

Infrastructure levy for Scotland: discussion paper (30th September 2024)

Heads of Planning Scotland (HOPS) is the representative organisation for senior planning officers from Scotland's local authorities and national park authorities.

This consultation response summarises key points made by Scottish Planning Authorities, but we note that there will be differences of opinion between authorities and would defer to their own responses on specific local issues.

Setting the payable amount

1. Do you agree that the charge should be based on a calculation per square metre of development? Are there any options or issues we have not considered above?

HOPS agree that the cost should be calculated on square metre of development. Costs based on square metre of development should provide the most transparent system.

HOPS suggest that different development types / use classes will need appropriate rates considering land value differences.

2. Should the area of the development be calculated by internal or external measurement?

HOPS suggest that external measurement may be the preferred method. Information should be readily available from planning applications (for non-residential buildings) of gross floor space based on external measurements.

3. How should existing property that is demolished or redeveloped be treated in the calculation?

HOPS suggest that reuse of brownfield, vacant and derelict land and empty buildings would be subject to reduced rates in order to promote development in line with the objectives of NPF4.

We note that individual planning authorities have differing opinion on the specifics of calculating charges and whether brownfield sites should be subject to Infrastructure Levy.

Setting the levy amount

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

HOPS agree that the Levy should be charged as a set amount per square metre, but as noted above different development types / use classes will need appropriate rates taking into account land value differences.

5. Is it helpful to use average sale values to set the amount of the Levy? What other methods could be used?

HOPS agree that this may be helpful should there be sufficient information for the area as different areas are influenced by different socio-economic factors. We note differing views from planning authorities and would defer to their position based on local circumstances on this matter.

6. How can a set amount best reflect local variation in development value? Do you agree that local authorities should set the zones across which the amount is set?

HOPS agree that local authorities should set the zones. There will be a need to reflect the significant land value differences across Scotland, some local authorities may also wish to set different rates within the local authority area. HOPS would support guidance from Scottish Government on the

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evidence base required to do this as it may be a complicated exercise which may be subject to legal Challenge.

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

HOPS agree there should be flexibility in how local authorities apply Levy charges in their area. This needs to take into account different market conditions within localities. Areas where the authorities are promoting regeneration and are not so attractive for investment would benefit from this flexibility.

8. How could amounts for commercial and industrial development be set?

HOPS noted differing feedback on this matter from planning authorities and would defer to their individual feedback on the matter.

The ILS and other demands on value

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

Yes, the overall HOPS position was that Local Authorities should have discretion to waive or reduce the ILS under certain conditions. This would need to be supported by clear guidance.

The introduction of an ability to waive or reduce fees may also mean the “base rate” for Levy calculations can be set to a more appropriate level.

Authorities did note concern that any function to waive the ILS may result in challenges, to do so conditions should be clearly set to avoid any challenges and that the waiver could be used only for these specific exemptions.

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

Yes, HOPS note there would need to be clear reasoning for the assessment to waive/reduce a fee. The provision of planning obligations and other charges may impact on the viability of development progressing and this needs to be considered carefully with ILS.

What kinds of development should pay the Levy?

11. Do you agree that residential institutions should be excluded from the Levy?

No, the overall position held by HOPS is that residential institutions should not be excluded from the Levy. These developments will still have an impact on the infrastructure and services within an area and should not be excluded from financially contributing to mitigating these effects.

Some authorities noted that there may be local cases where flexibility to exclude may be useful. Examples mentioned were when the authority wished to incentivise development on brownfield land or in a town centre.

12. Should the Levy be charged on all or some types of affordable housing?

HOPS would state yes in most circumstances, 25% affordable housing as part of a larger development should not be exempt and developers would also be subject to contributing to Section 75 agreements /Planning Obligations in these cases.

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There will be cases where affordable housing delivery should be exempt from any additional financial burdens such as 100% of a site being delivered as affordable housing by a Registered Social Landlords in order to meet housing requirements.

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

HOPS agree that these should not be exempt.

14. Should renewable energy infrastructure and related development also be subject to the Levy? How might that impact on voluntary community benefits?

