

Maintenance Options for Public Open Spaces in New Residential Developments Policy 2020



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1 Introduction

Perth and Kinross is fortunate to have an enviable reputation for environmental quality based on a rich legacy of well designed, connected and maintained public open space (POS). This good standard of POS provision is vital for providing for public health, wellbeing and amenity.

The level of community pride in our POS is demonstrated by the success of some voluntary 70 Bloom, Path, Allotment and Friends of Parks Groups who, supported by Community Greenspace (CG), put an immense effort in every year to create places they are proud of. It is therefore important for the Council to ensure that new POS provided within residential developments are up to an acceptable standard and that their maintenance in perpetuity is assured.

There is no legal requirement for councils to take on the maintenance of POS and no legal basis to compel developers to transfer title and commuted sums (CS) to councils. However the best way to ensure high quality POS is through adoption by the Council. This proposed policy aims to encourage developers, who have provided POS to Council standards, to opt for Council adoption so that the POS will be maintained in perpetuity for public benefit. It ensures that on all developments Priority POS (PPOS), including equipped play areas, sports pitches, large parks and key green corridor path links, will be adopted by the Council to ensure they are available to all. Above ground SUDS being jointly maintained with Scottish Water must also be adopted in all developments. It also allows developers an alternative option to make private maintenance arrangements for all other areas of POS, including developments with no PPOS areas, but only where criteria to safeguard the public, Council and residents' interests are met. It will replace the current policy adopted in 2001 and updates the required payments from developers to

the Council (the commuted sum) to ensure Council adoption is affordable and sustainable.

2 Context

2.1 **National Policy**

2.11 Quality Places

The Scottish Government (SG) have made it clear in a suite of planning policies that the creation of quality places is a fundamental requirement of the development management process. This is summarised in their 2013 'Creating Places' policy statement on architecture and place for Scotland in which the joint Ministerial Statement says:

'Our responsibility is not simply to preserve this great asset, but also to create Scotland's future assets. Our vision is a Scotland where quality places support our communities, respect our environment, drive our economy and reflect our identity as a modern, forward-facing nation. It is the commitment of this Government, and the ambition of this policy statement, to create places where people prosper. Place should not be considered merely a backdrop to our lives, but as an agent of change. Good buildings and places can enrich our lives as individuals and as a society in many different ways. Whether it is by supporting active, healthy lifestyles, or reducing our carbon footprint, or being the critical factor which attracts visitors and inward investment, the value of place cannot be underestimated or ignored'.

It goes on to say: *'Good design can guarantee that we get it right first time, avoiding scenarios where we are left with problem buildings or places which fail our communities. Good developments not only house people, but support a wide range of activity. Through the careful use of land, developments should*

be designed to accommodate a range of housing, local retail, leisure facilities, and high quality green spaces which are attractive, rich in biodiversity and well connected'.

This is a clear shift away from car orientated street and standard housing design typical of the latter half of the 20th and early 21st century.

2.12 Community Empowerment

The SG's drive to empower communities to take on responsibility and/or ownership for land and buildings which they use or want to use is enshrined within the Community Empowerment (Scotland) Act 2015. The Act also aims to strengthen the communities' voice in decisions regarding public services. In support of this, the Land Reform (Scotland) Act part 2 was amended and came into force on 15 April 2016 to extend the community right to buy to urban land and buildings (in addition to rural land). This provides the legislative framework for councils to transfer appropriate assets to community user groups.

2.13 Owners' Associations (OAs)

The Title Conditions (Scotland) Act 2003 ([Development Management Scheme](#)) Order 2009 (enacted 1.6.09) aims to protect the interests of home owners where private factoring of POS applies. It is the SG's response to dissatisfaction with previous private maintenance arrangements and high profile cases where residents have sought legal protection against unjustified increases in private factoring fees, particularly where factors are failing to maintain POS to adequate standards. It follows a SG consultation in 2011 on the Maintenance on Private Housing Estates and whether changes were required to the Title Conditions (Scotland) Act 2003 to allow for changes of private factors. The [Development Management Scheme \(DMS\)](#) entrusts the management for the maintenance of common areas to an Owners Association (OA) which is a body corporate so can own land and enter into contracts etc.

