, section 35 will amend section 75 and 75A to require planning authorities to publish individual planning agreements and notices of determination. Section 36 will amend section 36 of the 1997 Act (“Registers of applications etc.”) to require planning authorities to prepare and publish annual reports of the planning obligations entered into in that year. Currently, regulation 28(3)(a)(vi) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013² requires a decision notice to include a statement as to where the terms of any planning obligation, or a summary of such terms, may be inspected. All decision notices are published in the register of planning applications held by each planning authority. Section 3.3.4 of this Circular deals with publication and monitoring of obligations.

² [The Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#)

3 Planning Obligations

3.1 Key considerations

13. Under section 75, a planning obligation is an obligation which does any of the following:
 - restricts or regulates the development or use of land, which may include
 - requiring specified operations or activities to be carried out, or
 - requiring the land to be used in a specified wayand / or
 - requires the payment of a lump sum or of periodical payments
14. Planning obligations may be used for a range of planning purposes: there is no list or definition of what they can or cannot be used to deliver. However, they most often take the form of an agreement between a developer and/or landowner and the planning authority, to overcome obstacles to the grant of planning permission and ensure development complies with policies, for example to secure the provision of necessary infrastructure or affordable housing. In this way, planning obligations can enable a proposed development to be permitted which would otherwise be unacceptable.
15. Planning obligations are specific agreements to deliver particular actions in order to make development acceptable. They are separate from community benefit relating to renewable energy development. They cannot be used to collect general funding for unspecified purposes. Where financial contributions are made, and the agreed actions are not delivered, any payments should be returned.
16. All planning obligations should comply with the tests set out in this Circular.
17. Where planning authorities propose to use planning obligations to secure the provision of infrastructure which is needed to enable development on allocated sites, this should be set out in the local development plan, in line with the Infrastructure First approach. Guidance is provided in section 3.2 of this Circular. Policies on the use of planning obligations to secure affordable housing should also be set out. This will allow developers and landowners to take these requirements into account in their financial assessments and expectations, including in setting the price paid for land. Where additional obligations are needed in relation to the particular circumstances of individual developments, these should be identified by the planning authority as early as possible in the process.
18. Planning obligations may add to development costs, and as a result can impact on the economic viability of development proposals and the deliverability of the LDP. Where infrastructure is necessary to enable development, it is a policy decision for the planning authority as to whether it should be funded through planning obligations, taking local development needs and economic circumstances into account. Development viability should be a consideration in

the development planning process and negotiating individual planning obligations. More guidance is provided in section 3.1.2 of this Circular.

19. Planning obligations should be concluded as quickly as possible, to minimise delay to planning decisions and the delivery of development. Early engagement between parties is encouraged, and the use of templates or model clauses can help to address common issues. The process of negotiating and concluding planning obligations needs to be effectively managed, and monitoring should be in place to ensure that obligations are met and to track the use of financial contributions. Development management approaches are covered in section 3.3 of this Circular.

3.1.1 Policy tests

20. Section 75 provides a very broad description of what a planning obligation may do. However, this must be taken in the context of the planning system as a whole. Planning authorities must consider each planning application on its merits and reach a decision in accordance with the development plan, unless material considerations indicate otherwise. They must not take into account matters which are unrelated to the proposed development. Thus a planning obligation made in connection with a planning application should not seek to provide benefits which are unconnected with the development: such an obligation should be given no weight in the planning decision, whether it is requested by the authority or offered by the developer. This principle is central to maintaining confidence in the planning system and avoiding any perception of buying and selling of planning permission.
21. Where planning obligations are entered into, under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) they should meet the following policy tests, as set out in NPF4:
 - **necessary to make the proposed development acceptable in planning terms**
 - **serve a planning purpose**
 - **relate to the impacts of the proposed development**
 - **fairly and reasonably relate in scale and kind to the proposed development**
 - **be reasonable in all other respects**
22. The five policy tests above should be strictly adhered to. While they are set out in NPF4 in relation to Policy 18, Infrastructure First, the tests are relevant to all planning obligations. These tests are likely to be referenced in any appeal (or local review, where relevant) against a refusal to grant planning permission because of a failure to agree a planning obligation, or a refusal to modify or discharge the obligation.
23. The tests are interlinked, and the first test is sometimes used as an overarching summary of the purpose of planning obligations. Where a particular development would not be acceptable in a given location, due to its impacts on

land use, the environment or infrastructure, it may be possible to use a planning obligation to ensure those impacts are mitigated, thus making the development acceptable and deliverable and allowing for planning permission to be granted.

Necessity test

24. Planning obligations or other legal agreements should not be used to resolve issues that could equally be resolved in another way. Planning obligations, in particular, can take significant time to agree, with consequent cost implications for all concerned. Where a planning permission cannot be granted without some restriction or regulation, and before deciding to seek a planning obligation, the planning authority should consider the following options in sequence:

i) Planning conditions: Planning conditions are generally preferable to a planning or legal obligation, not least as they are likely to save time and money for all concerned. For example, conditions can require a plan or strategy to be agreed before a certain point in the development's progress, rather than having to be agreed before planning permission is granted. The guidance contained in [Circular 4/98: the use of conditions in planning permissions](#) should be followed.

ii) Alternative legal agreements, for example, an agreement made under a different statute, such as the Local Government (Scotland) Act 1973, the Countryside (Scotland) Act 1967, the Sewerage (Scotland) Act 1968, the Roads (Scotland) Act 1984 etc. A planning obligation is not necessary where the obligations for a landowner or developer may be implemented, for example, by a one-off payment towards the cost of infrastructure provision or the maintenance of open space.