HOPS suggest that these types of development should not be exempt as default, depending on the sites being developed on there may be need for contribution to the Levy, especially in the case of transport infrastructure required to support renewables infrastructure of increasing size and weight and its impact on rural transport infrastructure. HOPS would suggest that regulations and guidance allow for flexibility for local circumstances.

HOPS suggest that Scottish Government provide guidance on links between community benefit funds and the Infrastructure Levy to provide clarity to local authorities, developers and community groups. The levy could be more than just providing infrastructure mitigation and it should be clear it allows spend on infrastructure benefit by Local Authorities.

Exemptions

15. Do you agree that householder development should be excluded from the Levy?

Yes, the overall position from the HOPS discussion was that householder development should be excluded, though the points below should be noted.

Concerns were raised around the resource impact this may have on planning authorities. Some noted if the levy was based on a sqm calculation the administrative burden may be greater than the sum the levy secures.

Additional fees for property enhancement may not encourage residents to improve properties which would work against the place-making agenda.

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

As a default HOPS would suggest this should not be exempt due to the cumulative impact of these developments, there may however be cases where local authorities wish to promote this type of development and offer a local exemption.

17. Are there any other types of development that should be exempt?

HOPS note there may be a requirement to exempt PDRs as they may introduce a level of difficulty in Levy calculation.

18. Should there be exemptions for charities or other types of developer?

Charities or other types of developer should not be exempt by default.

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

The Local Authority position on setting exemptions nationally or locally was mixed.

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Many seen benefits in having clear guidance and thresholds set nationally for consistency and fairness. Particularly for certain types of development, including renewables and roads infrastructure, to avoid complications for cross boundary work.

Local discretion was advised to account for local needs, circumstances, and market conditions. Flexibility was highlighted around the needs for subsidies and land value.

There was some suggestion that a national framework could be adopted with approaches to allow for local conditions. Types of development specifically excluded from the Levy and the thresholds for qualifying to pay the Levy, the formula and use-class weightings for calculations should all be set at national level so that all Scottish Local Authorities begin with a level playing field. Local Authorities should then have the discretion to tailor to a “Place Appropriate” level locally. That would include having the discretion to remove other types of development from paying the Levy, increasing (but not lowering) qualifying thresholds and being able to apply a “locality weighting” to any rate which would reflect local market circumstances.

When should the Levy be calculated, and paid?

20. When would be the best time for the Levy to be calculated and paid?

HOPS suggest there needs to be a level of flexibility built into payments. Many authorities suggested calculation should be done at planning application stage and should be index link if payment is to be phased. An alternative suggestion was also given of the charge being levied at the point where value uplift is crystallised (land transaction etc.) to avoid any viability issues.

The majority of authorities supported some manner of phased or milestone-based payment method on commencement of development (at that stage). Developers might prefer payments upfront (related to land value) for planning certainty but paying on completion may support infrastructure-first approaches and specific types of development.

HOPS also note the administrative and resource challenges that more complicated payment mechanisms may introduce.

21. What arrangements could be made in the case of development benefitting from PDRs?

HOPS note there may be a requirement to exempt PDRs as they may introduce a level of difficulty in Levy calculation.

22. Is any special statutory provision needed to manage arrangements in LLTNPA?

No comment

Who should be liable to pay?

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

Yes, this seems an appropriate way to identify the responsible party.

24. If not, who should be liable, and how (and when) should they be identified?

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HOPS see this as a potential additional burden to authorities, it may be difficult, time consuming and costly for the authority to identify other liable parties.

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

Yes, though as stated this is unlikely to be a concern, we see a benefit in providing clarity within provisions.

Penalties and enforcement

26. Should there be a penalty fee if the Levy is not paid on time?

HOPS agree that a penalty may be beneficial to ensure payment of the Levy.

27. If so, should it be a fixed amount or a proportion of the amount due?

HOPS suggest a proportional amount would be the fairer method of calculating fees. We do note that some other fixed penalty fees do not have their intended effect on ensuring payment.

28. Should the penalty increase over time if the Levy is still not paid?

Yes.

29. Should the local authority be able to require development to stop if the Levy is not paid? Would this be effective?

Yes. This should be an effective lever to ensure payment.

