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| <b>Report To:</b>       | <b>Environment &amp; Regeneration Committee</b>        | <b>Date:</b>       | <b>29 August 2024</b>    |
| <b>Report By:</b>       | <b>Planning and Building Standards Service Manager</b> | <b>Report No:</b>  | <b>ENVO/048/24/SJ/DH</b> |
| <b>Contact Officer:</b> | <b>Daniel Henderson</b>                                | <b>Contact No:</b> | <b>01475 712420</b>      |
| <b>Subject:</b>         | <b>Infrastructure Levy for Scotland – Planning</b>     |                    |                          |

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## **1.0 PURPOSE AND SUMMARY**

- 1.1  For Decision  For Information/Noting
- 1.2 This report seeks approval of the proposed response to the current public consultation undertaken by Scottish Government on the proposed new Infrastructure Levy for Scotland (ILS).
- 1.3 The ILS is intended to help fund infrastructure projects which are needed as a result of the cumulative impacts of development, or regional projects. These are projects which are less clearly connected to the impacts of developments, and therefore could not readily be funded or provided through section 75 planning obligations.
- 1.4 The ILS is proposed to be introduced to allow planning authorities to capture some of the increase in land value to recoup the cost of its actions and to contribute to future action. The aim is to support development by providing infrastructure and the charges must not make development unviable.
- 1.5 The overarching aim of the ILS is to create an additional, fair and effective mechanism for securing contributions to infrastructure on a wider scale. The ILS is intended to complement rather than replace section 75 planning obligations.

## **2.0 RECOMMENDATIONS**

- 2.1 The Committee are asked to note the contents of this report and approve the draft consultation response attached as Appendix A.

**Stuart W Jamieson**  
**Director, Environment & Regeneration**

### **3.0 BACKGROUND AND CONTEXT**

- 3.1 Development and the creation of better places requires interaction between the private sector and the public sector. The planning system guides where development should take place, whether that is residential or commercial. Most developments are financed and carried out by the private sector, but the public sector needs to facilitate or respond to growth and development by ensuring necessary infrastructure is provided and maintained.
- 3.2 Through the identification of sites in development plans, the granting of planning permission, and investment in infrastructure, the actions of the public sector can increase land value.
- 3.3 The concept of an infrastructure levy is that an element of that land value uplift should be used more directly to contribute to the costs of providing the infrastructure which supports development.
- 3.4 At present, planning obligations under section 75 of the Town and Country Planning (Scotland) Act 1997 are the principal planning mechanism used in Scotland to secure contributions to, or provision of, infrastructure.
- 3.5 The ILS is intended to complement rather than replace section 75 planning obligations, and other mechanisms for securing developer contributions, which will continue to be used to secure site-specific mitigation, on-site infrastructure and affordable housing.
- 3.6 The new Planning (Scotland) Act 2019 provides powers for the Scottish Ministers to make regulations to introduce an Infrastructure Levy, that is, a charge payable to a local authority on development in that local authority's area, to be spent on the provision of infrastructure.
- 3.7 It is intended to supplement rather than replace existing national and local government funding; in most cases it will be one element in a mix of funding for any project.
- 3.8 The National Planning Framework (NPF4) advocates an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking. It seeks to ensure that infrastructure needs are understood and identified early in the development planning process as part of an evidence-based approach.
- 3.9 This approach will help to provide information to support the introduction of the ILS, by identifying the infrastructure which is needed in an area and how and when it will be delivered. It will also strengthen the plan-led nature of Scotland's planning system by targeting infrastructure investment and delivery in a way that works with the spatial strategy of the development plan.
- 3.10 The current stage of consultation is pre-draft of any prospective legislation that would come forward, which, itself, would require to be the subject of consultation. As such, the consultation is seeking feedback to shape the form of the future provisions. In this respect, the proposed draft response to the consultation is seeking to establish from an Inverclyde perspective, that the design of any scheme should not disproportionately benefit more buoyant development markets where private sector activity is more prevalent, land values are higher, and development may be more capable of sustaining levy charges. As such, the response articulates that demand for infrastructure should be considered, rather than the buoyancy of development markets. As a related point, the Council's proposed draft response also seeks that Government is aware of potentially negative impacts of a levy, such as that if adequate provision for development viability is not explicitly built into any scheme, this could discourage development activity in areas that already experience a lack of activity due to viability margins of development.

3.11 The consultation seeks responses on a range of operational matters, such as valuations, exemptions and administration. There is insufficient information on some of the operational matters to provide detailed responses, and, as such, the draft response reiterates strategic principles of the scheme from an Inverclyde Council perspective. It also identifies that additional administration burdens on planning authorities should be considered through simplified regulations and cost coverage of additional activities required to be serviced by the local authority.