If an alternative legal agreement is used, the planning authority must satisfy itself that the requirements of the relevant legislation are met. If that agreement is being used in connection with a planning decision, compliance with the tests will help to ensure that it can be taken into account.

iii) Planning obligations: Planning authorities should be clear that a planning obligation is typically only necessary where successors in title need to be bound by the required obligation, for example where phased contributions to infrastructure are required, or to restrict use or secure affordable housing in the longer term.

Planning purpose test

25. Planning authorities should satisfy themselves that an obligation is related to the use and development of land. Where infrastructure and affordable housing requirements can be identified in advance, this judgement should be rooted primarily in the development plan – see section 3.2 of this Circular. Identifying requirements in LDPs can enable potential developers to be aware when undertaking development appraisals and designing their proposals of:

- the likelihood of a planning obligation being sought, and
- the likely financial requirements of that planning obligation

Relationship to proposed development test

26. Planning obligations must relate to the development being proposed. Where a proposed development would either create a direct need for particular facilities, place additional requirements on infrastructure (including cumulative impact when considered with other development) or have a damaging impact on the environment or local amenity, these may be barriers to the grant of planning permission. If measures to overcome or mitigate those barriers can be identified, a planning obligation could be used to secure them. There should be a clear link between the development and any mitigation offered as part of the developer's contribution.
27. Planning obligations should not be used to extract advantages, benefits or payments from landowners or developers which are not clearly related and necessary to allow permission to be granted for the particular development. The obligation should demonstrate that this test is met by specifying clearly the purpose for which any contribution is required, including the infrastructure to be provided.

Scale and kind test

28. Planning obligations must fairly and reasonably relate in scale and kind to the proposed development. Developers may, for example, reasonably be expected to pay for, or otherwise contribute towards the provision of, infrastructure which would not have been necessary but for the development. In assessing such contributions planning authorities may take into account the cumulative impact of a number of proposed developments, and use obligations to share costs proportionately. If the impact of a particular development on the infrastructure is negligible ("*de minimis*") then it is not appropriate to require a contribution from that development.
29. An effect of such infrastructure investment may be to confer some wider community benefit, for example as a result of minimum design requirements, but contributions should always be proportionate to the scale of the proposed development. Attempts to extract excessive contributions towards the costs of infrastructure or to obtain extraneous benefits are unacceptable.
30. Planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not necessary to allow permission to be granted for the particular development. If an infrastructure problem exists outwith the context of any proposal for new development, it would be the responsibility of the relevant infrastructure provider to remedy it. If it can be shown that proposed new development would worsen that deficiency to a non-trivial degree, then a planning obligation may be used to secure a proportionate contribution to fund an appropriate share of the mitigation. It is inappropriate to grant planning permission for a development which would demonstrably exacerbate a situation which is already unsatisfactory, unless there is a plan in place to address the issue. Infrastructure constraints and requirements for allocated sites should be set out in the LDP.

31. Determining whether contributions are proportionate also includes consideration of their potential impact on the viability of the development. Further discussion of viability is set out in section 3.1.2 below.

Reasonableness test

32. Planning obligations should be reasonable in the circumstances of the particular case. The planning authority should be clear that the requirement in the obligation is related to the proposed development, either directly or cumulatively with other developments, such that it should not be permitted without it. The requirement in the obligation should also either:
 - mitigate the loss of, or the impact upon, some infrastructure, amenity or resource present on the site or in the area prior to the development, or
 - provide or contribute to the cost of providing necessary infrastructure or facilities required as a consequence of or in connection with the development
33. The timeframe for building infrastructure should be taken into account. It may be difficult to show that infrastructure is related to the development, if it is not provided until many years after the development is completed, unless it can be shown that there is a continuing impact. However, it must also be recognised that infrastructure projects take time to obtain funding approval and to be delivered. The planning authority should also be able to show that the cost of the proposed infrastructure is reasonable, taking into account any relevant guidance or standard specifications, and other policies or legislation with which the infrastructure provider needs to comply.
34. In addition, when determining whether a planning obligation is required, planning authorities should take account of the existence of any other agreements or conditions that already apply to the development, and whether the overall burden is reasonable.

3.1.2 Viability

35. Entering into a planning obligation may have financial consequences for developers which could make proposals uneconomic. The impact of contributions on the viability of a development is an issue which may be relevant to the policy tests.
36. A range of factors can affect the viability of a development. These include the sales value (or revenue) achievable, the costs of development (for example, construction costs and price paid for land) and the profit sought by the developer, as well as any developer contributions required. These factors will vary across the country and across different types of development, and will change over time.
37. Information about constraints on sites, policies on planning obligations, and indicative infrastructure costs, should be set out in the LDP and Delivery Programme (see section 3.2 of this Circular) and developers should take

account of these in their appraisals and land purchases. However, additional requirements may arise during the development management process, in relation to the particular site and development proposal. It is relevant to note that what is considered an unviable development site for one developer, may be viable for a different developer with different proposals and expectations.

