

Issue 4	Policy 5 - Infrastructure Contributions	
Development plan reference:	Policy 5, page 23	Reporter:
Body or person(s) submitting a representation raising the issue (including reference number):		
Tayside & Central Scotland Transport Partnership (TACTRAN) (0057) Stewart Milne Homes (0290/03) Scottish Natural Heritage (SNH) (0353) Scottish Government (0451) Springfield Properties PLC (0455) Woodland Trust Scotland (0462) Network Rail (0509) Portmoak Community Council (0541) Homes for Scotland (0562) Scone Estate (0614) A&J Stephen Limited (0622)		
Provision of the development plan to which the issue relates:	Policy 5 – Infrastructure Contributions & Developer Contributions and Affordable Housing Supplementary Guidance	
Planning authority's summary of the representation(s):		
<p><u>Policy 5: Infrastructure Contributions</u></p> <p>SNH (0353/01/005): Policy 5 and the Developer Contributions and Affordable Housing Supplementary Guidance (CD021) currently sets out developer contributions for road and junction improvements, affordable housing and education contributions, but not green infrastructure or active travel improvements. TAYplan's Policy 6 'Developer Contributions' (CD022) provides the framework for including green infrastructure and active travel, seek the inclusion of these type of contributions and improved connectivity in the Plan.</p> <p>Stewart Milne Homes (0290/03/007): Level of emerging developer contributions is making many sites unviable. Contributions need to be reasonable and proportionate and partnership working required to bring forward essential funding, which needs to be set out in policy to enable it to be appropriately tested. Policy 5 needs to set out specific requirements of developer contributions linking to the supplementary guidance. Bullet points a) and b) of the policy are non-specific and could be applied to any contribution the Council may consider appropriate at a later date. Any requirement for developer contributions must take account of available capacity within the existing infrastructure and must not be used where there is no direct link within the development or if it is too remote to be considered reasonable. Supplementary Guidance must therefore ensure that the contributions are justified in terms of Circular 3/2012 (CD0168) and meet all 5 policy tests. Any requirements need to be fully set out at an early stage in the plan making process and full opportunity provided to test and challenge the assumptions used. It is essential that sites identified in the LDP2 are deliverable and this requires early identification of planning gain improvements. Developers should not fund large scale infrastructure projects to enable development to come forward and make up shortfalls in local authority budget. A fair mechanism of delivery considered on a site by site basis is needed to ensure that</p>		

development viability is not at risk as a result. This should be assessed and demonstrated through the Local Development Plan and not left for Supplementary Guidance or until an application is made for planning permission.

Stewart Milne Homes (0290/03/016): Policy 5 should be amended to make reference to Circular 3/2012 (CD168) to ensure full consideration is given to the policy and scope for pursuing developer contribution.

Scottish Government (0451/01/006): Lack of detail about what contributions will be sought and the locations, types of development where they will be sought. To comply with paragraph 139 of Circular 6/2013: Development Planning (CD001) which states that matters to be dealt with in the plan itself rather than supplementary guidance include: items for which financial or other contributions, including affordable housing, will be sought, and the circumstances where they will be sought. Further detail could be added to Policy 5 to list the types of contribution that will be sought, and the locations, types of development where they will be sought.

Springfield Properties PLC (0455/01/002): A per recent case law, there needs to be more than a minimal connection between infrastructure need and the development proposed. Policy 5 needs to be reflective of recent case law regarding developer contributions.

Springfield Properties PLC (0455/01/007): Policy 5 needs to make reference to Circular 3/2012 (CD168).

Woodland Trust Scotland (0462/01/020): In addition to point (b) the Council could add provision for compensatory planting as a developer contribution. Where appropriate and where facilities or infrastructure will be placed under pressure from additional development developers should contribute through native tree planting. Scottish Planning Policy principle 217 (Paragraph 147, Page 30 assumed) (CD004) states that 'where appropriate planning authorities should seek opportunities to create new woodland and plant native trees in association with development. If a development would result in the severing or impairment of connectivity between important woodland habitats, workable mitigation measures should be identified and implemented, or preferably linked to a wider green network.'

