

# Planning Committee

2.00pm, Wednesday, 15 May 2019

## Internal Audit – Developer Contributions – referral from the Governance, Risk and Best Value Committee

Item number  
Executive/routine  
Wards  
Council Commitments

### 1. For Decision/Action

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- 1.1 The Governance, Risk and Best Value Committee has referred the attached Developer Contributions Audit to the Planning Committee for review and scrutiny.

**Laurence Rockey**

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# Referral Report

## Internal Audit – Developer Contributions – referral from the Governance, Risk and Best Value Committee

### 2. Terms of Referral

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- 2.1 The Governance, Risk and Best Value Committee on 7 May 2019 considered the [Internal Audit Quarterly Update Report: 26 November 2018 to 29 March 2019](#), which detailed progress with the 2018/19 Internal Audit Plan and the outcomes of the completed audits.
- 2.2 One of the completed audits submitted was the Developer Contributions audit, which was rated as “Significant enhancements required”.
- 2.3 The Governance, Risk and Best Value Committee agreed:
  - 2.3.1 To approve the proposals to carry forward three audits into the 2019/20 plan year.
  - 2.3.2 To note the outcomes of the completed audits.
  - 2.3.3 To note progress with the delivery of the 2018/19 Internal Audit (IA) plan and the carried forward 2017/18 audits.
  - 2.3.4 To note that reporting performance against IA key performance indicators will start in the new 2019/20 IA plan year.
  - 2.3.5 To note key IA priorities and ongoing areas of focus.
- 2.4 The Committee also requested that the Developer Contributions audit be referred to both the Finance and Resources Committee and the Planning Committee, for review and scrutiny.

### 3. Background Reading/ External References

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- 3.1 [Internal Audit Quarterly Update Report: 26 November 2018 to 29 March 2019](#) – report by the Chief Internal Auditor.
- 3.2 [Governance, Risk and Best Value Committee – 7 May 2019 – Webcast](#)

## 4. Appendices

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Appendix 1 – Internal Audit – Developer Contributions

# ***The City of Edinburgh Council***

## **Internal Audit**

### **Developer Contributions**

Final Report

1 May 2019

Project Code

**PL1802**

#### **Overall report rating:**

**Significant  
enhancements  
required**

Significant areas of weakness and non-compliance in the control environment and governance and risk management framework that puts the achievement of organisational objectives at risk

# Contents

1. Background and Scope	2
2. Executive summary	5
3. Detailed findings	7
Appendix 1 - Basis of our classifications	16

This internal audit review is conducted for the City of Edinburgh Council under the auspices of the 2018/19 internal audit plan approved by the Governance, Risk and Best Value Committee in March 2018. The review is designed to help the City of Edinburgh Council assess and refine its internal control environment. It is not designed or intended to be suitable for any other purpose and should not be relied upon for any other purpose. The City of Edinburgh Council accepts no responsibility for any such reliance and disclaims all liability in relation thereto.

The internal audit work and reporting has been performed in line with the requirements of the Public Sector Internal Audit Standards (PSIAS) and as a result is not designed or intended to comply with any other auditing standards.

Although there is a number of specific recommendations included in this report to strengthen internal control, it is management's responsibility to design, implement and maintain an effective control framework, and for the prevention and detection of irregularities and fraud. This is an essential part of the efficient management of the City of Edinburgh Council. Communication of the issues and weaknesses arising from this audit does not absolve management of this responsibility. High and Critical risk findings will be raised with senior management and elected members as appropriate.

# 1. Background and Scope

## Background

Developer contributions (also referred to as infrastructure contributions; planning obligations; and section 75 Agreements in Scotland) are contracts entered into between a landowner or developer and the planning authority. They mostly occur in relation to planning applications, and can include financial contributions towards schools, roads, transport, public realm, and affordable housing.

### Relevant legislation and guidance

The Scottish Government's [Supplementary Guidance \(SG16\) on Developer Contributions](#) notes that:

- Section 69 of the Local Government (Scotland) Act 1973 gives authorities the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions. This provision enables agreements to be made which can include financial payments; and
- both Section 75 and 69 Agreements will be used by Councils to secure developer contributions. In cases where a relatively small financial contribution in relation to the overall development cost is involved, it may be possible (with developer agreement) to issue a Council invoice for developer contributions of less than £20,000. Payment of the invoice will be required before the decision notice is issued.