38. Cash flow can also be affected where substantial sums of money have to be paid either before the development gets under way or at an early stage in construction. Authorities should consider whether it would be reasonable for all parties to accept staged or phased payments to support the overall viability and success of a project. Provided the tests can be met, alternative options such as off-site provision or commuted sums can also help to support viability. Infrastructure providers should be included in such discussions.
39. This is particularly relevant where infrastructure requires to be put in place before the development is completed, but the cost of doing so would make the development unviable. Planning authorities should consider the possibility of infrastructure being funded, and development thus enabled, through other mechanisms. The costs of such an approach (which may include borrowing costs) would then be recovered through staged payments as development progresses. This may also include costs being recovered from developments which are consented after the infrastructure is in place. Further advice on such approaches is provided in section 3.2.4 on cumulative impact.
40. Where a developer seeks a reduction in contributions requested, on the grounds of viability, it may be helpful to seek a viability assessment from an independent third party, such as the District Valuer Services or other appropriately qualified and experienced professional. An open book approach should be used in considering viability issues, and can contribute significantly to identifying solutions and reducing delays.
41. It should be noted that, even if it is found that the contribution would cause the development to become unviable, it does not necessarily mean that the contribution should be reduced or waived. A judgement needs to be made as to whether it is in the public interest for the development to go ahead without the contribution, or with a reduced contribution. If the result is that necessary infrastructure or other mitigations cannot be provided, then the application may need to be refused. This applies at the original decision on the planning application or in the context of an application for modification or discharge, and any local review or appeal.

3.1.3 Restrictions on use of land and buildings

42. While the most common use of planning obligations is to ensure the provision of infrastructure to make a development acceptable in planning terms, there is a limited role for obligations in restricting the use of land or buildings.
43. Such obligations may, for example, be appropriate where permission is given for housing of a particular type, such as purpose built student accommodation, or in particular circumstances, such as to safeguard rural homes for specific

workers. Where such restrictions are necessary to make a proposed development acceptable, planning obligations might be used to ensure they apply to successors in title. Planning obligations should not be used where other mechanisms, such as rural housing burdens or conditions on any grant provided, can be used to achieve the same result.

44. Planning authorities should carefully consider how such restrictions can be monitored and enforced, and whether they may introduce unnecessary burdens or constraints. For example, they may make it difficult for purchasers to obtain a mortgage where there are restrictions on the subsequent sale of the property.
45. Where a planning authority considers that some restriction on use should be imposed, they should consider the options as set out in the necessity test.

3.2 Development planning

46. The process of preparing the local development plan should be the point at which consideration of the potential need for and use of planning obligations begins. Planning authorities should work with infrastructure providers, other local authority departments and Key Agencies, as well as local communities and the development industry, to identify where development should and should not take place and where constraints can be overcome.
47. Under the development planning system introduced by the Planning (Scotland) Act 2019, the development plan comprises:
 - the National Planning Framework (NPF)
 - the Local Development Plan (LDP)
48. There is no longer provision for supplementary guidance to become part of the development plan. Policies requiring planning obligations, including those on developer contributions and affordable housing, should be included in the Proposed Plan, where they will be subject to examination, and subsequently become part of the LDP. However, existing supplementary guidance adopted before 31 March 2025 will continue to be part of the development plan until the planning authority adopt a new LDP. Existing non-statutory local guidance may also continue to be a material consideration in planning decisions, where appropriate, and new non-statutory guidance can continue to be produced if necessary, to expand on the policies in the LDP.

3.2.1 NPF4

49. The National Planning Framework (NPF4) contains Scottish Government policies which planning authorities are required to take account of in preparing their LDPs. Planning obligations and planning conditions are mentioned specifically in relation to Policy 18 (Infrastructure First). However, NPF4 should be read as a whole, and planning obligations may be used in connection with various policies, for example Policy 16 (Quality Homes), Policy 3 (Biodiversity) and Policy 13 (Sustainable Transport).

Infrastructure First

50. LDPs are expected to take an Infrastructure First approach. As set out in NPF4 Policy 18, this means that: “Infrastructure considerations are integral to development planning and decision making and potential impacts on infrastructure and infrastructure needs are understood early in the development planning process as part of an evidence based approach.”

Local Development Plans:

LDPs and delivery programmes should be based on an integrated infrastructure first approach. Plans should:

- be informed by evidence on infrastructure capacity, condition, needs and deliverability within the plan area, including cross boundary infrastructure;
- set out the infrastructure requirements to deliver the spatial strategy, informed by the evidence base, identifying the infrastructure priorities, and where, how, when and by whom they will be delivered; and
- indicate the type, level (or method of calculation) and location of the financial or in-kind contributions, and the types of development from which they will be required.

51. The Glossary to NPF4 provides a definition of infrastructure for this purpose. We have included this in the Annex to this Circular. However, this definition is not exhaustive and does not limit either the types of infrastructure or the other purposes for which planning obligations can be used.
52. Policy 18 also sets out the tests that apply to planning obligations, as reproduced in paragraph 21 of this Circular.

3.2.2 Local Development Plans

53. The [Local Development Planning Guidance](#) explains the requirements of the development planning process and should be referred to for full details of the process, along with other guidance on relevant issues. The following paragraphs summarise how information should be provided to support the use of planning obligations to fund infrastructure. Policies on the use of planning obligations to address other issues, including affordable housing, should be included in a similar way, drawing on the advice on NPF4 policies in the LDP guidance.
54. There are three stages to development planning:
 - evidence gathering, with the production of the Evidence Report which undergoes Gatecheck
 - plan preparation, creating the Proposed Plan for consultation and examination, and
 - delivery, based on the adopted plan and Delivery Programme
55. The Evidence Report should set out baseline information on existing infrastructure capacity and needs. This “can indicate where there is scope for future growth in line with the infrastructure investment hierarchy, or where intervention will be required to support future development”.