**Timetable to Implementation**

3.12 It has to be noted that if no ILS regulation is made by 24/07/2025 then there will be no opportunity to make any regulation at all.

- Summer 2024: stakeholder engagement based on discussion paper until 30th September 2024
- Autumn – Winter 2024: preparation of draft regulations and consultation paper
- Spring 2025: public consultation on draft regulations

3.13 Regulations need to be in Parliament by December 2025 with a view to come into force in Spring 2026.

**4.0 PROPOSALS**

4.1 The Committee are asked to note the contents of this report and approve the draft consultation response attached as Appendix A.

**5.0 IMPLICATIONS**

5.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

| SUBJECT   | YES | NO |
|---|-----|----|
| Financial   | X   |    |
| Legal/Risk  | X   |    |
| Human Resources   |     | X  |
| Strategic (Partnership Plan/Council Plan)                                     | X   |    |
| Equalities, Fairer Scotland Duty & Children/Young People’s Rights & Wellbeing |     | X  |
| Environmental & Sustainability  |     | X  |
| Data Protection   |     | X  |

**5.2 Finance**

One off Costs

| Cost Centre | Budget Heading | Budget Years | Proposed Spend this Report | Virement From | Other Comments |
|-------------|----------------|--------------|----------------------------|---------------|----------------|
| N/A         |                |              |                            |               |                |

Annually Recurring Costs / (Savings)

| Cost Centre | Budget Heading | With Effect from | Annual Net Impact | Virement From (If Applicable) | Other Comments |
|-------------|----------------|------------------|-------------------|-------------------------------|----------------|
| N/A         |                |                  |                   |                               |                |

In relation to financial governance, Local authorities will be required to report annually on the amount of infrastructure levy income collected and spent, what it has been spent on and predictions for future years. Given the purpose of the ILS, it seems clear that the money collected should be accounted for separately and not subsumed into general local authority funding.

### 5.3 Legal/Risk

N/A

### 5.4 Human Resources

N/A

### 5.5 Strategic

The application of the proposed new ILS may have implications for new housing developments and the priority places outlined in the Local Development Plan for targeted regeneration. Application of ILS to development requires to be considered to ensure it does not adversely impact on development activities in Inverclyde Council area.

### 5.6 Equalities, Fairer Scotland Duty & Children/Young People

#### (a) Equalities

This report has been considered under the Corporate Equalities Impact Assessment (EqIA) process with the following outcome:

|   |   |
|---|---|
|   | YES – Assessed as relevant and an EqIA is required.   |
| X | NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, assessed as not relevant and no EqIA is required. Provide any other relevant reasons why an EqIA is not necessary/screening statement. |

#### (b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

|   |  |
|---|--|
|   | YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed. |
| X | NO – Assessed as not relevant under the Fairer Scotland Duty for the following reasons: Provide reasons why the report has been assessed as not relevant.    |

(c) Children and Young People

Has a Children's Rights and Wellbeing Impact Assessment been carried out?

|   |   |
|---|---|
|   | YES – Assessed as relevant and a CRWIA is required.   |
| X | NO – Assessed as not relevant as this report does not involve a new policy, function or strategy or recommends a substantive change to an existing policy, function or strategy which will have an impact on children's rights. |

**5.7 Environmental/Sustainability**

N/A.

Has a Strategic Environmental Assessment been carried out?

|   |   |
|---|---|
|   | YES – assessed as relevant and a Strategic Environmental Assessment is required.  |
| X | NO – This report does not propose or seek approval for a plan, policy, programme, strategy or document which is like to have significant environmental effects, if implemented. |

**5.8 Data Protection**

Has a Data Protection Impact Assessment been carried out?

|   |  |
|---|--|
|   | YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.                                    |
| X | NO – Assessed as not relevant as this report does not involve data processing which may result in a high risk to the rights and freedoms of individuals. |

**6.0 CONSULTATION**

6.1 None.

**7.0 BACKGROUND PAPERS**

7.1 Infrastructure Levy for Scotland – Discussion Paper

<https://www.gov.scot/publications/infrastructure-levy-scotland-discussion-paper/>

## **Infrastructure Levy for Scotland**

### **Questions from the Discussion Paper and Answers (for further review):**

- **Do you agree that the charge should be based on a calculation per square metre of development?**

As a matter of principle, Inverclyde Council notes the Government intent to advance an infrastructure levy, utilising the planning system as a means to secure delivery of funds.

Inverclyde Council would welcome additional funds being directed to improving infrastructure, including if this can be introduced through competent and fair legislative provisions that draw funds from development activity.