The City of Edinburgh Council's (The Council) [LDP Supplementary Guidance - Developer contributions and infrastructure delivery](#) also notes that:

- developer contributions (except for payments toward land) will be index linked;
- contributions towards education infrastructure will be held for 30 years from the date of construction of new school infrastructure;
- all other contributions will be held for 10 years;
- if the actual cost of delivering the new infrastructure is lower, S75 legal agreements can make provision for the repayment of unused contributions;
- applicants have the opportunity to ask the Council to consider modifying existing S75s to reflect contribution rates that have been updated to take account of up-to-date costs; and
- applicants have the statutory right to apply to the Council for the modification or discharge of a Section 75 agreement.

### Identifying, calculating, and agreeing developer contributions

The Council's Planning team process all planning applications received, including assessing whether developer contributions are required.

The first step is to consider whether the planning application is aligned with the Council's Local Development Plan (LDP) which sets out a development strategy and several proposals across the city for the next 10 years, with supporting infrastructure requirements detailed in the Action Programme (AP). These can be located at [Edinburgh LDP and AP](#).

If the development is included in the LDP and AP, a planning case officer will determine the nature and value of contributions relevant to the planning application. Where the proposed development is not included in the LDP and AP, further engagement with service areas (for example, Transport and Housing) is required to establish the infrastructure requirements; associated costs; and contributions required.

The Planning case officer then co-ordinates a proposal in conjunction with other service areas. The proposal is discussed and negotiated with the developer.

Final proposals are reviewed by planning team managers and presented to the Development Management Sub-Committee (DMSC), for approval once every 2 weeks. Some proposals, with smaller contribution amounts, are not presented to DMSC for review, and are not supported by legal agreements. Following Committee approval, proposals are referred to the Council's Legal team and outsourced to an external legal firm for development of the relevant legal agreements.

The legal agreement specifies the total value of the contribution; phasing of payments; and utilisation of the funds. Some legal agreements also state the requirement for exclusive use of contributions for a specified purpose and/or for a specified duration.

All key documents relating to each stage of the planning application, including final developer legal agreements, are publicly available on the Council's [planning portal](#).

Two planning officers are responsible for monitoring developments across the city; reviewing development progress in their area; and liaising with developers to ensure that contributions are received on time. These planning officers also raise invoices for contributions and inform service areas when contributions have been received.

All development contributions received are administered by Finance (until funds are requested by service areas) via an excel spreadsheet that records all contributions received, and their subsequent allocation to infrastructure developments. The spreadsheet is referenced with the relevant planning application numbers, and dates back to 2003.

Treasury also allocates unutilised developer contributions into temporary investments to earn interest Income.

Planning operates under a Scottish Government Performance Framework which has target of processing every local application within 2 months from the date of application, and major development applications in 4 months or the date defined in the planning processing agreement. The Council, in conjunction with the developer, developed legal agreements for 14 major applications in 2017/18 with an average processing time of 66.2 weeks.

## **Scope**

The objective of this review was to assess the adequacy of the design of the controls established to support development; agreement; and approval of developer contribution legal agreements by Planning and Legal Services, and subsequent administration and application of developer contributions by Finance.

The outcomes of the review also provide assurance on the controls established to manage the following risk identified in the Planning Services risk register:

*Risk that section 75 developer's money is held but not used and that at a future date the developers may want the money back.*

Whilst Finance manages developer contributions, there is no relevant risk recorded in the Finance risk register.

Our work was performed during the period August 2018, and concluded on 31 August 2018. Our opinion and findings are based on the review outcomes as at that date. There was a delay in issuing the draft report due to Internal Audit resourcing challenges, with the initial draft issued on 24 January 2019.

### **Limitations of Scope**

The following areas were specifically excluded from the scope of this review:

- as management has confirmed that there are known weaknesses in the design of the controls supporting the end to end developer contributions process, no testing was performed to confirm how effectively the controls are applied; and
- all other aspects of Planning operations and the performance framework that do not specifically relate to developer contributions.



## 2. Executive summary

### Total number of findings: 3

Summary of findings raised	
High	1. Backlog of legacy developer contributions
High	2. End to end developer contribution processes, procedures, and training
High	3. Ongoing management of developer contributions

### Opinion

Our review confirmed that significant enhancements are required to improve the design of the controls supporting development; agreement; and approval of developer contribution legal agreements by Planning and Legal Services; and ongoing management and allocation of the funds received by Finance.