56. As part of the spatial strategy and place-based approach, the Proposed Plan should set out, as far as reasonably practicable, what infrastructure is needed in connection with each allocated site, including cumulative impacts, and strategic priorities for delivery. This includes consideration of the transport appraisal, and other relevant appraisals and strategies. If developer contributions are expected to be sought to mitigate impacts, the policy should describe which sites will be required to contribute to each item, or the methodology for determining this, and methodologies for calculating the appropriate contribution from each site. The treatment of potential windfall sites that may come forward should also be considered. Where the planning authority considers that a range of different infrastructure solutions may be appropriate, depending on the development coming forward, the parameters of any flexibility should be set out in the Proposed Plan.
57. If contribution zones are used, these should be set out in the Proposed Plan. The policy must demonstrate that each development required to contribute has a real relationship to the proposed infrastructure. It is a matter of policy judgement for the planning authority to determine how the costs of the infrastructure are shared between the developments, so long as they are shared fairly and meet the tests set out in this Circular.
58. The Delivery Programme is required to set out the actions required to deliver policies and proposals contained in the LDP, how those actions are to be undertaken and the timescale for each action. It should identify the indicative costs of the infrastructure required, who is responsible for delivery, the planned timing or phasing of delivery and payment, and the funding sources, including the amount to be funded through developer contributions and the formulae by which costs are to be shared. Reference should be made to how development viability has been factored into the funding approach, to support delivery of affected developments within the spatial strategy.
59. The Delivery Programme must be reviewed at least every two years, and is therefore the most appropriate place to provide costs and timings, and to reflect any other changes which may be needed as delivery of allocated sites and infrastructure progresses. It is also able to take account of windfall sites coming forward, and of changes to the wider economic situation, demographic forecasts, etc, which may be unpredictable and rapid. The planning authority should work closely with infrastructure providers and with the local housing authority / Registered Social Landlords to support alignment with their funding programmes and delivery priorities. Care should be taken to ensure that the costs of proposed infrastructure are fully understood and that sufficient account has been taken of the likely passage of time between granting of consent and the commencement of delivery. Indexation may be used to ensure that payments keep pace with costs.
60. As delivery of the LDP is dependent on the actions of partners from both the public and private sectors, the planning authority is expected to involve them in early discussions to input into the proposed Delivery Programme, and revisions.

61. The planning authority is required to publish their proposed Delivery Programme alongside the Proposed Plan consultation, and it must be submitted as part of the documentation for the examination of the LDP. The information it contains will be relevant to making representations and to the examination of the Proposed Plan, in terms of scrutinising deliverability of sites. The first Delivery Programme is to be published within three months of adoption of the LDP.
62. Reviews of the Delivery Programme will allow the planning authority to keep the need for infrastructure under review, so that it is in a position to demonstrate the ongoing need for the infrastructure required by the LDP in respect of a particular site, should that need be questioned in a planning application or application for modification or discharge of an obligation. The planning authority should be open about any change in infrastructure needs, and ready to return contributions already paid towards infrastructure that is no longer necessary.
63. Despite this plan-led process, development plans cannot anticipate every situation where the need for a planning obligation will arise. Where the potential need for an obligation emerges during the development management process, planning authorities should consider the guidance in this circular and inform the applicant as soon as practicable. Similarly, when windfall sites come forward, the development plan and the guidance should be used to determine whether planning obligations are required.

3.2.3 Community views

64. Communities have a key interest in the impact of new development on local infrastructure and amenities. In preparing the LDP, planning authorities should engage with communities and encourage them to consider potential impacts and what infrastructure improvements or other requirements might be needed to accommodate development in their area. This information may be included in Local Place Plans (LPPs). LPPs may be incorporated into the LDP, but can also be a material consideration in planning decisions on their own, and are a useful source of information for developers about community aspirations. Communities may also express their views about impacts and potential mitigations through pre-application consultation and comments on planning applications. However, decisions on how infrastructure will be funded, and therefore whether contributions will be required from developers, are matters for the planning authority and infrastructure providers to determine.

3.2.4 Cumulative impact

65. Where the cumulative impact of a number of allocated sites creates the need for additional infrastructure, planning authorities may wish to seek contributions on the basis of standard charges and formulae. In order to demonstrate compliance with the tests set out in section 3.1.1 of this Circular, the approach used must ensure that the charges are relevant and proportionate to the impacts of the individual development. This will be assisted by the detail included in the LDP and Delivery Programme to show where additional capacity will be needed, when and in what form it will be delivered, expectations of how

much it will cost, which developments contributions will be sought from and how they will be calculated.

66. As set out in paragraphs 28-30, where the need for new or improved infrastructure is only partly created by new development, the costs should be appropriately apportioned between developers and the body that would otherwise be responsible for funding its delivery.
67. Methods for calculating contributions should be set out in the LDP, together with the level of contributions in the Delivery Programme, in a way that provides transparency and helps landowners and developers predict the size and types of contributions likely to be sought for specific sites or general locations prior to committing to a site or submitting a planning application. High level information should be provided on how monies will be held, how they will be used, and in what circumstances they will be returned to the developer.
68. In many cases it is not possible, or not cost-effective, for facilities to be delivered incrementally, so they need to be built at full capacity from the start. As a result it may be necessary to charge some developments in advance of delivering the infrastructure, and others afterwards to recoup funds paid out up front. In addition, in line with more delivery-focused planning and the expectation of a deliverable housing land pipeline, contributions may need to be taken from some sites before the capacity of existing infrastructure is exceeded, in order to fairly divide the costs of planned infrastructure between all developments whose cumulative impact creates the need for it.
69. Where a planning application is not granted because of a failure to conclude a planning obligation any appeal against refusal of the application should consider, amongst all other relevant matters, whether or not the planning authority has highlighted potential development constraints in the development plan or relevant placemaking tools such as development briefs and Masterplan Consent Areas, and whether the authority has provided sufficient detail to demonstrate that the proposed obligation meets the policy tests, including consideration of development viability.