Portmoak Community Council (0541/01/002): Would value greater flexibility within this Policy enabling a broader application of this Policy. Specifically within a small community that developer contributions can be applied to support common infrastructure projects within the community and not just immediate off-site developments.

Homes for Scotland (0562/01/004): The Policy must acknowledge recent case law regarding developer contributions. There has been recent case law considering the issue of where contributions towards infrastructure could and should be sought. It is therefore relevant to consider referencing those conclusions within Policy 5 and in particular the need for there to be more than a minimal connection between infrastructure need and the development proposed.

Homes for Scotland (0562/01/008): It would be relevant to reference Circular 3/2012 (CD168) within Policy 5 to give the full context for the policy and scope for pursuing contributions towards infrastructure. Homes for Scotland will fully engage in any review process.

Scone Estate (0614/01/005): Policy 5 does not comply with Circular 3/2012 (CD168). It is unclear what 'comprehensive planning' means and would request that the wording is clarified. Developer obligations should only be sought to mitigate the impact of development, in line with Circular 3/2012 (CD168). There is a risk that 'comprehensive planning' introduces uncertainty in what may or may not be sought in terms of developer obligations.

Scone Estate (0614/01/016): Policy 5 does not comply with Circular 3/2012 (CD168). Concern over the 'Note' section in particular "Proposals which increase the number of dwellinghouses within settlements by over 10% with identified deficiencies in community infrastructure may be subject to proportionate community facilities contribution. This sentence is not in line with the tests of Circular 3/2012 (CD168). Developer contributions cannot be sought for 'identified deficiencies' they should only be sought to mitigate the anticipated impact of the development in question. This is confirmed by the third test of Circular 3/2012 (CD168) 'relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area'. Propose that the wording is either deleted or amended so that there is no risk that the policy is in contravention of the Circular tests.

A&J Stephen Limited (0622/01/020): There has been recent case law considering the issue of where contributions towards infrastructure could and should be sought. It is therefore relevant to consider referencing those conclusions within Policy 5 and in particular the need for there to be more than a minimal connection between the infrastructure need and the development proposed.

A&J Stephen Limited (0622/01/024): It would be relevant to reference Circular 3/2012 (CD168) within Policy 5 to give the full context for the policy and scope for pursuing contribution towards infrastructure. A & J Stephen Limited will fully engage in any review process.

Network Rail (0509/01/03): Supports the approach of Policy 5. Network Rail is embarking on a drive to attract third party funding to deliver enhancement projects. This is based on the principle that third parties derive benefits from enhancements should make a financial contribution that is proportionate to the benefits that they can reasonably be expected to derive. It is right that where the cumulative impact of new developments will exacerbate a current, or generate a future, need for additional infrastructure that appropriate contribution are made by developers. We understand the need for local planning authorities and infrastructure providers to work closely together to understand development impacts and appropriate mitigation and to ensure effective delivery. Network Rail should be clearly excluded from having to make developer contributions as a publically owned company arm's length body of the Department of Transport (DfT).

#### Developer Contributions and Affordable Housing Supplementary Guidance

TACTRAN (0057/01/005): Welcomes the recognition of the cumulative impact development has on existing transport infrastructure and facilities. It is appropriate for developers to provide reasonable contributions towards the new or upgrade of infrastructure. TACTRAN wishes to be consulted on any future changes to the existing Supplementary Guidance to ensure that necessary improvements to strategic connectivity are included where appropriate.

SNH (0353/01/031): Recommend the Supplementary Guidance includes green

infrastructure and active travel contributions. Request to be consulted on revised Supplementary Guidance.

Stewart Milne Homes (0290/03/017): It is questioned whether the Councils Developer Contributions and Affordable Housing Supplementary Guidance (CD021), Section 6 Transport Contributions is valid taking account of the Supreme Court decision on the Aberdeen City and Shire Strategic Transport Fund. The Supplementary Guidance should be reviewed to ensure it remains valid.