Each house purchaser is automatically part of this association and is required to pay a service charge to fund maintenance. The OA must appoint a manager who does not have to be a member and is usually a professional property management firm. In practice, the developer generally appoints a factor for the initial period (usually five years) allowing time for the OA to assume control. In theory, once the OA have assumed control if they are not satisfied with the appointed factor after the initial period, they can opt for an alternative factoring company. The factor works under the direction of the OA so successful POS maintenance relies on an interested and effective OA. It is a relatively new model so is likely to only have been used in a small number of developments over a short period of time so has therefore not yet been proved in terms of the long term sustainable maintenance of POS. The mechanisms for large numbers of residents to act collectively and agree common goals which are in the public interest, or have the knowledge or expertise to instigate change in factoring arrangements is likely to be difficult.

The Council has permitted several DMS to date being at Bridge of Earn (LDP2 H72), Rattray (LDP2 H63), and Bertha Park (LDP2 MU345) on the north west edge of Perth. These residents are financially responsible for the maintenance of all the POS (except for the football pitches at Bertha Park which the Council will adopt). Residents of affordable houses, built by the Council, are exempt from factoring fees. The developers appoint maintenance companies to factor the POS however there is an option for the OAs, once established, to appoint alternative companies if dissatisfied with maintenance. For Bertha Park the S.75 planning agreement requires the payment mechanism and process to be agreed by the Council in advance of the commencement of each phase.

2.2 **Public Open Space**

Well designed and implemented public open space (POS) is an essential component in creating successful places. Creating Places states:

‘Developments should be designed to accommodate a range of housing, local retail, leisure facilities, and high quality green spaces which are attractive, rich in biodiversity and well connected.’

POS includes parks, play areas, sports areas, paths (which are often incorporated within ‘green corridors’), woodlands and can also include natural water features or man-made sustainable urban drainage schemes (SUDS) and other locally distinctive landscape features. SUDS should be integral to POS providing attractive amenity and biodiverse features. POS provide for amenity, recreation, social exchange and encourage people to have healthier lifestyles.

Small blocks of ‘semi-private’ amenity planting and grass, which are for the benefit of residents only, rather than the wider public is not POS. Further details are provided within the Supplementary Guidance.

2.21 **Council Process for Ensuring the Provision of Good POS**

If the Council has agreed the POS provision and layout through a planning consent and it has been implemented to a satisfactory standard, the Council will normally offer to adopt it. Council adoption requires the transfer of land title and the appropriate commuted sum and ensures that all POS is maintained to an appropriate standard in perpetuity. This includes the regular inspection, repair and replacement of equipped play areas. It also ensures that communities have opportunities to take over the management and maintenance of any appropriate land or facilities, such as amenity woodland,

allotments or sports pavilions, through arrangements such as a licence to occupy.

2.22 Private Maintenance Arrangements

The current policy (set out in the Environment & Consumer Services Committee Report 30 May 2001 Ref. ECS61) allows developers to opt for adoption by a private maintenance company. It does not allow for factoring charges to residents (although in a few cases the policy has not been applied). Experience has shown that in many cases maintenance issues develop in the long term such as trees overshadowing properties, overgrown shrub beds and failing play standards. Complaints from residents, if the Council's planning enforcement section. The residents may also contact Community Greenspace in the hope that the Council will take over their POS maintenance, however without land title and a commuted sum this is not possible.

3 Policy

3.1 Policy Aims

This policy aims to:

1. Ensure new residential developments include good quality, well designed POS to Council standard which is adequately maintained in perpetuity to contribute to creating safe and attractive places to live and visit.
2. Ensure adequate resources are secured to maintain POS adopted by the Council and that the adoption process is clear and efficient.
3. Ensure the long term quality standard of priority POS, being equipped play areas, sports pitches, large parks and possibly green corridor path links, through Council adoption.
4. Ensure the Council, public interest and house purchasers are protected where private factoring arrangements are permitted.

5. Encourage community empowerment by providing opportunities for community ownership, management and/or maintenance of community facilities within POS.

These aims are consistent with the Council's Corporate Plan's 2018 - 2022 strategic objectives which provide a framework for improving outcomes for all at every life stage. In particular objective 5. Creating a safe and sustainable place for future generations.