3.3 Development management

3.3.1 Process of agreeing obligations

70. Where the planning authority requires a planning obligation, applicants should be made aware of this as early as possible. In many cases the obligation will need to be agreed before the final decision on the grant of planning permission is made.
71. Agreeing planning obligations can add significant time and cost to the planning application process. All parties should give a high priority to agreeing the obligation, to avoid delays in the planning system and in the delivery of development. There should be effective cross-service management within the local authority, and liaison with any relevant external agencies, to ensure the terms of the agreement meet their requirements and are deliverable.
72. In negotiating planning agreements, planning authorities are encouraged to use pre-application discussions, with relevant agency involvement, and processing agreements, other project management approaches or codes of practice, so as to make clear the process and deadlines and the issues to be agreed at each milestone. This should help to increase transparency and the efficiency of the planning obligations process. Processing agreements could include timescales for all parties to respond at each stage. Where the parties agree that the proposal will take longer than the statutory period to determine, the processing agreement may also include an agreement to extend that period. Processing agreements should include any third parties who will be involved in agreeing the obligation, such as landowners.
73. All parties should proceed as quickly as possible to agree the key points, or Heads of Terms, to be included in the obligation. This should contain as much financial detail as possible and should make reference to policies and other material (such as standard charges and formulae) contained in the LDP and Delivery Programme. Where relevant, Heads of Terms should include phased payment dates, payment triggers and indexation details.
74. In those cases where a planning obligation is considered necessary, planning authorities will often consider an application on the basis that a planning obligation is to be concluded, and will indicate whether they are “minded to grant” planning permission. Applicants must be advised as soon as possible that the planning authority is minded to grant planning permission subject to both parties concluding a planning obligation, setting out the likely key terms of the obligation.
75. It should be noted that an indication that the planning authority is minded to grant an application is not a formal decision. If the planning obligation is not agreed and so a decision notice is not issued within the statutory timescales, or any extended timescale which has been agreed, the applicant can seek local review or appeal for non-determination. If the applicant and landowner do not progress the obligation the planning authority also has the option to refuse the

application for not complying with the relevant policies the obligation is addressing.

76. Heads of Terms should be agreed before seeking either a decision on the application or a “minded to grant” indication. Any Report of Handling or report to the Council or a Committee of the Council considering the application should be able to confirm that the parties are prepared to enter into such an obligation to resolve outstanding matters, and outline the principal components of the obligation under discussion.
77. To enable conclusion of the agreement as soon as possible, planning authorities should empower officials to complete the drafting of the obligation, for example around the timing of payments. Planning authorities may wish to use model obligations, clauses, or templates to help speed up the process. These should be developed in discussion with industry representatives to promote acceptance and minimise the need for adjustments to individual agreements.
78. Alternatively, the full terms of a planning obligation may be agreed before a decision is reached as to whether planning permission can be granted. The obligations can then be registered immediately the planning decision has been made, to allow the consent to be issued quickly. This can reduce delays in the process, by removing the need to negotiate and conclude the obligation only after the authority becomes minded to grant consent. However, a balance needs to be struck between the benefits of this approach and the risk of abortive work if the application is refused for other reasons, or the agreement needs to be changed. To avoid any risk of being bound by its terms irrespective of the planning authority's decision, the obligation can include a clause that it would come into effect only when planning permission for the development in question is granted.
79. Planning authorities are encouraged to identify specific officers with responsibility for planning obligations, who can undertake liaison and negotiations with developers and provide expertise and advice to other officers. It is important that such officers have an effective understanding both of the requirements for planning obligations set out in the development plan and of development economics, to ensure that requirements are based on an informed understanding of what a development project can reasonably be expected to bear, both as a total cost and in the scheduling of payments for all obligations. They should also have the authority to liaise with other services and agencies to ensure that any obligations or contributions requested meet the policy tests.

3.3.2 Content of planning obligations

80. The following points should be considered in drawing up planning obligations:
 - Planning obligations should contain only those matters that are justified when considered against the tests set out in section 3.1.1 of this Circular, and should be restricted to specific purposes. Other matters such as

conditions attached to an associated planning permission should not be included.

- Where possible, planning obligations should include a clause enabling them to apply to future consents which are for substantially the same development, without the need to negotiate a new agreement or a variation to the original. This situation may arise, for example, in the context of applications under section 42 of the Act. The future application of the obligation may be subject to specified parameters, for example provided there is no material change to the aspects of the development that determine the amount of contributions required.
- A planning obligation may not need to apply to the whole “red line” site area on the associated planning application, but only to the area relevant to the matters in the obligation. However, the planning authority should have regard to the effectiveness and enforceability of the planning obligation if the area of land covered by it is less than the whole site area.
- Final purchasers of individual residential properties should normally be excluded from any liability for provision of or contributions to infrastructure under a planning obligation. Restrictions on the first occupation, use or development of the land may continue to apply.
- Statutory undertakers should also normally be excluded from liability, for any infrastructure they have or propose to place on the site.
- Section 75C makes it the default position that former owners continue to be bound by planning obligations and are severally liable for any breach. This may be appropriate in some cases to prevent avoidance, for example by transferring land which the obligation requires to be restored, to a company without assets. However, in most cases it is appropriate for the agreement to exclude liability for former owners except for breaches that occurred while they owned the property.
- Planning authorities should consider using staged payment arrangements throughout the progress of the development, if their funding allows, to minimise the risk associated with transfer or sale of the site to new owners, and to assist developers with cashflow.