Network Rail (0509/01/011): Recommend that the revised Developer Contributions and Affordable Housing Supplementary Guidance (CD021) reflect current policies 58A, 58B and 5 and emerging proposals in the LDP e.g. Perth Station and bus/rail hub and contributions thereto.

### **Modifications sought by those submitting representations:**

#### Policy 5: Infrastructure Contributions

SNH (0353/01/005): Modify Policy 5b to 'the provision, or improvement of, off-site facilities and infrastructure where existing facilities or infrastructure will be placed under additional pressure or there are opportunities for improved connectivity.'

Stewart Milne Homes (0290/03/007): Modify Policy 5 to set out specific requirements of developer contributions linking to Supplementary Guidance.

Springfield Properties PLC (0455/01/002); Homes for Scotland (0562/01/004); A&J Stephen Limited (0622/01/020): Modify Policy 5 to set out specific requirements of developer contributions linking to Supplementary Guidance.

Stewart Milne Homes (0290/03/016); Springfield Properties PLC (0455/01/007); Homes for Scotland (0562/01/008); A&J Stephen Limited (0622/01/024): Modify Policy 5 to make reference to Circular 3/2012 (CD168).

Scottish Government (0451/01/006): Modify Policy 5 to list the types of contribution that will be sought, and the locations, types of development where they will be sought.

Woodland Trust Scotland (0462/01/020): Modify Policy 5 to include provision of compensatory planting as a developer contribution.

Portmoak Community Council (0541/01/002): Modify Policy 5 to allow contributions to be sought for common infrastructure.

Scone Estate (0614/01/005): Modify Policy 5 to provide further clarity on the wording 'comprehensive planning'.

Scone Estate (0614/01/016): Modify Policy 5 to provide delete or modify the 'Note' to bring in line with Circular 3/2012 (CD168).

Network Rail (0509/01/003): Modify Policy to exclude network Rail from being required to make a contribution.

#### Developer Contributions and Affordable Housing Supplementary Guidance

TACTRAN (0057/01/005): No modification but wish to be consulted on changes to revised Supplementary Guidance

SNH (0353/01/031): Modify the Supplementary Guidance to include green infrastructure and active travel contributions and be consulted on revised Supplementary Guidance. Update the Action Programme accordingly.

Stewart Milne Homes (0290/03/017): Review the Developer Contributions and Affordable Housing Supplementary Guidance (CD021), Section 6 Transport Infrastructure to ensure it is valid.

Network Rail (0509/01/011): Modify Supplementary Guidance to reflect current policies 58A, 58B and 5 and emerging proposals in the LDP where contributions may be required.

#### **Summary of responses (including reasons) by planning authority:**

##### Policy 5: Infrastructure Contributions

SNH (0353/01/005): TAYplan Policy 6 (CD022) identifies a wide range of contributions which may be required to mitigate any adverse impact on infrastructure, services and amenities brought about by development. Circular 3/2012 (CD168) and Policy 5 allows for appropriate contributions to be sought where a deficit would be exacerbated by new development. While the proposed modification seeks to provide clarity in relation specifically to connectivity the proposed wording could cause ambiguity as the majority of new developments would not be required to make any such contribution. Policy 5 will remain effective with or without reference to improved connectivity in the event that such issues are identified as these are likely to be site specific and not cumulative across a range of sites.

No modification is proposed to the Plan.

Stewart Milne Homes (0290/03/007): No evidence has been provided to support the position that the level of developer contributions is making many sites unviable. The Developer Contributions and Affordable Housing Supplementary Guidance September 2016 (CD021) provides a clear outline of the necessary contribution requirements within Perth & Kinross which allows for early consideration of contribution requirements when carrying out site assessments in advance of promoting the inclusion of sites within the Local Development Plan. Circular 6/2013: Development Planning (CD001) paragraph 81 identifies that 'detailed policies may be removed to Supplementary Guidance ...provided an appropriate context remains in the Plan itself.' Policy 5 defines the principle and context for infrastructure contributions with the detail defined through Supplementary Guidance in line with the Circular. It is acknowledged that it would not be appropriate to produce other Supplementary Guidance than that identified under Policy 5.