Any implementation, however, should operate at a sufficiently strategic level to ensure that it does not have a localised negative impact on appetite for development, noting that development activity is proportionately lower than the most buoyant regions in Scotland.

In this respect, it is likely that infrastructure demands are unlikely to be caused solely as a result of developer demand in the most buoyant areas, and different challenges will be applicable where there may be less development activity – including that infrastructure investment may support access to opportunity and attractiveness of an area for development that private markets are less likely to fix than in more buoyant markets.

Without further exploration of the impact of the matters covered in detailed questions in this questionnaire, it is unclear as to whether some of the discussed mechanisms impact positively, negatively or in a natural manner for Inverclyde. In such instances, this response will confirm the strategic priority should be fair collection and distribution of funds to avoid inadvertently creating further divergence in the socio-economic prospects of different local authority areas.

In particular, Inverclyde Council would note that: -

- The impact of a levy should not be deleterious such that it reduces development activity in the area by impacting on viability of development proposals, which, in many cases is already marginal
- Infrastructure requirements in Inverclyde are likely to exist just as in other local authority areas. The overarching mechanism for distribution of funds should be considered not only at local, but also regional and national level to ensure a fair and proportionate distribution of funds that does not exacerbate inequality by providing a disproportionate amount of funding to buoyant markets; it should also consider redistribution to ensure benefit is experienced in Inverclyde area

In respect of the calculation method, while it is considered that collection method should be simplified to ensure the burden of collection on local authorities and developers is minimised and clear pre-application guidance can be issued.

- **Are there any options or issues we have not considered above?**

No further suggestions.

- **Should the area of the development be calculated by internal or external measurement?**

Gross External Area is already used for calculating planning application fees and for determining whether a development is “permitted development” or requires planning permission. This would provide consistency across all of methods of calculation relating to Planning matters.

- **How should existing property that is demolished or redeveloped be treated in the calculation?**

Demolished property should be exempt from the calculation because it no longer uses infrastructure. Redeveloped property should be treated in the same manner as proposed development.

- **Do you agree that the Levy should be charged as a set amount per square metre?**

This would appear to be a simple method of collection, however, the wider principle matters raised in the Council’s response remain applicable.

- **Is it helpful to use average sale values to set the amount of the Levy?**

Per response to first question, the levy should be responsive to markets, development viability and ensure no unintended consequences are imposed that unduly favour buoyant development markets over others or discourage development in areas that are seeking to support and increase development activity.

- **What other methods could be used?**

Per previous response.

- **How can a set amount best reflect local variation in development value?**

It is unclear how this consideration is addressed, however, the matters raised in response to the first questions also relate.

- **Do you agree that local authorities should set the zones across which the amount is set?**

Local discretion on application of the funding is supported, alongside the principles raised in response to the first question.

- **Should local authorities be allowed to charge the Levy only in parts of their area (or not at all)?**

Local discretion on application of the funding is supported. There may be a need to encourage development in particular areas which could be exempt from the charge or pay a lesser amount due to marginal viability applicable in those regions.

- **How could amounts for commercial and industrial development be set?**

The matters raised in response to the first questions also relate. The Council has strong evidence of market failure in the commercial property market, and setting contributions should recognise a) that supply of sufficient commercial premises is a structural issue Inverclyde Council is continuously seeking to address and b) there currently is no speculative demand for new commercial space because it is not viable for the private sector to provide commercial space.

- **Would it be helpful for local authorities to have discretion to waive or reduce the ILS in individual cases?**

Local discretion on application of the funding is supported. There may be a need to encourage development in particular areas which could be exempt from the charge or pay a lesser amount due to marginal viability applicable in those regions. However, this should be addressed in the mechanisms of implementation rather than ad hoc waiving of contributions to ensure consistent application.

- **Should the impact of planning obligations and other charges / requirements be considered in this assessment?**

The overall impact of development charges should be considered to avoid suppressing development activity in locations where development has marginal viability and inadvertently proportionately benefiting buoyant markets.

- **Do you agree that residential institutions should be excluded from the Levy?**

No – these would use infrastructure just like any other development so should pay the fee, which would be affordable at the low level of charge.

- **Should the Levy be charged on all or some types of affordable housing?**

It is recognised that the guidance indicates that there is concern that market distortion may occur if the levy was not applied to all housing tenures.

- **How should commercial development, purpose-built student accommodation and build-to-rent housing be treated?**

The same as residential institutions.

- **Should renewable energy infrastructure and related development also be subject to the Levy?**

Renewable energy developments have an impact on infrastructure and should be considered in the same terms as other developments impacting on infrastructure within the provisions of the levy.