The need to enhance the design of the control framework supporting developer contributions was initially highlighted by Internal Audit in the review of Planning Controls and the Local Development Plan completed in October 2015, where 4 Medium and 2 Low rated findings were raised.

As part of the self-attestation exercise performed across the Council in February 2018, management confirmed that three of the original Medium rated actions included in this report had not been implemented. These findings reflected the need to ensure that:

1. ensure that progress against delivery of legal agreement terms is effectively monitored in the Uniform system (original implementation date: 1 January 2016);
2. review and address historic contributions totalling circa £2.3M (original implementation date: 31 January 2016); and
3. reinstate preparation and presentation of an annual report to the Corporate Leadership Team (CLT) and Planning Committee detailing agreements concluded; payments received; and infrastructure delivered (original implementation date: 30 June 2016).

The three findings were reopened in May 2018 and are currently reported as overdue based on their originally agreed implementation dates. Management had not addressed these historic findings at the time of our review, as it was agreed with Internal Audit that they would wait for the IA outcomes to determine how best to address both the historic and any new findings raised.

Our current review established that the backlog of historic developer agreements and value of associated contributions has not been fully analysed and quantified to determine where contributions (plus indexation and interest adjustments) should be returned to developers as per Local Government (Scotland) Act 1973 requirements.

Consequently, the original findings that were reopened will be replaced by a new High rated finding (refer 3.1 below), reflecting that the original Medium rated findings were not addressed; that the Council has been exposed to the risks noted below for a further three years; and that the volume and value of legacy contributions is likely to have increased.

The new finding will continue to be reported as overdue based on the agreed implementation date of the original finding (31 January 2016).

A further two High rated findings have been raised following completion of our current review, reflecting the need to enhance controls to ensure that the end to end developer contribution process is clearly defined and documented, with training provided across all services and teams involved; and improve the ongoing financial management of contributions received.

Our detailed findings and recommendations are included at Section 3 below.

### **Management response**

There has been considerable progress since the 2015 Internal Audit findings were raised, but it is accepted that a further phase of work is required.

The position at March 2014, as described at page 7 of the report, was that developer contributions held in investment accounts totalled £7.378m. The 31 March 2019 position has significantly improved, as funds held in investment accounts at March 2019 that were held in these same investment accounts as at March 2014 totalled £2.653m. Based on the date of investment, accepting that this may not be the same as the day the monies were received, £1.154m of the £2.653 March 2019 position was invested in 2013/14.

The report states that of the £7.378m mentioned above, as at 31 March 2014, transport infrastructure contributions aged in excess of five years totalled £5.090m. Of the monies held on investment as at 31 March 2019, the amount which was held on investment prior to 31 March 2009, which is directly comparable to the £5.090m, is now £0.790m, of which £0.491m relates to transport. There is potential for some of these schemes to have been completed, however, and the remaining contributions will be reviewed in the second phase of our work plan as detailed in our management response to finding 1, recommendations 1.1 and 1.2 below.

These actions will be embedded within a robust end to end process to address the points raised in finding 2 below, along with other work to address the IA recommendations.

# 3. Detailed findings

## 1. Backlog of legacy developer contributions

High

### Position as at October 2015

A Medium rated finding was raised in the audit of Planning Controls and the Local Development Plan completed in October 2015 reflecting the need to review legacy developer contributions.

The report highlighted that as at March 2014, developer contributions held in investment accounts totalled £7,377,870. Of this balance, funds aged in excess of 5 years relating to transport infrastructure developments totalled £5,090,108.

Finance confirmed that £3,499,850 of the £5M had been identified as 'other infrastructure' developments that was ring-fenced for specific ongoing projects, and were engaging with Transport Planning to establish the position in relation to the balance of £1,590,258. An additional balance of £706,410 that had not been transferred to investment accounts, was also being investigated, leaving a total historic balance of £2,296,668 to be reviewed and addressed.

### Outcome of the Council wide self attestation exercise completed in February 2018

As part of the self-attestation exercise performed across the Council in February 2018, management confirmed that the actions agreed to address legacy contributions had not been implemented, and the finding was reopened in May 2018.