No modification is proposed to the Plan.

Stewart Milne Homes (0290/03/016); Springfield Properties PLC (0455/01/007); Homes for Scotland (0562/01/008); A&J Stephen Limited (0622/01/024): The Local Development Plan is developed in line with Government Policy including Circular 3/2012 (CD168) which provides the framework for requiring contributions to mitigate the impact of new development. Policy 5 defines the principle of developer contributions and sets out the



basis for Supplementary Guidance. The Developer Contributions and Affordable Housing Supplementary Guidance September 2016 (CD021) define how contributions will be required in line with Circular 3/2012 (CD168). Circular 3/2012 (CD168) requires that authorities consider the requirement for a planning obligation using a sequential approach that favours the use of a planning condition wherever possible. This is reflected within Policy 5. Developer contributions can be secured by other means than planning obligations and it is not necessary for the Policy to refer to the Circular. In the event that a planning obligation is requested for a particular development, this would be considered against the Circular. This issue was considered through the review of the previous Local Development Plan through Issue 4 Infrastructure Contributions (CD174) where the Reporter agreed with the Council's position.

No modification is proposed to the Plan.

Scottish Government (0451/01/006): Paragraph 81 of Circular 6/2013: Development Planning (CD001) states 'detailed policies may be removed to Supplementary Guidance, especially if there is no significant change from the previous plan, and provided the appropriate context remains in the plan itself.' The view is that this is at odds with paragraph 139 which states that Supplementary Guidance should not include 'items for which financial or other contributions, including affordable housing, will be sought, and the circumstances (locations, types of development) where they will be sought.' The Council has adopted Developer Contributions and Affordable Housing Supplementary Guidance (CD021) which details the application of the various different developer contributions to new development across the Council area. Since the adoption of the Local Development Plan in 2014 this Guidance has been reviewed and updated twice to reflect changing circumstances. The Council would seek to continue this approach as there is no significant change from the previous plan and through Policy 5 it is considered that appropriate context remains in the Plan. It also provides significant flexibility where revisions to the application of contributions are required. To contain this level of detail would not allow for changes in the detailed application of the Guidance within the scope of Government Policy and the adopted Local Development Plan.

The representation from the Scottish Government does not refer to Local Development Plan 2 Policy 20: Affordable Housing (CD144) which is also supplemented by the adopted Supplementary Guidance. The Council considers that this Policy fulfils the requirements of paragraph 139 of the Circular (CD168) as it sets out that 'Residential Development, including conversions, consisting of 5 or more units should include provision of an affordable housing contribution amounting to an equivalent of 25% of the total number of units proposed' which is a clear summary of how the policy will be applied to new development.

If the Reporter considers that additional information is required to be included within Policy 5 the following provides a summary of the requirements of the Adopted Developer Contributions and Affordable Housing Supplementary Guidance 2016 (CD021) taking account of paragraph 139 of Circular 6/2013: Development Planning (CD001). The Council would view that the inclusion of this within the Local Development Plan would be excessive and that the current approach taken by the Council is more proportionate and no modification would be sought.

#### Primary Education

A full list of the schools where contributions will be sought, Supplementary Guidance Appendix 1.

A plan showing the City Centre zone where developments of less than 20 units are exempt from contributing towards primary education, Supplementary Guidance Appendix 4.

A list of types of developments which would require to contribute towards primary education and any exemptions:

- Applies to:
  - Dwellings with two or more bedrooms;
  - Change of use to create a dwellinghouse with two or more bedrooms.
- Exemptions for:
  - Affordable and Council Housing;
  - Applications for dwellings which are not likely to place an additional burden on the existing schools, for example Student accommodation lined to a college/university or holiday accommodation;
  - Single bedroom dwellings;
  - Sheltered housing.