3.3.3 Registration

81. Where planning authorities wish the provisions of a planning obligation to be enforceable against successors in title the obligation must be registered in the Land Register, or recorded in the General Register of Sasines, as appropriate.
82. On receipt of an application for registration or recording, the Keeper of the Registers of Scotland will issue an acknowledgement of the date of receipt. This is the date of registration/recording, even where the Keeper's final decision to register or record is taken at a later date. The date of the Keeper's acknowledgement is therefore normally the trigger for the release of planning permission.
83. There is a small risk that an obligation might be returned, withdrawn or registration refused because of a technical defect, or that the land could be sold

or the landowner become insolvent before the obligation is registered or recorded. The obligation will not run with the land unless the owner of the land at the time of registration is a party to it, and therefore the development for which permission has been granted could be carried out without being subject to the obligation. However, there are situations where the timeous issue of planning permission can be crucial to the development proceeding. The planning authority will need to consider whether this risk is acceptable. Some aspects can be dealt with by way of a provision in the planning obligation or a separate letter, which can also record agreement over who should be responsible for registering the obligation.

84. Standard registration criteria for the Land Register of Scotland and the General Register of Sasines apply to planning obligations (including unilateral obligations), GNAs and determinations as to the modification or discharge of either as follows:

- reference to the appropriate section of the Town and Country Planning (Scotland) Act 1997 (as amended) should be narrated in the body of the document to be registered
- determinations should also include a reference to the date of registration or recording of the planning obligation or GNA to be discharged or modified
- documents to be registered should be of self proving status as provided for in the Requirements of Writing (Scotland) Act 1995 and should be accompanied by the appropriate application form and fee. Further details are available from www.ros.gov.uk
- documents to be registered in the Land Register should narrate the title number(s) of the property affected. Documents to be recorded in the General Register of Sasine should describe the property affected sufficiently to identify it.

3.3.4 Publication and monitoring

85. The Development Management Regulations³ require a summary of the terms of any section 75 planning obligation to be within the planning officer's report (paragraph 4 of schedule 2), which will be recorded in the Register of Applications maintained by the planning authority. They also require that the terms (or a summary of those terms) are available for inspection. This may be achieved by the terms being summarised in the officer's report or with the publication of the completed agreement in the Register of Applications (regulation 28(3)(vi)).

86. Planning authorities should have mechanisms and procedures in place for confirming that infrastructure, facilities and affordable housing to be provided under planning obligations are delivered. Planning authorities should designate a responsible officer for this purpose. It is good practice to publish annually

³ [The Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#)

what contributions have been received and what they have been spent on over the duration of the legal agreement.

87. Where contributions are gathered towards infrastructure to be delivered by the local authority or other infrastructure providers, or payments for affordable housing to be provided off-site, mechanisms should also be in place to monitor the collection and drawing down of those funds and the provision of the infrastructure / housing. Planning obligations should include clear agreements as to how long funds may be retained. Where relevant, other public bodies should be kept informed of progress in delivering obligations, and expiry dates for funding. If funds are not used for the agreed purpose within the agreed period, they should be returned to developers.

3.3.5 Enforcement of operations required by a planning obligation

88. Section 75(7) provides a power for planning authorities, where operations required to be carried out by a planning obligation have not been undertaken, to enter the land and carry out the operations themselves. Any expenses incurred in doing so may be recovered from the person or persons against whom the planning obligation is enforceable. Before taking any direct action the planning authority must give the person or persons a minimum of 21 days notice of their intentions.
89. A person against whom an obligation is enforceable is generally the owner of the land but may also be, depending on the obligation, a tenant or any other person who has use of the land, and former owners.

3.3.6 Unilateral obligations

90. Section 75 includes provision that a person may unilaterally enter into a planning obligation, without agreement with the planning authority. This may be done by the owner of the land to which the obligation relates, or by another person, for example a developer who has an option to buy the land subject to grant of planning permission. The existence of a unilateral obligation would not preclude the planning authority seeking an additional obligation for matters which they consider should be the subject of a planning obligation and are not sufficiently addressed by the unilateral obligation (or any other obligation in place). A planning authority should not, however, seek a planning obligation that would simply duplicate the terms of a unilateral obligation. While there is no statutory requirement for a person preparing a unilateral obligation to do so, early engagement and discussion with the relevant planning authority is strongly encouraged.
91. As with any other planning obligation, the relevant instrument containing a unilateral obligation may be registered in the Land Register or recorded in the General Register of Sasines as appropriate, provided the owner of the land is party to it. Once registered the obligation is enforceable by the planning authority against future owners of the land, unless it specifically provides otherwise. In so far as an obligation may contain negative obligations it is also

enforceable, as with other planning obligations, against the tenant or occupier of the land.

3.4 Modification or Discharge of planning obligations

92. Section 75A(1) provides that a planning obligation may only be modified or discharged either:
- a) by agreement in writing between the person (or persons) against whom that obligation is enforceable and the planning authority, or
 - b) by the planning authority following an application for modification or discharge under section 75A(2), or the Scottish Ministers on appeal under section 75B

3.4.1 Modification or discharge by agreement

93. There is no set procedure for negotiating the modification or discharge of a planning obligation by agreement. However, as noted in paragraph 105, any determination to modify or discharge a registered or recorded planning obligation – or agreement to do so – does not take effect until the date it has been registered or recorded in the appropriate register. Any agreement to modify or discharge a planning obligation under section 75A(1)(a) should therefore be capable of being registered or recorded.
94. The right of appeal to the Scottish Ministers under section 75B only arises in certain circumstances (set out below) following an application under section 75A(2). There is no right of appeal to the Scottish Ministers where negotiations to modify or discharge a planning obligation by agreement (under section 75A(1)(a)) break down. In those circumstances it would be necessary to lodge a formal application, and if it is not approved, then to appeal.