### Outcomes of current review completed August 2018

Review of the current process established to manage developer contributions confirmed that there remains a backlog of legacy developer contributions where:

- timeframes specified in legal agreements have expired;
- the conditions of the legal agreement have not been met.
- the specified purpose is no longer relevant; and
- the Council has delivered linked infrastructure from the Capital Investment Programme and would be entitled to drawdown corresponding contributions.

This backlog has not been fully analysed to determine where contributions (plus indexation and interest adjustments) should be returned to developers, and the volume of agreements and value of associated contributions has not yet been quantified.

Consequently, the original finding that was reopened will be replaced by this new High rated, reflecting that the original Medium rated finding was not addressed; that the Council has been exposed to the risks noted below for a further three years; and that the volume and value of legacy contributions is likely to have increased.

The new finding will continue to be reported as overdue based on the agreed implementation date of the original finding (31 January 2016).

### Risks

- potentially significant adverse reputational consequences for the Council.

### 1.1 Recommendation – review of developer contributions held in the Finance database

A full review of all developer contributions held in the Finance database should be performed and all entries reconciled to amounts held on deposit and/or the general ledger. All contributions held on

deposit, but marked as “expired” or “due to expire” should be considered as part of the risk-based review detailed at recommendation 2 below;

#### **Agreed management action - review of developer contributions held in the Finance database**

A full review of all developer contributions held in the Finance database will be performed, and all entries reconciled to amounts held on deposit and/or in the general ledger.

**Owner:** Stephen Moir, Executive Director of Resources

**Contributors:** Hugh Dunn, Head of Finance; Alison Henry, Corporate Finance Senior Manager; Rebecca Andrew, Principal Accountant; Michael Thain, Head of Place Development; David Leslie, Chief Planning Officer; John Inman, Service Manager;

**Agreed Implementation Date:** 30 September 2020

#### **1.2 Recommendation – retrospective review of historic developer contribution legal agreements**

1. a risk based review of historic developer contribution legal agreements should be performed to determine whether:
  - the terms of the agreement have been fulfilled and the associated developer funds used on relevant infrastructure developments;
  - the terms of the agreement have or have not been fulfilled, and no developer contributions were received; and
  - the terms of the agreement have not been fulfilled and the Council is currently holding funds that should be returned to the developer.
2. where agreements have not been fulfilled, and no contributions were received, the developers should be contacted to confirm that the agreement is void and no longer applicable;
3. where agreements have not been fulfilled and funds are held by the Council, the developer should be contacted to arrange reimbursement of funds (including interest); and
4. a check should be performed prior to reimbursement to confirm that the value to be refunded has been accurately calculated.

#### **Agreed Management Action – retrospective review of historic developer contribution legal agreements**

Planning has worked with Finance to identify the status of legacy contributions identified in 2015. Planning accepts that the status of the remaining £2.3 million backlog needs to be identified, and any associated actions identified and recorded.

Whilst an agreed implementation date of 30 September 2020 is noted below, priority will be given to completing these actions as quickly as possible.

1. the audit recommendations detailed above will be implemented. Finance and planning will work together to determine the risk based sample to be included in the review.
  - for the sample selected, Planning will determine whether or not the terms of the agreement have been fulfilled
  - where agreements have been fulfilled, Finance will determine whether developer contributions have been received and applied.
  - where agreements have not been fulfilled and the Council is holding developer funds, the management action specified at 2.3 below will be applied.

2. an internal record will be maintained of agreements that have not been fulfilled to prevent services from drawing down contributions to support any development work. Developers will not be advised that agreements are void and no longer applicable, as (under legislation) only developers can seek to discharge the agreement; and
3. and 4 where agreements have not been fulfilled and funds are held by the Council, the developer will be contacted (where they can be traced) to ascertain whether they would accept reimbursement of funds. Where this is the case, a value should be agreed between the Council and the developer that reflects interest and indexation (where applicable) and reimbursed.

**Owner:** Paul Lawrence, Executive Director of Place

**Contributors:** Michael Thain, Head of Place Development; David Leslie, Chief Planning Officer; John Inman, Service Manager; Hugh Dunn, Head of Finance; Alison Henry, Corporate Finance Senior Manager; Rebecca Andrew, Principal Accountant; Nick Smith, Head of Legal and Risk; Kevin McKee, Senior Legal Manager; Graham Nelson, Senior Solicitor.

