

ABERDEEN CITY COUNCIL

COMMITTEE	City Growth and Resources
DATE	10 November 2021
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Developer Obligations Update
REPORT NUMBER	COM/21/246
DIRECTOR	Gale Beattie – Director of Commissioning
CHIEF OFFICER	David Dunne – Interim Chief Officer of Strategic Place Planning
REPORT AUTHOR	David Berry – Developer Obligations Team Leader
TERMS OF REFERENCE	1.1.1

1. PURPOSE OF REPORT

- 1.1 Following the instruction from Council on 10th March 2021, this report summarises the status of the developer obligations fund (at 30th September 2021) and provides an overall summary of the extant developer obligations which the Council has entered into with developers. It also provides an update on the receipt and spend of developer obligations during the first nine months of the 2021 calendar year.

2. RECOMMENDATIONS

That the Committee:-

- 2.1 Note the contents of this report; and
- 2.2 Note that future reports on developer obligations will be prepared annually as soon as practicable after the end of each financial year in accordance with the emerging requirements of the Planning (Scotland) Act 2019.
- 2.3 Instruct the Chief Officer of Strategic Place Planning, to monitor risks associated with the Developer Obligations process and to highlight these to the Chief Officer of Finance so that an assessment of financial risk can be carried out and included in the Councils financial performance and budget reports.

3. BACKGROUND

Background to Developer Obligations

- 3.1 Although new development can have a positive impact on an area by providing new homes, jobs and economic development, it can also put pressure on existing infrastructure such as roads, schools, community centres, health

services, and sport and recreation facilities. Where existing infrastructure and facilities do not have enough capacity to absorb the extra demand that new development will create, financial contributions can be sought from developers to mitigate the impact of their proposals. These contributions must be used to provide new or enhanced infrastructure and facilities, and they are generally referred to as Developer Obligations (DOs).

- 3.2 DOs can be used to mitigate the direct impacts of individual developments or the cumulative impacts of a number of developments in an area. They are used to make development proposals acceptable in cases where planning permission would otherwise have to be refused.
- 3.3 It is important to note that all DOs must meet a series of strict tests in national planning policy¹. In particular, DOs cannot be used to fund improvements to infrastructure and facilities that are not needed as a direct consequence of development. Similarly, DOs cannot be used to resolve pre-existing problems or deficiencies with infrastructure and facilities.
- 3.4 Relevant Council services and external partner agencies (eg NHS Grampian and Sport Aberdeen) are consulted at the planning application stage for all development proposals which exceed specific size thresholds. Their advice is then used to help determine the DO requirements for individual development proposals based on site-specific circumstances and with reference to policies in the Local Development Plan.
- 3.5 Having established the DO requirements for individual developments, the DOs are normally secured through a legal agreement between the Council and the applicant/developer. The legal agreement is entered into when planning permission is granted.
- 3.6 The legal agreement will outline what DOs are required and when they are payable. DO payments are often made in instalments linked to the rate of development on site. This means it is inherently difficult to predict when DO payments are likely to be received, as the rate of development on any site can be influenced by a range of external factors beyond the Council's control. In some cases, the agreed DO payments may not be received at all (eg if the planning permission is not implemented, or if the development does not progress beyond a specified payment 'trigger point').
- 3.7 The legal agreement for each development will also usually specify what the relevant DOs are to be spent on and the period within which they must be spent. The spend conditions are generally very clearly defined (eg to deliver specific works at a particular school) and the period for spending DOs is usually a specified number of years from the date when payment is received in full (periods of 5-7 years are typical). The DOs must be used in accordance with the spend terms set out in the legal agreement, otherwise there is a significant risk that they may need to be repaid to the developer. In most cases there is therefore very little flexibility in how DOs can be spent.

¹ Circular 3/2012: ['Planning Obligations and Good Neighbour Agreements'](#).

- 3.8 Once DOs have been paid by developers, it is normally the responsibility of relevant Council services and external partners (eg NHS Grampian and Sport Aberdeen) to use the funds to deliver appropriate enhancements to local infrastructure and facilities. In order to facilitate this, the relevant services and partner organisations are provided with regular updates which summarise the DO that has been collected and identify how and when it needs to be spent.