3.4.2 Application under s.75A(2)

95. The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010⁴ set out the procedures that apply to applications made under section 75A(2). Regulation 3 specifies the items and information an applicant is to submit to the planning authority, including details of the land, the planning obligation, the applicant and other parties to the obligation, the changes the applicant wishes to be made and the grounds on which the changes are sought. The applicant must set out the exact terms of any modification sought. Regulation 4 stipulates that the application is deemed to have been made on the date on which the last of these items or information is received (the validation date).
96. Planning authorities have discretion (regulation 6) to require an applicant to supply any further information, documents or material they consider necessary to enable them to deal with the application. Where a planning authority seeks further information this does not affect the validation date; i.e. the validation date remains the date on which the last item or information required under regulation 3 is received.

⁴ [The Town and Country Planning \(Modification and Discharge of Planning Obligations\) \(Scotland\) Regulations 2010](#)

3.4.3 Notification of application to interested parties

97. Under Regulation 3, the applicant must provide to the planning authority a statement setting out, to the extent known to the applicant, the names and addresses of any other parties to the planning obligation and of any other interested parties. An interested party is defined as (other than the applicant) the owner of the land and/or any other person against whom the planning obligation is enforceable.
98. On receipt of an application, it is then the responsibility of the planning authority to notify these interested parties that an application has been made (regulation 5). The notification must, in addition to providing details of the application and the modification sought, state how representations can be made to the planning authority and the date by which they must be made. This is a minimum of 21 days from the date notification is served.
99. The planning authority is only required to serve notice to interested parties at the addresses identified by the applicant, and is not required to make any further investigations where parties cannot be contacted using this information. However, since the authority must give notice of their determination to any non-applicant against whom the obligation is enforceable, it should ensure that it is informed of their details.

3.4.4 Determination

100. Section 75A(5) provides that the planning authority must notify their decision to the applicant – and to any non-applicant against whom the obligation is enforceable – within the prescribed period. The prescribed period, as set out in regulation 7, is the period of two months after the date of validation. Regulation 7 also requires notice to be given to every interested party, which would include the owner (if they are not the applicant).
101. In determining an application under section 75A the planning authority may decide that the obligation:
 - is to continue to have effect without modification (i.e. refuse the application)
 - is discharged; or
 - is to have effect subject to modifications
102. Where an application relates to more than one planning obligation, the planning authority should normally make a separate determination in relation to each planning obligation.
103. It is also open to the planning authority to discharge a planning obligation or to modify the planning obligation even if the discharge or modification was not sought in the application. However, the consent of the applicant must be obtained by the planning authority before making such a determination (see section 75A(4A)). Where the authority propose to modify the planning obligation in such a way that would put or increase a burden on any non-applicant, that person's consent must be obtained before making such a determination (see

section 75A(4B)). Where the planning authority is required to seek consent by virtue of section 75A(4A) or section 75A(4B), this should be obtained in writing.

104. Any application for modification or discharge should be considered against the policy tests set out in section 3.1.1 of this Circular. The decision-maker should determine the application in view of how the policy tests apply at the time of the decision, taking into account any changes in circumstances; for example, it may be that external factors affecting the development mean that the obligation is no longer reasonable and that a modification to reflect the change in circumstances is appropriate. Similarly, a discharge of an obligation should not be granted on the basis that the requirements of the obligation could have been secured by a less onerous means, such as a planning condition: it would not be possible to impose a planning condition retrospectively on the related permission.
105. Where a planning obligation has been registered in the Land Register of Scotland, or recorded in the General Register of Sasines, any determination to modify or discharge the obligation, or any agreement to do so, does not take effect until the determination or the agreement, as the case may be, is registered or recorded in the appropriate register (see section 75A(6) and (7)). It is a matter for the applicant to ensure that this is done in order that the determination can take effect.

3.4.5 Right of appeal to Scottish Ministers

106. Where an application under section 75A to modify or discharge a planning obligation is refused, there is a right of appeal to the Scottish Ministers in certain circumstances. The applicant (i.e. the person who applied for the obligation to be modified or discharged) may appeal if the planning authority decides that the obligation should not be modified or discharged, or if the planning authority fails to give notice of its decision within the 2 month period set out in regulation 7 of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010⁵. The appeal must be made to the Scottish Ministers within 3 months beginning either with the date of the planning authority's decision or the end of the 2 month period. Where the appeal is on the grounds that the planning authority has failed to give notice of its decision, it is assumed for the purpose of the appeal that the authority has determined that the planning obligation is to continue to have effect without modification.
107. The Town and Country Planning (Appeals) (Scotland) Regulations 2013⁶ apply (see regulation 21 of those Regulations) to all appeals made in respect of planning obligations. Detailed guidance on appeals procedures, including how to appeal and what information is to be submitted by the appellant and the planning authority, is contained in [Planning Circular 4/2013: Planning appeals](#).