This policy has been developed to compliment the draft Supplementary Guidance on Open Space to the Local Development Plan which aims to ensure that developers provide POS to Council standards. The policy sees a classification of two types of POS:

1. Priority POS (PPOS) including equipped play areas, *large parks, sports pitches and possibly green corridor path links which are of importance to the wider community, not just the residents on the development.
2. Non priority POS – any other areas of public greenspace which are only likely to be used by the residents on the development.

The developer will be asked to identify the two types of open space for discussion and agreement with the Council as part of the development design and planning application process.

3.2 Policy - Options for Developers

The key principle is that the Council wants to ensure that good quality POS is provided and maintained in perpetuity for public benefit and to contribute to enhancing Perth and Kinross's reputation for quality places and landscapes.

The best way to achieve this is through Council adoption of POS which meets Council standards. There are two options available to developers:

1. The Council adopts all POS in new developments. In this case the flat rate commuted sums will be paid by the developer with no charge to the residents. Where there is a planning requirement for exceptionally large POS areas, such as a country park, the Council reserves the right to apply a site specific CS calculation for these areas. Areas of amenity planting and small open spaces which do not benefit the public will not be adopted by the Council. These areas can be maintained through employing a private factor or them remaining the resident`s responsibility.
2. The Council will adopt only the PPOS in all developments to ensure they are available to the public and that residents are not charged for these important public spaces. In all cases the Council must adopt above grounds SUDS (where Section 7 agreement applies) and they are being jointly maintained with Scottish Water (see below). For play areas, payment of the flat rate commuted sum will apply. For the other PPOS areas the flat rate commuted sum per dwelling will not apply. Instead, a site-specific commuted sum will be calculated separately based, on current maintenance rates, and be paid by the developer. For all remaining POS and amenity areas the developer can apply a Development Management Scheme (DMS), subject to Council agreement, with home owners meeting maintenance costs of these areas. Land title for the POS areas must be transferred to the Owners' Association.

* Large parks will usually incorporate play and/or pitch facilities, further POS areas within the same development if over 1ha and suitable for informal play or ball 'kickabouts' will usually also be considered as large parks. Where play and pitch facilities are not required within a development the same criteria apply. In small settlements areas of public open space smaller than 1ha may be significant and the largest of these will be considered large parks.'

** Above ground SUDS (Sustainable Urban Drainage Systems) being jointly maintained with Scottish Water must be adopted by the Council to comply with the Section 7 agreement (please see SG guidance). Where they are the only POS to be adopted within a development a site-specific commuted sum will be payable.

3.3 Council Adoption

Although developers can opt for private arrangements for some areas, Council adoption of all POS within a development is preferred as it is a simpler process. It also has the benefit that after adoption, developers and residents are relieved of all future maintenance responsibilities which will be attractive to all prospective house purchasers.

Developers must transfer land title and pay the appropriate commuted sums (CS) prior to maintenance handover for all adopted POS. In addition the appropriate CS per play area will be paid by the developer. Payment of a security deposit (*SD) which is calculated as a percentage of the CS is also required to ensure that all POS meets Council standards prior to adoption. If minor POS remedial works is required on adoption the Council will do this at the developer's expense using the SD. * (Appendix 2 provides details of the Security Deposit).

Appropriate facilities provided by developers within adopted POS, such as allotments and sports pavilions, will be made available for community management.

The CS does not include maintenance of any built features within POS for which a separate arrangement applies. The Council will not adopt any 'semi-private' amenity areas for the benefit of the residents only. These will remain the responsibility of the developer or residents through maintenance by a factor or through an OA.

3.4 Calculation of the Commuted Sum (CS)

The CS figures given below are based on the 2020/21 maintenance costs, however the CS will be uplifted annually on 1 April in line with the retail price index (RPI) and the appropriate CS will be applied at the time of adoption. For general POS, the CS continues to be based on a 'flat rate' average estimated maintenance cost per dwelling and the period over which it is applied is 20 years so is £800 per dwelling at 2020 prices. In addition the separate CS per play areas is required.