DO Fund Status (30th September 2021)

- 3.9 Table 1 overleaf provides an extract from the DO database which summarises the status of the DO fund at 30th September 2021. The table categorises the DOs that have been paid to the Council according to the overall purpose for which they are to be used. However, as outlined in paragraph 3.7 above, it is important to note that each individual contribution will usually also have more specific spend terms which must be complied with.
- 3.10 As can be seen from Fig 1.0 and Table 1, the Council currently holds DO funds amounting to approximately £25.3m. Education contributions account for the highest proportion of these funds (approx. 44% of the total). Roads and transport related contributions also account for a high proportion (approx. 21% of the total), with affordable housing accounting for just under 10% of the total. Taken together, these types of contribution account for just under 75% of the total DO funds currently held by the Council.
- 3.11 It is significant to note that of the £25.3m DO payments currently held by the Council, approximately £15m is made up of part paid contributions. These are contributions from ongoing developments, where the DO is being paid in instalments. The Council is unlikely to be under any immediate time pressure to spend these contributions as the time period for spending DO does not normally start until payment has been received in full.
- 3.12 Furthermore, records from the DO database indicate (Fig 2.0) that of the £10.3m fully paid contributions, approximately £1.4m are upfront payments which have been received from sites where development has not yet commenced. The Council is unable to spend these DO funds at present, as they may need to be returned if development does not begin on the relevant sites and the planning permissions subsequently expire.

Total Current Fund £25,300,000

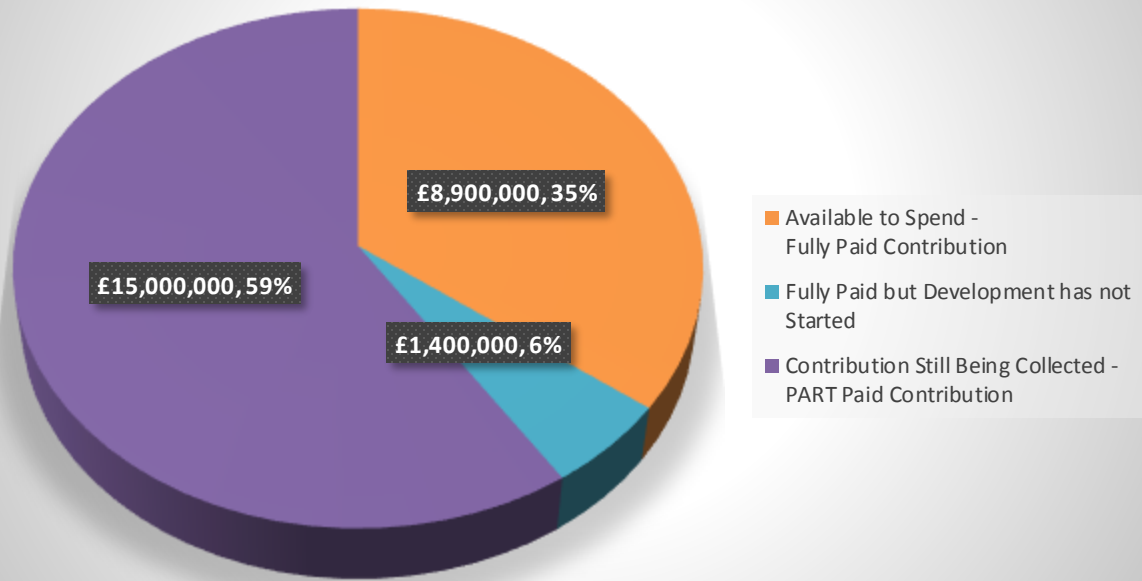


Fig 1.0 – Current DO Fund

Fully Paid Contributions (£10.4million = £8.9+£1.4 million)