⁵ [The Town and Country Planning \(Modification and Discharge of Planning Obligations\) \(Scotland\) Regulations 2010](#)

⁶ [The Town and Country Planning \(Appeals\) \(Scotland\) Regulations 2013](#)

108. On an appeal under section 75B, the Scottish Ministers may determine that the planning obligation:
- is to continue to have effect without modification (i.e. refuse the appeal)
 - is discharged; or
 - is to have effect subject to modifications
109. Where an appeal relates to more than one planning obligation, the Scottish Ministers may make a separate determination in relation to each obligation. The Scottish Ministers must obtain the consent of the applicant where, on an appeal under section 75B, they propose to either:
- discharge the planning obligation despite that not being sought in the section 75A application, or
 - modify the planning obligation in a way that was not proposed in the section 75A application
110. Similarly, where the Scottish Ministers propose to modify the planning obligation in a way that would put or increase a burden on any non-applicant, that person's consent must be obtained before making such a determination.
111. Most appeals will in practice be delegated to Reporters for determination. Appeals will normally be determined through written submissions. In some cases disputes about the relevant facts may necessitate the hearing of evidence. In such circumstances, the Reporter may make arrangements for an inquiry or hearing session to take place and the Reporter may decide that witnesses should be placed under oath.
112. Once the Scottish Ministers, or a Reporter exercising delegated powers, have decided an appeal, they cannot reconsider or correct it. A further appeal can be made to the Court of Session, under section 239 of the Act, within 6 weeks of the date of decision. The court has power to quash the appeal decision if it is outwith Ministers' statutory powers or if the appellant has been substantially prejudiced by a procedural failure in the appeal.

4 Good Neighbour Agreements (GNAs)

4.1 General principles

113. The provisions in the primary legislation and regulations in respect of GNAs broadly follow a similar approach to those set out for planning obligations, although there are a number of significant differences.

4.2 Parties to a GNA

114. A GNA is entered into between a person, for example a landowner or developer, and a community body (as opposed to a planning authority). A community body is defined (section 75D of the Act) as being either:

- the community council for the area in which the land in question (or any part of that land) is situated, or
- a body or trust whose members or trustees have a substantial connection to the land in question and whose object or function is to preserve or enhance the amenity of the local area where the land is situated

115. In the case of a body or trust, other than a community council, the body must be recognised (and notified) by the planning authority as meeting the criteria set out in the second bullet point above.

116. There is no provision in the legislation for any person to propose or enter into a unilateral GNA.

4.3 Scope of a GNA

117. Section 75D(1) sets out that a GNA may govern 'operations or activities relating to the development or use of land, either permanently or during such period as may be specified in the agreement'. A GNA may make provision, for example, that information is provided to the community body regarding the nature and progress of development on a site. It should be stressed, however, that a GNA may not require any payment of monies.

118. As with a planning obligation, a GNA (to which an owner of the land is a party) may be registered in the Land Register of Scotland or the General Register of Sasines, making it enforceable against future owners or occupiers of the land.

119. A GNA should not be viewed as an alternative to a planning obligation. A planning authority should not seek to make it a requirement for the grant of planning permission that a GNA be put in place.

4.4 Modification or discharge of a GNA

120. Section 75E provides that a GNA may be modified or discharged by agreement between the community body and the person against whom it is enforceable. If they are unable to reach agreement then either may apply to the planning authority for determination. The procedures for submission of an application for modification or discharge of a GNA, subsequent determination of the

application by the planning authority, and appeal to the Scottish Ministers, are broadly similar to those for planning obligations. They are set out in the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010⁷.

121. Regulation 3(2)(i) of the 2010 regulations requires that any application is accompanied by evidence that attempts have been made to negotiate the amendment of the GNA. Failure to supply this evidence will mean that the application cannot be validated.
122. The planning authority may determine that the GNA be discharged, that it continue in force with no modification, or that it be modified as per the amendment sought in the application. The legislation does not permit the planning authority to determine that the GNA should be subject to any modification (or modifications), other than that which was set out in the application.

4.5 Right of appeal to Scottish Ministers

123. Either the community body or the person against whom the GNA is enforceable may appeal the planning authority's decision (or failure to reach a decision within 2 months) to the Scottish Ministers, under section 75F. It should be noted that the person or body who appeals need not be the person or body who originally sought the modification or discharge of the GNA. An appeal may therefore be made against a planning authority decision to allow an application to modify or discharge a GNA. The appeal must be made to the Scottish Ministers within 3 months beginning either with the date of the planning authority's decision or the end of the 2 month period.
124. The procedure for an appeal is the same as for a planning obligation, as set out in the Town and Country Planning (Appeals) (Scotland) Regulations 2013 (see regulation 22 of those Regulations). Detailed guidance on appeals procedures, including how to appeal and what information is to be submitted by the appellant and the planning authority, is contained in Planning Circular 4/2013: Planning appeals.
125. As with the planning authority decision, the legislation does not permit the Scottish Ministers to determine that the GNA should be subject to any modification (or modifications), other than that which was set out in the application.

⁷ [The Town and Country Planning \(Modification and Discharge of Good Neighbour Agreement\) \(Scotland\) Regulations 2010](#)

Annex – Definition of “Infrastructure First” from NPF4

Infrastructure First:

Putting infrastructure considerations at the heart of placemaking. For the purpose of applying the Infrastructure First policy, the following meaning of infrastructure will apply:

- communications – including digital and telecommunications networks and connections;
- existing and planned transport infrastructure and services;
- water management – supply, drainage systems and sewerage (including flood risk management);
- energy supplies/energy generation – including electricity and heat networks, distribution and transmission electricity grid networks, and gas supplies;
- health and social care services – including both services provided in the community directly by Health Boards and services provided on their behalf by contractors such as GPs, dentists and pharmacists;
- education – including early years, primary, secondary, further and higher education services;
- green and blue infrastructure; and
- spaces for play and recreation.



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