Contribution level will be £6,460 per dwelling (But this may be subject to change as defined in the Supplementary Guidance).

#### Auchterarder A9 Junction Improvements

A plan showing the Auchterarder A9 Junction Boundary, Supplementary Guidance Appendix 2.

- Applies to:
  - Residential Dwellings;
  - Non-residential development where a Transport Assessment is required;
  - Development out with the Auchterarder A9 Junction Boundary, within the Strathearn Housing Market Area, which is identified to have a significant impact on the junction.
- Exemptions for:
  - Affordable and Council Housing;
  - Non-residential developments which do not require a Transport Assessment or are considered to reduce the need to travel;
  - Developments within the Auchterarder Development Framework area.

Contribution level will be £3,450 per dwelling or pro-rata for non-residential development (But this may be subject to change as defined in the Supplementary Guidance).

#### Transport Infrastructure

A plan showing the Transport Infrastructure boundary, Supplementary Guidance Appendix 3.

Two tiers of contribution level within Perth Core Area & Out-with Perth Core Area.

A plan showing the City Centre zone where developments of less than 20 units are exempt from contributing towards primary education Supplementary Guidance Appendix 4.

- Applies to:
  - All Residential Dwellings – Flat rate contribution for Open Market and reduced for Affordable Housing;
  - Non-residential development – Individual rate per m<sup>2</sup> based on different use classes.
- Exemptions for:

- Employment use on brownfield land;
- Change of use to create less than 5 dwellinghouses;
- Development which would not increase traffic levels or would support Council objectives.

#### Perth Core Area

Land Use	Contribution per m <sup>2</sup>
Retail	£123
Employment	£11
Other non-residential use	£43

Land Use	Contribution per unit
Residential	£3,549
Residential - Affordable	£1,775

#### Out-with Perth Core Area

Land Use	Contribution per m <sup>2</sup>
Retail	£92
Employment	£8
Other non-residential use	£32

Land Use	Contribution per unit
Residential	£2,639
Residential - Affordable	£1,319

The contribution figures and the application to development may be subject to future change. Subject to appropriate consultation additional contribution requirements may be introduced through the lifetime of the Development Plan. The most up to date contribution position will be detailed within the adopted Supplementary Guidance.

Springfield Properties PLC (0455/01/002); Homes for Scotland (0562/01/004); A&J Stephen Limited (0622/01/020): The Local Development Plan is developed in line with Government Policy including Circular 3/2012 (CD168) which provides the framework for requiring contributions to mitigate the impact of new development. The case law referred to the Supreme Court and decision concerning Aberdeen City and Shire Strategic Transport Fund which provides guidance in relation to application of Government Policy to Local Authority Policy but it does not change Government Policy. The Council, having taken expert external legal advice (CD175) has undertaken a review of the methodology and approach to Transport Infrastructure Contributions as set out in the Developer Contributions and Affordable Housing Supplementary Guidance (CD021). The methodology and approach to Transport Infrastructure Contributions is considered to be valid in terms of legislation, caselaw and National Policy. The Council does not consider it necessary to reference specific case law within Policy 5 or specify the need for there to be more than a minimal connection between the infrastructure need and the development proposed. This is already a requirement of the five Tests of Circular 3/2012 (CD168).

No modification is proposed to the Plan.



Woodland Trust Scotland (0462/01/020): Circular 3/2012 (CD168) and Policy 5 allows for appropriate contributions to be sought where a deficit would be exacerbated by new development. This approach is underpinned through Local Development Plan 2 (CD144) Policy 38: Forestry, Woodland and Trees and Policy 40: Green Infrastructure. While the proposed modification seeks to provide clarity in relation specifically to connectivity the proposed wording could cause ambiguity as the majority of new developments would not be required to make any such contribution. Policy 5 will remain effective with or without reference to the provision of compensatory planting in the event that such issues are identified.

No modification is proposed to the Plan.