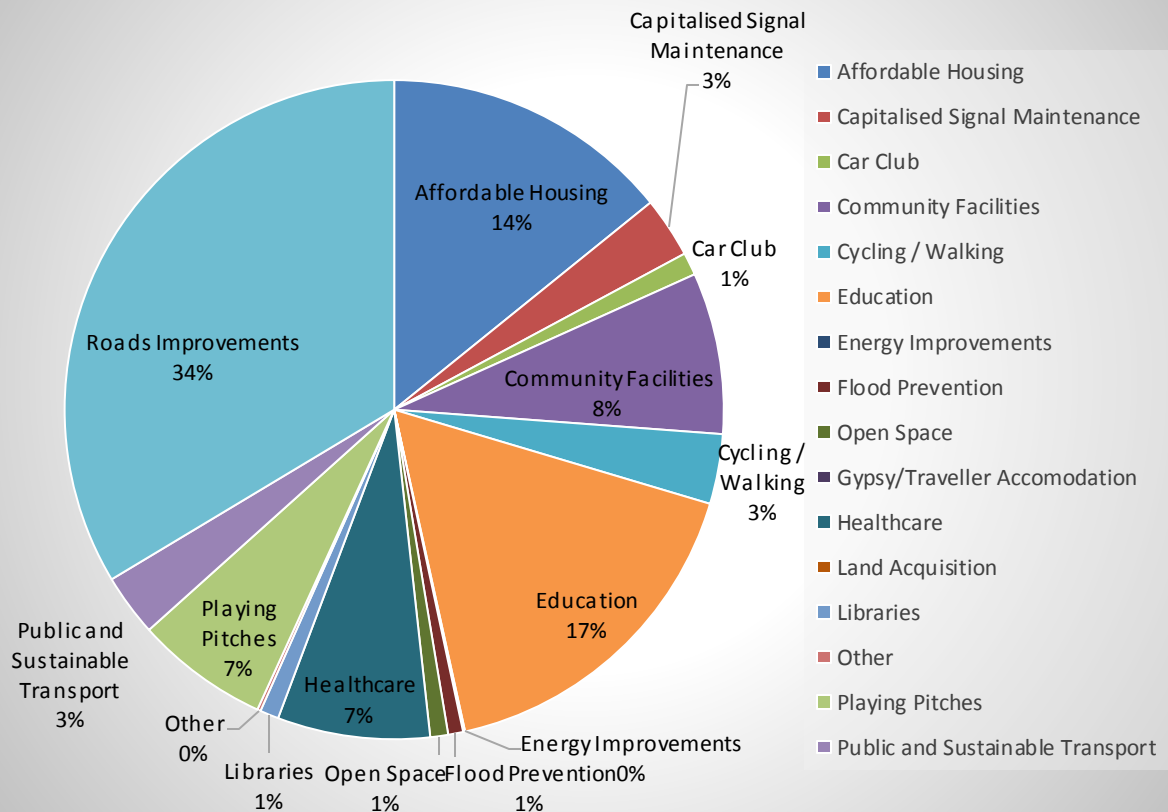


Fig 2.0 – Breakdown of Fully Paid Contributions Available to Spend

Table 1: Overall Status of the DO Fund (30th Sep 2021)

Contribution Type / Purpose	Available Balance (£)	
Affordable Housing	Fully Paid Contributions	£ 1,452,242
	Part Paid Contributions	£ 770,522
	Total	£ 2,222,764
Capitalised Signal Maintenance	Fully Paid Contributions	£ 304,114
	Part Paid Contributions	£ -
	Total	£ 304,114
Car Club	Fully Paid Contributions	£ 113,585
	Part Paid Contributions	£ 1,417
	Total	£ 115,002
Community Facilities	Fully Paid Contributions	£ 811,182
	Part Paid Contributions	£ 858,777
	Total	£ 1,669,959
Core Paths / Cycling / Pedestrian Facilities	Fully Paid Contributions	£ 350,722
	Part Paid Contributions	£ 199,755
	Total	£ 550,477
Education	Fully Paid Contributions	£ 1,734,191
	Part Paid Contributions	£ 9,323,106
	Total	£ 11,057,297
Energy Improvements	Fully Paid Contributions	£ 9,800
	Part Paid Contributions	£ -
	Total	£ 9,800
Flood Prevention	Fully Paid Contributions	£ 75,000
	Part Paid Contributions	£ -
	Total	£ 75,000
Grounds Maintenance / Open Space / Play Equipment	Fully Paid Contributions	£ 89,689
	Part Paid Contributions	£ 3,533
	Total	£ 93,222
Gypsy/Traveller	Fully Paid Contributions	£ -
	Part Paid Contributions	£ 163,204
	Total	£ 163,204
Healthcare Facilities	Fully Paid Contributions	£ 765,765
	Part Paid Contributions	£ 880,861
	Total	£ 1,646,626
Land Acquisition	Fully Paid Contributions	£ -
	Part Paid Contributions	£ 291,311
	Total	£ 291,311
Libraries	Fully Paid Contributions	£ 93,981
	Part Paid Contributions	£ 68,388
	Total	£ 162,369
Multiuse / Other	Fully Paid Contributions	£ 16,770
	Part Paid Contributions	£ 540,032
	Total	£ 556,802
Playing Pitches / Sport & Recreation	Fully Paid Contributions	£ 669,559
	Part Paid Contributions	£ 408,276
	Total	£ 1,077,835
Public Transport Unit / Sustainable Transport	Fully Paid Contributions	£ 311,425
	Part Paid Contributions	£ 100,164
	Total	£ 411,589
Road Improvements / Streetscape / Traffic Management / TRO	Fully Paid Contributions	£ 3,440,715
	Part Paid Contributions	£ 1,417,620
	Total	£ 4,858,335
Overall Total	Fully Paid Contributions	£ 10,238,740
	Part Paid Contributions	£ 15,026,966
	Total	£ 25,265,706