Where the Council only adopts the PPOS, a site-specific CS for other adoptable PPOS and SUDS (if not within PPOS) will be calculated based on the approved plans and schedules provided by the developer. Where there is a planning requirement for exceptionally large POS areas, such as a country park, the Council reserves the right to apply a site specific CS calculation for these areas. This ensures adequate resource to maintain POS.

The separate CS for equipped play areas continues to be based on the 'flat rate' average estimated maintenance cost per play area. This is also for a 20 year period and includes a contribution to the replacement cost (as this will occur during the 20 year CS period). There will be 2 different CS rates related to the age range/size of the play area being £65,500 per LEAP and £82,000 per NEAP/REAP (see Appendix 1 for details). Where a NEAP/REAP is required within a small development the Council may contribute to its delivery.

3.5 Private Maintenance Arrangements

Factoring of non-priority POS (excluding SUDS) will only be permitted using the Development Management Scheme (DMS) model. This is on the basis that Owners' Associations will act in the interests of residents to manage the long-term maintenance of POS.

Enforceable robust planning conditions and agreements must ensure that POS maintained through the DMS is designed and maintained to at least Council standards, it remains accessible to the public and the interests of residents are protected. Owners' title deed conditions must clarify their responsibilities in relation to the DMS and the Council may require sight of the relevant clauses. Title to the POS must remain with a single entity i.e. the OA or body undertaking the maintenance and not be transferred to individual house purchasers.

The DMS factoring arrangements will be kept under close review until the Council is satisfied this is an appropriate means of securing the sustainable long term management of good quality accessible POS. In the event of any Owners' Association requesting transfer to Council maintenance, it will be required to follow the Council's adoption process.

4 Conclusion

This draft policy has been developed to ensure the sustainable future provision and maintenance of good quality, accessible public open space as part of new housing developments. It requires all priority public open space which will be used by the wider public, to be adopted by the Council for the appropriate commuted sum and for the land title to transfer to the Council.

It is accepted that alternative private arrangements can be made through the Development Management Scheme, for non-priority POS which is largely of benefit to specific residential areas. For developments with no PPOS, the developer can choose between Council adoption, or applying a Development Management Scheme. It will be the responsibility of the Owners' Association to ensure the standards of maintenance are appropriate and to arrange for and pay the factor.

Appendix 1 Calculation of Commuted Sum (CS) for 20 Year Period

All figures below are based on the maintenance costs for 2020/21 however the CS will be uplifted annually on 1 April in line with the retail price index (RPI). The appropriate CS will be applied at the time of adoption. This will also apply to the different completed phases of large developments which take several years to complete. The CS will be drawn down at 5% per annum over 20 years following adoption. This will cover the additional costs of maintaining the adopted sites through the Grounds Maintenance (Operations) budget, and play area maintenance contract. When the CS is fully spent maintenance will be funded through the Council's revenue budget.

The 20 year period is a significant increase (double the current policy's 10 year period), although some other councils base their CS on longer periods (25-40 years) any greater increase could lead developers to compromising on the level of POS provision.

Where the Council adopts all POS

The CS is £800 per dwelling in 2020/21 in addition the separate CS for play areas (as detailed below) is required. Where there is a planning requirement for exceptionally large POS areas, such as a country park, the Council reserves the right to apply a site specific CS calculation for these areas.

The CS of £800 per dwelling is applied for a 20 year period by doubling the previous (current 2001 policy) CS of £400 per dwelling calculated for a 10 year period. The CS in the 2001 policy was calculated by averaging the maintenance cost per house across a range of developments to provide a 'flat rate' which has been uplifted in line with inflation since. The use of a flat rate CS in the 2001 policy is continued on the basis that clarity on costs at an early stage in the development process is an advantage to developers and increases efficiency for all concerned.

The £800 CS equates to £40 per house (800/20) which compares favourably to the estimated maintenance cost of £51 per house for existing houses throughout Perth and Kinross (Council annual maintenance budget/ number of houses in 2020).

Where the Council adopt only Priority POS and SUDs

Priority POS includes: play areas, large parks, sports pitches and possibly green corridor path links. In addition, the Council must adopt above ground SUDs being jointly maintained with Scottish Water. The play area CS (as detailed below) will apply plus a site-specific CS will be calculated for other PPOS and SUDs.