**Agreed Implementation Date:** 30 September 2020

## 2. End to end developer contribution processes, procedures, and training

**High**

Review of the end to end process applied to determine the infrastructure requirements associated with planning applications; the associated costs; contributions required from developers; and ensure that funds are received within agreed timeframes established that:

- the end to end process has not been documented. Consequently, inconsistent processes based on individual preferences are applied by planning officers covering the East and West of the city;
- no detailed guidance is available to support planning offers with the assessment of infrastructure requirements (via consultation and review of the Action Programme (AP)) associated with proposed planning developments, and determination of costs;
- only one case officer is assigned to each planning application, and the current position in relation to the progress with the planning application and developer contributions is not consistently recorded on the Uniform system;
- there is no standard pro forma or guidance detailing the nature and granularity of the details required from other services to support preparation of the developer contribution proposal and finalisation of the legal agreement;
- developer contribution proposals for submission to the Development Management Sub-Committee (DMSC), and legal agreements are inconsistent in terms of structure and content;
- no ongoing quality assurance is performed by planning managers throughout the process. Whilst developer contribution proposals are reviewed prior to submission to the DMSC, a standard review process is not applied;
- estimated costs and associated contributions are not shared with developers prior to sending them the draft legal agreement;
- for developments where low value contributions are required, a legal agreement is not always established. IA was informed that a cheque is received from the developers and banked;
- the majority of developer contribution legal agreements are outsourced to external legal firms for preparation, with the associated costs incurred by the developers. No check is performed by the internal legal team to ensure that sufficient information has been provided to support preparation of the draft agreement, and there is also a significant difference between the internal and

external legal rates applied to calculate the recharge to developers, to ensure that they are not financially disadvantaged;

- Finance is not notified when contributions are finally agreed with developers. Instead, they are notified by Planning (although not always consistently) when the first contribution instalment is received;
- key person dependencies have been identified in Finance and Planning in relation to recording and monitoring contributions received;
- induction and ongoing training has not been developed and implemented for all planning officers and service areas involved in determining; agreeing; and managing developer contributions; and
- There is no established process to communicate with the Action Programme (AP) Board to ensure that they are made aware of all developer contributions received; funding gaps between expected and actual developer contributions enabling the AP financial model to be updated; and details of additional infrastructure requirements identified by planning case officers or consultees.

## Risks

- lack of knowledge and understanding of the end to end developer contribution process;
- delays in finalising and agreeing developer contributions, resulting in delays in planning approval;
- Key person dependencies;
- insufficient information to support developer contribution proposals for submission to the Development Management Sub-Committee (DMSC) that could potentially result in inappropriate decisions;
- insufficient information provided to external legal firms to support preparation of legal agreements resulting in significant volumes of queries; delays; and increased costs;
- significant changes to draft legal agreements due to lack of ongoing developer consultation resulting in delays and increased costs;
- developer contributions received are not identified and appropriately allocated;
- unutilised contributions are not reallocated (where permitted) or returned to developers;
- infrastructure requirements included in the Action Programme (AP) supporting the Local Development Plan (LDP) and the supporting costing model are not updated to reflect any changes arising from individual planning applications; and
- potential breach of historic developer contribution legal agreements.

### 2.1 Recommendation – process documentation, guidance, and standardised documentation

- 1 the end to end process applied to determine the infrastructure requirements associated with planning applications; the associated costs; contributions required from developers (including interest and indexation to be applied to contributions received); finalise and agree legal agreements; ensure that funds are received within agreed timeframes; management of contributions received: and spending/delivery of infrastructure will be clearly documented and agreed by all service areas involved in the process;
- 2 the process will be immediately updated to reflect any significant legislative changes, and re communicated. Otherwise the process will be reviewed and refreshed annually;
- 3 an internal threshold should be established detailing the value and complexity threshold for infrastructure developments above which a legal agreement is required, and the contribution threshold for the Management Sub-Committee (DMSC) considering applications should be reviewed in parallel.

- 4 detailed guidance will be developed and implemented for planning officers detailing the end to end process and timeframes required from a planning perspective. These will include (but should not be restricted to) the need to document whether a legal agreement is required; the requirement to engage with developers throughout the process; confirmation of how funds will be received and identified (for example invoices issued with funds received via cheque payment or direct credit); and the need to ensure that the AP Board and Finance are made aware of all agreed developer contributions; and
- 5 standard documents will be designed and implemented to ensure that all information required is obtained from service areas; that consistent assessments are used in planning reports; consistently formatted reports are provided to Committee; and that all necessary information is provided to external solicitors.