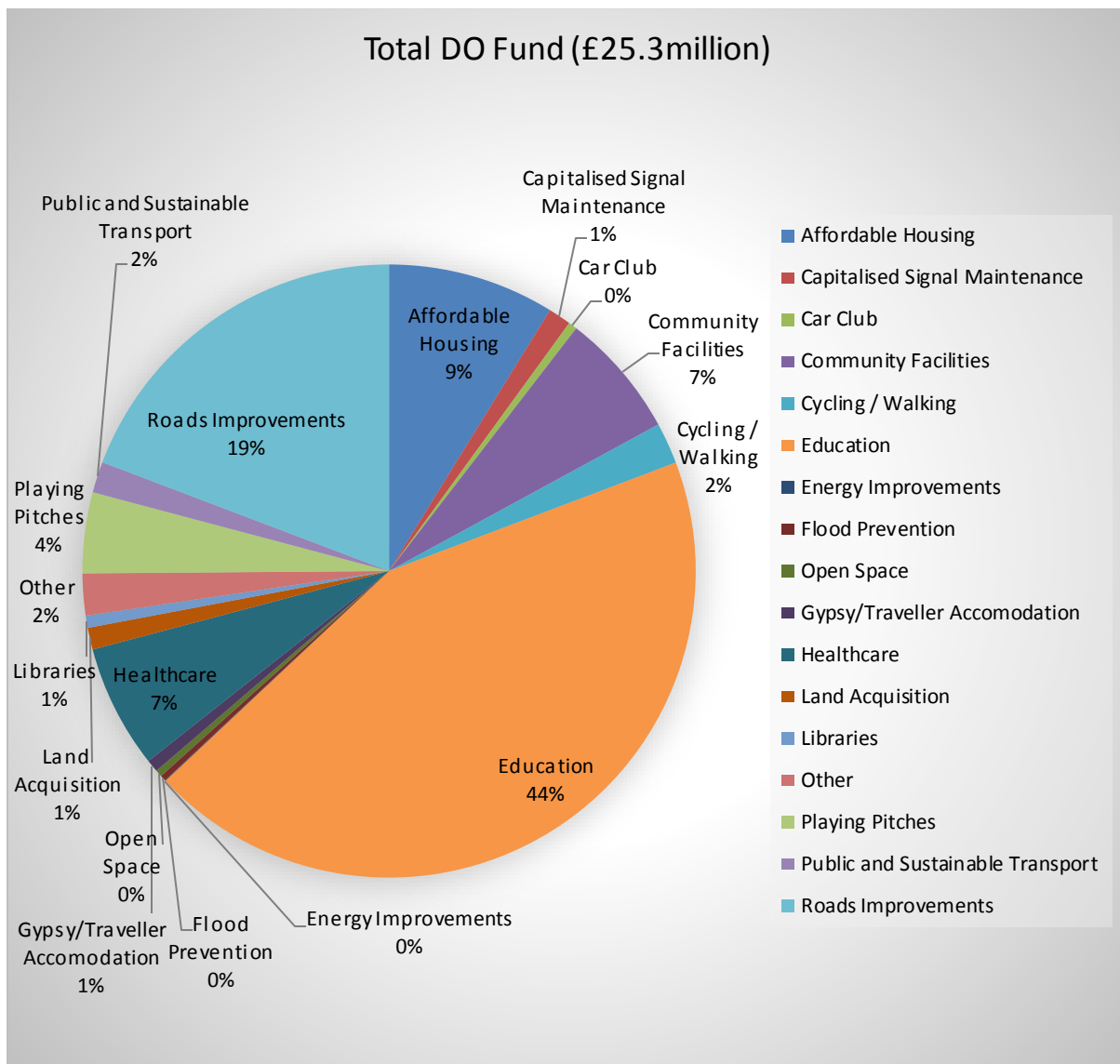


Fig 3.0 – Breakdown of Total DO Fund

Payments Into the DO Fund 1st January – 30th September 2021

- 3.13 Table 2 below provides a summary of payments into the DO fund during the first nine months of the 2021 calendar year. Again, the payments are categorised according to the overall purpose for which they are to be used, but each payment will usually also have more specific spend conditions which must be complied with.
- 3.14 The table shows that DO payments amounting to just over £5.2m were received during the period from 1st January – 30th September 2021, with payments towards education accounting for more than 50% of this total. Payments towards affordable housing, community facilities and road improvements also accounted for a large proportion of the overall receipts (with each of these accounting for approximately 10% of the total).