- **How might that impact on voluntary community benefits? Note, if community benefits are offered by a developer for renewable energy projects this is outwith the decision making on a particular application.**

It is noted that community benefit falls outwith the planning system, however, the current system is stable and provides valuable benefit to impacted communities. It is not clear to Inverclyde Council whether a levy will adversely affect community benefit and the Council would encourage that Government appropriately considers this matter, which is likely to require engagement with industry and community.

- **Do you agree that householder development should be excluded from the Levy?**

While the collective impact of householder development is likely to have some impact cumulatively on infrastructure, it is not considered that there will be sufficient evidence of impact at individual householder level, and it may additionally, be impractical and disproportionate to implement at individual level (unless applied e.g. as a small flat charge to householder application fees).

- **Should self-build housing and very small developments be exempt?**

Not as a matter of principle, but viability considerations set out otherwise in the response should be taken into account.

- **Are there any other types of development that should be exempt?**

The principle should apply based on whether development has a specific and measurable impact or not.

- **Should there be exemptions for charities or other types of developer?**

The principle should apply based on whether development has a specific and measurable impact or not.

- **To what extent should exemptions be set nationally, or at local authorities' discretion?**

The scheme should be designed nationally to operate in a consistent and robust manner, however, local discretion should be accounted for in the system, to ensure the impacts are fair across Scotland. Local discretion should be considered in the system design.

- **When would be the best time for the Levy to be calculated and paid?**

S75 contributions are secured prior to issue of consent to ensure deliverability and it would seem appropriate that any levy contributions are secured prior to consent.

- **What arrangements could be made in the case of development benefitting from PDRs?**

Government will require to consider further mechanisms for payment of any levy contribution for development under permitted development rights. This should not

create undue administrative burden on local authorities and any impact on collection should be funded through any contribution.

- **Is any special statutory provision needed to manage arrangements in LLTNPA?**

No response.

- **Do you agree that the owner of the land at commencement of development should be liable to pay the Levy?**

If the assumption is that the charge is generated from land value uplift from planning permission granting, the design of any implementation mechanism will require to address how this is collected.

- **If not, who should be liable, and how (and when) should they be identified?**

If the assumption is that the charge is generated from land value uplift from planning permission granting, the design of any implementation mechanism will require to address how this is collected.

- **Should there be specific provisions to prevent liability for the Levy being passed on to homebuyers?**

If the assumption is that the charge is generated from land value uplift from planning permission granting, the design of any implementation mechanism will require to address how this is collected.

- **Should there be a penalty fee if the Levy is not paid on time?**

This matter should be addressed by Government in design of any levy scheme.

- **If so, should it be a fixed amount or a proportion of the amount due?**

This matter should be addressed by Government in design of any levy scheme.

- **Should the penalty increase over time if the Levy is still not paid?**

This matter should be addressed by Government in design of any levy scheme.

- **Should the local authority be able to require development to stop if the Levy is not paid?**

This matter should be addressed by Government in design of any levy scheme.

- **Would this be effective?**

This matter should be addressed by Government in design of any levy scheme.

- **Do you have any views on offences relating to failure to pay, failure to stop work, or attempting to evade full payment?**

This matter should be addressed by Government in design of any levy scheme. It is vital that any contribution does not unduly impact on the administrative process for planning authorities and additional processing activities should be covered in levy scheme provisions through recovery of costs from the contribution or planning fees.

- **Are any changes needed to the definition of infrastructure?**

No.

- **Do you agree that the Levy should fund infrastructure identified in the development plan, or should local authorities provide a separate list?**

The purpose of the development plan, including NPF4, is to direct development to the right location and advance plan requirements needed to support development ambitions. The development plan process already goes through assessment of impact of development on infrastructure and the current system may provide some clarity on infrastructure requirements in any given area. It is noted that development contributions is one of the most contested areas of planning in terms of challenge from private sector, so it should ensure it is robustly designed to ensure that need is accepted. Any additional burden to provide evidence through the LDP system could slow plan production, and administration costs and burdens to develop additional infrastructure should be factored into the development of the scheme.

- **How could the costs of administering the Levy be covered?**

By making this as simple as possible with funds paid before planning permission issued. It is vital that any contribution does not unduly impact on the administrative process for planning authorities and additional processing activities should be covered in levy scheme provisions through recovery of costs from the contribution or planning fees.

- **Do you agree that the local authority should publish an annual report on infrastructure levy income and expenditure?**

Yes, this would assist transparency.

- **How many years should reporting cover – six, ten, or a different period?**

No opinions on this.

- **Are any other provisions required on accounting or collection of the Levy?**

No additional comment.

### **Are there any other issues to be considered?**

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**Additional comments are welcome.**