Large parks will usually incorporate play and/or pitch facilities and SUDS, further POS areas within the same development if over 1ha and suitable for informal play or ball 'kickabouts', will usually also be considered as large parks. Where play and pitch facilities are not required within a development the same criteria apply. In small settlements areas of public open space smaller than 1ha may be significant and the largest of these will be considered large parks.'

The developer will be required to provide separate area measurements, planting and infrastructure specifications and projected annual maintenance costs for the park, sports areas, key green corridors with paths and SUDS (if not incorporated in another PPOS). This will be used to calculate the projected annual Council costs which will be multiplied by 20 to calculate the CS which applies for the 20 year period.

In small developments with SUDS being jointly maintained with Scottish Water and no other PPOS, a site-specific CS for the SUDS only will be required.

CS for Play Area Maintenance £65,500 per LEAP, £82,000 per NEAP/REAP

Separate CSs for play areas are applied on the basis that not all developments require to provide a play area and that play maintenance costs are higher due to the need for regular inspection, repair and renewal of items of play equipment and the requirement to refurbish the play area at the end of its life (approximately 15 years).

PKC's Play Strategy classifies equipped areas for play as summarised below:

- Local (LEAP) for 4-8 year old children.
- Neighbourhood (NEAP) & Rural (REAP) for both 4-8 and 8-14 year olds.
- Premier (PEAP) for both 4-8 and 8-14 year olds but are only provided in major parks.

A LEAP, NEAP or REAP may be required as part of a development. The average annual maintenance cost (inspection, repair and renewal) was calculated as:

LEAP - £2,400

NEAP/ REAP - £2,900

In addition to the above, a contribution to the replacement cost is included within the CS as this falls within the 20 year CS period. The current cost of replacement after approximately 15 years is:

LEAP - £52K

NEAP/REAP - £73K

The tables below show the calculation of the CS covering 20 years for the relevant play area classifications. This is comprised of a 20 year annual maintenance cost and a third of the expected replacement costs after 15 years. This contribution equates to the 5 years remaining within the 20 year CS period.

Play area classification	CS option 1	Calculation
LEAP	£65,500	£2,400 x 20 = £48,000 for maintenance plus £17,500 for replacement (5 years is a 1/3 of 15 years so 1/3 of £52,000 = £17,333 rounded up to £17,500).
NEAP/REAP	£82,000	£2,900 x 20 = £58,000 for maintenance plus £24,000 for replacement. (5 years is a 1/3 of 15 years so 1/3 of £73,000 is £24,334 rounded down to £24,000)

The annual maintenance element of the play area CS would be drawn down at 5% per annum over 20 years following adoption. The refurbishment element included within the CS, will be drawn down when the play area is due for refurbishment, estimated to be 15 years after adoption.

Appendix 2 Calculation of the Security Deposit (SD)

The SD will be 10% of the CS for any development up to 100 dwellings. For larger developments which are phased the SD will be payable as 10% of the CS for each phase.

The SD has been introduced in response to difficulties with the title transfer process and to guarantee that POS within developments are at adoptable standards prior to the Council accepting maintenance responsibility. It incentivises the developer to ensure adoptable standards are met and the adoption process is concluded. In rare cases where a developer consistently fails to meet standard the Council may adopt the POS (on condition that title and full CS is transferred) and use the SD to fund remedial works. Adoption is intended to be completed in one year following the initial inspection site meeting undertaken by CG and the developer. This time period is required to ensure all planting and other landscaping is successfully established and transfer land title. Immediately after this initial inspection, the developer must initiate the title transfer process and must ensure that the POS meets the required Council standard until title transfer is completed and the CS has been received. The Council will deduct any estimated and/or incurred costs from the SD including any remedial works and further 'snagging' inspection site meetings (charged at £120 per visit) undertaken by the Council. Any remaining portion of the SD thereafter will be deducted from the CS balance payable by the developer.

The SD is intended to guarantee the Council has sufficient funds to carry out any POS remedial works required. It provides an upfront payment from the developer and is therefore much simpler and more robust than a bond-based payment such as used for example in Road Bonds.