Table 2: Payments Into the DO Fund (1st Jan – 30th Sep 2021)

Contribution Type / Purpose	Amount (£)	% of Total
Affordable Housing	£ 523,954	10.0%
Capitalised Signal Maintenance	£ -	0.0%
Car Club	£ 47,571	0.9%
Community Facilities	£ 477,747	9.1%
Core Paths / Cycling / Pedestrian Facilities	£ 143,043	2.7%
Education	£ 2,867,412	54.9%
Energy Improvements	£ -	0.0%
Grounds Maintenance / Open Space / Play Equipment	£ 5,390	0.1%
Gypsy / Traveller	£ 45,120	0.9%
Healthcare Facilities	£ 347,248	6.6%
Land Acquisition	£ 88,276	1.7%
Libraries	£ 11,791	0.2%
Multiuse / Other	£ -	0.0%
Playing Pitches / Sport & Recreation	£ 119,818	2.3%
Public Transport / Sustainable Transport	£ 20,164	0.4%
Road Improvements / Streetscape / Traffic Management / TRO	£ 524,662	10.0%
Total	£ 5,222,196	100%

Payments Out of the DO Fund 1st January – 30th September 2021

- 3.15 Table 3 overleaf provides a summary of DO spend during the first nine months of the 2021 calendar year. For the avoidance of doubt, Table 3 includes contributions that were received before the beginning of 2021 and were spent during the specified period, as well as any contributions that were both received and spent during the specified period. Table 3 again categorises DO expenditure according to the general purpose for which the funds were used.
- 3.16 The table shows that approximately £5.5m of DO funds were spent during the period from 1st January – 30th September 2021. The majority of this related to the use of affordable housing DO to help deliver the Council's ongoing affordable housing new build programme. However, DO funds were also spent on a range of other purposes during the period. For example, DO contributions have also been made towards the ongoing works at Union Terrace Gardens and the delivery of new primary schools at Milltimber and Countesswells. A selection of the other projects which have received DO funding during the period include: the Council's ongoing traffic signal maintenance programme; car club enhancements; upgrades to the path network at Stewart Park; refurbishment of the Foundation Centre/258 North Balnagask Road to bring it back into use as a community facility; installation of digital equipment to enhance capacity at Woodside Library; and enhancement works at Hazlehead Park.

Table 3: Payments Out of the DO Fund (1st Jan – 30th Sep 2021)

Contribution Type / Purpose	Amount (£)	% of Total
Affordable Housing	£ 4,594,725	84.2%
Capitalised Signal Maintenance	£ 43,506	0.8%
Car Club	£ 43,979	0.8%
Community Facilities	£ 118,559	2.2%
Core Paths / Cycling / Pedestrian Facilities	£ 32,054	0.6%
Education	£ 560,418	10.3%
Energy Improvements	£ -	0.0%
Grounds Maintenance / Open Space / Play Equipment	£ 42,556	0.8%
Gypsy / Traveller	£ -	0.0%
Healthcare Facilities	£ -	0.0%
Land Acquisition	£ -	0.0%
Libraries	£ 5,766	0.1%
Multiuse / Other	£ -	0.0%
Playing Pitches / Sport & Recreation	£ 10,420	0.2%
Public Transport / Sustainable Transport	£ -	0.0%
Road Improvements / Streetscape / Traffic Management / TRO	£ 6,000	0.1%
Total	£ 5,457,983	100%