#### **Agreed Management Action – process documentation, guidance, and standardised documentation**

Planning is working with Finance and Legal Service on a number of key areas of the end to end process. Significant progress has been made including; the pilot and use of a transport officer proforma, to identify and detail infrastructure requirements; and the introduction of standard legal agreements. Planning continues to work with legal services to finalise developer contribution templates for planning officers and this will inform a standardised approach to key consultee infrastructure requests.

All Internal Audit recommendations will be implemented as detailed above (with the exception of 3), with Planning leading the process.

As an alternative to IA recommendation 3, the rationale detailing why either no agreement; or a section 69 or 75 agreement has been developed and applied, will be documented.

**Owner:** Paul Lawrence, Executive Director of Place

**Contributors:** Michael Thain, Head of Place Development; David Leslie, Chief Planning Officer; John Inman, Service Manager; Hugh Dunn, Head of Finance; Alison Henry, Corporate Finance Senior Manager; Rebecca Andrew, Principal Accountant; Nick Smith, Head of Legal and Risk; Kevin McKee, Senior Legal Manager; Graham Nelson, Senior Solicitor.

**Agreed Implementation Date:** 31 March 2020

#### **2.2 Recommendation – quality assurance**

- 1 Planning will develop and implement a developer contribution quality assurance process, designed to ensure that the end to end process has been consistently applied and that there is sufficient detail recorded prior to consideration of applications through the delegated or Development Management Sub-Committee (DMSC) process and prior to legal services instruction;
- 2 quality assurance checks will also ensure that planning officers have accurately recorded the current position in relation to both planning application and developer contribution on Uniform or any other appropriate system;
- 3 A standard checklist will be designed and used to record the outcomes of quality assurance reviews; and
- 4 All quality assurance findings must be addressed prior to submission of proposals to the DMSC and legal.

#### **Agreed Management Action – quality assurance**

Planning has made significant progress on specific parts of the contributions process, and will deliver other improvements to this process to address the recommendations. The capture and tracking of the financial contributions will be performed using the Council's PPSL accounts receivable system.

The Planning team's existing quality assurance process will be extended to include the end to end developer contributions process to be designed and applied as per recommendation 1.

The quality assurance process will cover the areas recommended by Internal Audit at 1 to 4 above, including use of the Council's PPSL accounts receivable system to record and monitor financial contributions received

ISO accreditors will also be requested to include the Developer contributions quality assurance process within the scope of their review which is scheduled for completion by October 2020.

**Owner:** Paul Lawrence, Executive Director of Place

**Contributors:** Michael Thain, Head of Place Development; David Leslie, Chief Planning Officer; John Inman, Service Manager; Hugh Dunn, Head of Finance; Alison Henry, Corporate Finance Senior Manager; Rebecca Andrew, Principal Accountant; Nick Smith, Head of Legal and Risk; Kevin McKee, Senior Legal Manager; Graham Nelson, Senior Solicitor.

**Agreed Implementation Date:** 31 December 2020

### 2.3 Recommendation – legal agreements and rates

- 1 Legal should design and implement a review of all information provided by planning prior to submission to external legal firms to ensure that it is complete, and can be easily understood to minimise the volume of subsequent queries and associated costs; and
- 2 Legal should revisit their internal charging structure in relation to developer contributions to ensure that these are aligned with the rates charged by external legal firms.

### Agreed Management Action – legal agreements and rates

Legal Services has developed a contributions template for use by planning officers prior to the determination of an application where contributions are required. Planning will continue to work with Legal Services to refine and finalise the template.

- 1 Legal Services will develop a template which will contain a drop down list of all information required to be filled in by Planning officers for every developer agreement, prior to a minded to grant status being issued by Planning.
- 2 To ensure consistency, Legal Services will apply a revised hourly charge rate based on a blended rate of the charges made by existing external firms preparing developer contribution legal agreements. This rate will be reviewed annually to ensure consistency with rates being charged under any new framework

**Owner:** Stephen Moir, Executive Director of Resources

**Contributors:** Nick Smith, Head of Legal and Risk; Kevin McKee, Senior Legal Manager; Graham Nelson, Senior Solicitor.