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

HOPS wish to see clear guidance from Scottish Government on penalty fees and how to treat offences.

What should the Levy be spent on?

31. Are any changes needed to the definition of infrastructure?

HOPS note that the terminology for infrastructure has become increasingly broad, yet it still lacks the flexibility for authorities to meet development requirements within some areas. HOPS suggest the definition be reviewed and revised.

HOPS noted the following issues which may benefit from being included or links strengthened under the umbrella of infrastructure, there was a suggestion that a short-term group may be needed to identify levy-worthy projects:

- Brownfield redevelopment
- Climate change mitigation measures
- Community infrastructure including libraries, community centres etc.
- Cultural facilities
- Energy development including renewables and heat networks
- Waste management
- Public realm improvements

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

HOPS would prefer that a separate infrastructure list was introduced. Some level of formal linking to the Local Development Plan would be beneficial to give a level of certainty but the list itself should remain separate for flexibility.

There was concern that if it was identified directly within the LDP this may be problematic to amend, or update should infrastructure requirements change though the lifespan of the LDP.

A separate list would allow local authorities to include projects from existing S75 agreements, providing access to additional funding sources like the Levy.

There was concern raised about how the introduction of the Levy will interact with LDP Delivery Plans, transitional guidance may be required to assist local authorities mid cycle.

33. How could the costs of administering the Levy be covered?

HOPS suggest support could be provided to Local Authorities by Scottish Government to administer the Levy. There will be a significant impact on authority officers dealing with planning obligations.

Accounting for levy income and expenditure

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

HOPS agree that reporting is required for infrastructure income and expenditure as there is a need for the local authority to provide transparency on the matter. This would need to be tied to reporting for other developer contributions and not be read in isolation.

Planning authorities did raise concerns of the additional administrative burden that an additional annual report would introduce. Should a report be required authorities would hope that this would be supported by clear guidance and take into account the limited resources of planning authorities.

Some authorities suggested a longer time period may be sufficient.

35. How many years should reporting cover – six, ten, or a different period?

HOPS suggest a 10-year reporting period may be required to ensure coverage for complex projects.

36. Are any other provisions required on accounting or collection of the Levy?

No further comments

Are there any other issues to be considered?

HOPS fundamentally support the principle of the planning system providing more opportunities to fund infrastructure within the context of robust national, regional and local development planning processes.

The Levy was seen as an opportunity to address limitations in Section 75 agreements. Should the levy be introduced HOPS wish for clear guidance on when a Section 75 agreement should be applied for direct development impacts compared to when the levy should be imposed for cumulative impacts. There is a

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need ensure that both Section 75 agreements and Levy work together without overlapping or duplicating contributions from developers.

HOPS note a number of concerns not directly in response to any of the questions noted above:

1. Authorities wished for further confidence in being able to support the levy especially in cases of cross boundary working, identification of infrastructure priorities and getting agreement at this level is vital to deliver larger infrastructure projects. A list of key national infrastructure projects and publication of guidance on Regional Spatial Strategies were seen as priorities to assist with the implementation of the Levy. It was noted that the Levy might be more applicable for regional or national projects where attributing proportional costs to individual developments is difficult.
2. Rural authorities warned of worsening regional inequalities through land value capture mechanisms.
3. HOPS note the significant resource challenges Local Authorities are currently facing, Section 75 agreements are already a huge constraint on staff time, there was concern if the Levy was not introduced correctly, it may become an additional burden.
4. There was some concern that the legislation was being rushed to meet the sunset clause.
5. HOPS note concerns whether the Levy is likely to bring in to fund the level of strategic infrastructure investment that is needed. It is expected that the levy income amounts will be lower than Section 75 obligations and it was questioned what the infrastructure levy costs could absorb. Examples were given of the impact of education infrastructure, noting it alone may absorb significant amounts of levy funds.
6. HOPS request that Scottish Government work closely with Planning Authorities on the drafting and implementation of the Infrastructure Levy. Authorities require robust legislation and processes that will establish a system that provides opportunities for significant funding to be secured within the context of a proactive and cohesive planning framework.