Portmoak Community Council (0541/01/002): Circular 3/2012 (CD168) and Policy 5 allows for appropriate contributions to be sought where a deficiency would be exacerbated by new development. Where a development is shown to make any adverse impact on infrastructure, services and amenities then contributions or mitigation can be sought. Developer Contributions cannot be secured towards existing deficiencies or requirements which are tenuous in terms of the proposed development. The proposed modification is not required.

No modification is proposed to the Plan.

Scone Estate (0614/01/005): Comprehensive planning relates to the delivery of the necessary infrastructure required to meet the aspirations of the Local Development Plan for each development site in creating a sustainable place. Circular 3/2012 (CD168) and Policy 5 allows for appropriate contributions to be sought where a deficiency would be exacerbated by new development. The requirement for contributions is considered in the context of the whole Local Development Plan and it is not considered that the use of 'comprehensive planning' in this Policy provides uncertainty or requires further clarity.

No modification is proposed to the Plan.

Scone Estate (0614/01/016): The 'Note' within Policy 5 highlights that where larger developments come forward within settlements which would increase the number of residential Dwellings by over 10% then they would be assessed to determine whether they would exacerbate deficiencies in community infrastructure. If appropriate a proportionate contribution may be sought. The Local Development Plan is developed in line with Government Policy including Circular 3/2012 (CD168) which provides the framework for requiring contributions to mitigate the impact of new development. Policy 5 defines the principle of developer contributions and any contribution requirement towards community infrastructure would be assessed on an individual basis with proportionate contribution being sought in consideration of individual impact and taking account of the relevant Government Policy.

While the Council would seek no modification if the Reporter was so minded the Council would agree to modifying the 'Note' to read 'Proposals which increase the number of residential Dwellings within settlements by over 10% and which would exacerbate deficiencies in community infrastructure may be subject to a proportionate community facilities contribution.'

Network Rail (0509/01/003): The Councils welcomes the support for Policy 5. The

requirement for a developer contribution is to mitigate any adverse impact on infrastructure, services and amenities brought about by development. If a development is proposed by Network Rail which would impact on infrastructure, services or amenities then the development would be assessed on an individual basis. Proposal required for an operational nature will generally be exempt from any contribution requirement. Modifying Policy 5 to provide a blanket exemption for Network Rail is not considered appropriate.

No modification is proposed to the Plan.

#### Developer Contributions and Affordable Housing Supplementary Guidance

TACTRAN (0057/01/005): The position presented by TACTRAN is noted. As a statutory consultee the Council will consult with TACTRAN on revisions to the adopted Supplementary Guidance and will consider all comments through this process.

No modification is proposed to the Plan.

SNH (0353/01/031): The Developer Contributions and Affordable Housing Supplementary Guidance (CD021) will be reviewed to take account of the new Local Development Plan. The Plan and associated documents should be read as a whole and where specific developer contribution proposals are identified then it may be appropriate to include these within the Supplementary Guidance. As a statutory consultee the Council will consult with Scottish Natural Heritage on revisions to the adopted Supplementary Guidance and will consider all comments through this process. The Action Programme will be updated to reflect the adopted Local Development Plan.

No modification is proposed to the Plan.

Stewart Milne Homes (0290/03/017): The Council, taking expert external legal advice (CD175), has undertaken a review of the methodology and approach to Transport Infrastructure Contributions as set out in the Developer Contributions and Affordable Housing Supplementary Guidance (CD021). This review has taken account of the Supreme Court decision in relation to the Aberdeen City and Shire Strategic Transport Fund. The methodology and approach to Transport Infrastructure Contributions is considered to be valid in terms of National Policy.

No modification is proposed to the Plan.

Network Rail (0509/01/011): The Developer Contributions and Affordable Housing Supplementary Guidance (CD021) will be reviewed to take account of the new Local Development Plan. The Plan and associated documents should be read as a whole and it is not considered that it is necessary to reference specific policies but where specific developer contribution proposals are identified then it may be appropriate to include these within the Supplementary Guidance.

No modification is proposed to the Plan.

#### **Reporter's conclusions:**

#### **Reporter's recommendations:**