**Agreed Implementation Date:**

- 30 June 2019 for implementation of template application of revised hourly charge; and
- 30 June 2020 for completion of first annual review of hourly charges

### 2.4 Recommendation – Induction and refresher training



- 1 Induction and ongoing refresher training covering all aspects of the developer contribution process should be designed and implemented (at least annually) for all new and existing employees; and
- 2 Training content should be reviewed on a regular basis (at least annually) to ensure that any legislative and process changes are reflected.

### Agreed Management Action – induction and refresher training

Planning has a continuous programme of officer training which has included legal agreements, developer contributions and the Action Programme. Planning have scheduled refresher training on contributions and invited officers from other services.

- 1 All Internal Audit recommendations related to induction and refresher training will be implemented as detailed above. The training will include those employees from Planning; Finance and Legal Services who are involved in the developer contributions process; and
- 2 Training content will be reviewed at least annually, and will be updated (when required) to reflect any legislative and process changes.

**Owner:** Paul Lawrence, Executive Director of Place

**Contributors:** Michael Thain, Head of Place Development; David Leslie, Chief Planning Officer; John Inman, Service Manager; Hugh Dunn, Head of Finance; Alison Henry, Corporate Finance Senior Manager; Rebecca Andrew, Principal Accountant; Nick Smith, Head of Legal and Risk; Kevin McKee, Senior Legal Manager; Graham Nelson, Senior Solicitor.

**Agreed Implementation Date:** 30 September 2019

### 3. Ongoing management of developer contributions

**High**

Our review of the ongoing management of developer contributions received established that:

- whilst Planning advises Finance of expected contributions, accurate matching of funds received to the relevant development is not always possible as payments received do not include references to the supporting planning applications;
- Finance does not have sufficient information to allocate developer contributions against the specific general ledger cost centres associated with each development. Instead, funds are allocated to a general cost centre within the Service Area;
- where only part of a contribution can be accurately matched to a specific development, the balance is posted to an 'unallocated money' account. Finance circulate details of the funds included in this account weekly to relevant teams across the Council to identify owners and allocate the funds;
- developer contributions are not included as a standing agenda item in meetings held between Finance and other service areas
- the only record of the value of individual developer contributions is a spreadsheet (the contribution spreadsheet) maintained by one Finance team member;
- the contribution spreadsheet is not reconciled to the value of developer contributions recorded in the relevant general ledger accounts, or funds used for investment by Treasury. The contributions spreadsheet is also not shared with the service areas; and
- no evidence is currently required to support drawdown of s75 funds by either services or Treasury.

**Risk**

- funds received are not identified as developer contributions; are not allocated to the correct general ledger codes related to the specific development; and / or remain in the 'unallocated money account' for a significant period;
- inability to accurately trace and identify developer contributions in the event of a request from a developer to modify or discharge the agreement;
- the developer contribution spreadsheet (the only record of contributions received) may be incomplete and / or inaccurate; and
- inappropriate / unauthorised use of developer contributions that is not aligned with the purpose specified in legal agreements.

### 3.1 Recommendation – identification and allocation of developer contributions

- 1 Finance will be provided with details of all finalised developer contribution legal agreements; planning application references; and relevant general ledger codes to enable identification and accurate allocation of developer contributions received;
- 2 developers will be asked to quote either the legal agreement or planning application reference on all contribution payments;
- 3 Finance will engage with planning to obtain guidance re treatment of funds received in instances where the expected contributions detailed in the legal agreement do not match the actual value received;

### Agreed Management Action – identification and allocation of developer contributions

Planning has commenced use of the PPSL accounts receivable system. The use of the system by planning officers ensures clear invoicing for individual contributions, streamlined payments and robust cross departmental referencing and addresses the recommendations above. This system is shared with Finance and ensures contribution payments are easily tracked back to specific infrastructure requirements.

Management accepts the control weaknesses identified considers that the following actions represent a more robust response:

1. planning will issue invoices for all developer contributions falling due using the PPSL accounts receivable system (or its successor), ensuring income is coded to the correct general ledger codes;
2. developers will be asked to quote the invoice numbers on all contribution payments.
3. recommendation 3 is accepted - Finance will engage with planning to obtain guidance re treatment of funds received in instances where the expected contributions detailed in the legal agreement do not match the actual value received

**Owner:** Paul Lawrence, Executive Director of Place

**Contributors:** Michael Thain, Head of Place Development; David Leslie, Chief Planning Officer; John Inman, Service Manager; Hugh Dunn, Head of Finance; Alison Henry, Corporate Finance Senior Manager; Rebecca Andrew, Principal Accountant; Nick Smith, Head of Legal and Risk; Kevin McKee, Senior Legal Manager; Graham Nelson, Senior Solicitor.

**Agreed Implementation Date:** 31 March 2020

### 3.2 Recommendation – ongoing maintenance of developer contributions

- 1 the contribution spreadsheet maintained by Finance will continue to be maintained as the main record of developer contributions received;

- 2 the spreadsheet will be regularly updated to reflect developer contributions received; allocation of funds to service areas; and transfer to, and receipt of funds from, Treasury;
- 3 allocation of interest and indexation applied (where relevant) to developer contributions will also be recorded on the spreadsheet;
- 4 the content of the spreadsheet will be regularly reconciled to the relevant general ledger cost centres where developer contribution funds have been allocated, to confirm completeness and accuracy;
- 5 reconciliations performed will be subject to ongoing management review to confirm that the position has been accurately reconciled, and all exceptions addressed;
- 6 the spreadsheet will be shared with Planning on an ongoing basis (at least monthly) and will be discussed at meetings held between Finance and Planning to confirm completeness and accuracy of content and address any unresolved issues;
- 7 appropriate controls will be developed and applied to the spreadsheet (for example, password protection and cell protection) to ensure that the content cannot be inadvertently amended;
- 8 previous versions of the spreadsheet will be maintained to ensure that any historic queries raised in relation to developer contributions can be addressed;
- 9 guidance on management of developer contributions will be developed and applied to reduce the potential risk of key person dependency; and
- 10 Finance will request evidence to support drawdown of developer contributions from service areas. Copies of the evidence provided will be retained with the contribution spreadsheet to provide a clear audit trail of utilisation of developer contributions.

#### **Agreed Management Action – ongoing maintenance of developer contributions**

All recommended actions will be implemented as set out above.

**Owner:** Stephen Moir, Executive Director of Resources

**Contributors:** Hugh Dunn, Head of Finance; Alison Henry, Corporate Finance Senior Manager; Rebecca Andrew, Principal Accountant

**Agreed Implementation Date:** 30 September 2020

# Appendix 1 - Basis of our classifications

Finding rating	Assessment rationale
<b>Critical</b>	<p>A finding that could have a:</p> <ul style="list-style-type: none"> <li>• <b>Critical</b> impact on operational performance; or</li> <li>• <b>Critical</b> monetary or financial statement impact; or</li> <li>• <b>Critical</b> breach in laws and regulations that could result in material fines or consequences; or</li> <li>• <b>Critical</b> impact on the reputation or brand of the organisation which could threaten its future viability.</li> </ul>
<b>High</b>	<p>A finding that could have a:</p> <ul style="list-style-type: none"> <li>• <b>Significant</b> impact on operational performance; or</li> <li>• <b>Significant</b> monetary or financial statement impact; or</li> <li>• <b>Significant</b> breach in laws and regulations resulting in significant fines and consequences; or</li> <li>• <b>Significant</b> impact on the reputation or brand of the organisation.</li> </ul>
<b>Medium</b>	<p>A finding that could have a:</p> <ul style="list-style-type: none"> <li>• <b>Moderate</b> impact on operational performance; or</li> <li>• <b>Moderate</b> monetary or financial statement impact; or</li> <li>• <b>Moderate</b> breach in laws and regulations resulting in fines and consequences; or</li> <li>• <b>Moderate</b> impact on the reputation or brand of the organisation.</li> </ul>
<b>Low</b>	<p>A finding that could have a:</p> <ul style="list-style-type: none"> <li>• <b>Minor</b> impact on the organisation's operational performance ; or</li> <li>• <b>Minor</b> monetary or financial statement impact; or</li> <li>• <b>Minor</b> breach in laws and regulations with limited consequences; or</li> <li>• <b>Minor</b> impact on the reputation of the organisation.</li> </ul>
<b>Advisory</b>	<p>A finding that does not have a risk impact but has been raised to highlight areas of inefficiencies or good practice.</p>