DO Risk Management and Alignment with ACC's Capital Programme

- 3.17 In the case of large-scale developments (eg major new urban extensions or new settlements such as Countesswells, Grandhome, Newhills etc) total DO payments can amount to several £Ms and are intended to be used by the Council as a contribution towards the delivery of major new infrastructure such as schools and road improvement schemes. Such large-scale infrastructure projects will usually need to be included in the Council's capital programme to ensure they are delivered at an appropriate stage in the development. These projects generally require additional Council funding as DO payments rarely cover the full cost of delivering them.
- 3.18 If these developers fail to make DO payments as expected, this is likely to have an impact on the budget for delivering the relevant infrastructure and result in increased costs for the Council. It is also important to note that if developers believe there is evidence that previously agreed DO requirements are no longer necessary or can no longer be justified, they can formally apply to vary their DO requirements at any time. If approved, any such applications would also have an impact on project budgets and may result in increased costs for the Council. Where the Council disagrees with a proposal to vary an existing legal agreement, the developer may also appeal that decision to the Scottish Government, which will appoint a Reporter to independently assess the appeal.
- 3.19 In response to these risks, initial work has been undertaken to review all existing projects within the capital programme to confirm the extent to which they are reliant on DO receipts. Regular monitoring/reporting will ensure that

any emerging risks associated with these DO receipts (eg if a developer falls behind with their DO payments or makes a request to modify or renegotiate their existing DO commitments) will be reported via the internal DO Working Group² and, if necessary, escalated at a corporate level via the Risk Board.

- 3.20 In addition to the above, as part of the ongoing management of the DO process, and in preparation for the expected introduction of the annual reporting on DO under the Planning (Scotland) Act 2019, it is intended to introduce a new process to improve transparency. Currently services responsible for spending DO are given condensed extracts of the database to allow them to factor these contributions into their service plans. The intention moving forward would be to refine these and make them available to elected members. Given the complexity of the DO process it is intended to introduce this process as soon as members have been given suitable training to allow them to understand legal framework within which DO can be collected and utilities. This will allow members to engage with the relevant services around the DO process.

Use of Developer Obligations

- 3.21 The time period between agreeing a developer obligations package via a legal agreement, and that development paying its full contribution can be significant. Large developments can see this period extend out to 10 or 15 years. Even in smaller developments work may not commence on site for many years after a legal agreement has been signed. In that context it is important that services reevaluate the appropriateness of the contribution when it comes to identifying a project to use the collected DO. Where a scheme is no longer required or puts an unnecessary or ongoing burden on the council, it may be more appropriate to return a contribution than to use it. It should be noted that DO contributions are intended to build capacity, and are therefore generally only for capital works, the ongoing burden of maintenance of those facilities falls on the council. In other instances where the identified project comes in underbudget it may be necessary to return any remaining contribution. While these are unusual examples, as building costs remain volatile and maintenance burdens increase, it will likely become more commonplace.
- 3.22 As part of the process of releasing DO the Working Group now require project proposals to be agreed with the relevant services Senior Management Team to ensure it aligns with the commissioning intentions before they are presented to the DO Working Group. The Working Group will then assess the project in the context of the LOIP and any relevant strategies and asset plans before agreeing its release.
- 3.23 The time period for spending DO will vary between legal agreements, and the type of contributions sought. Where a project is identified and there is a risk

² Membership of the DO Working Group includes the Chief Officers of Strategic Place Planning, Capital, Corporate Landlord and Early Intervention & Community Empowerment. Representatives from the legal and finance teams also sit on the DO Working Group.

that the project cannot be completed within the identified time period within the legal agreement, approaches can be made to the relevant developers to seek extensions.

Future DO Reporting Arrangements

- 3.24 As a consequence of new requirements under the Planning (Scotland) Act 2019, the Council will in the future be required to publish an annual report as soon as practicable after the end of each financial year. This report will be expected to include the following information –
- a) the number of planning obligations that are:
 - i. entered into in that year,
 - ii. entered into in a previous year and not yet expired,
 - iii. entered into in a previous year and not yet complied with,
 - b) the development to which each planning obligation relates, and
 - c) the name of the person that has entered into the planning obligation
- 3.25 These new statutory requirements have not yet come into force. However, it is possible that they will come into effect by the end of the current financial year. Future annual reports will be prepared in accordance with these emerging requirements and will be presented to Members prior to publication.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from the recommendations of this report.
- 4.2 When a project funded by Developer Obligations is added to the Capital Programme it will include an expenditure profile driven by the project's milestone and delivery profile, and also a funding profile based on expected availability of DO funds. This project funding profile is included within the overall funding envelope for the Capital Programme. Where there is any deviation between the expected and actual receipt of DO funds, the capital programme is required to "cashflow" the balance by amending the amount of borrowing applied to the programme. This is regularly reviewed and is included within the financial monitoring and approvals of the capital programmes.

5. LEGAL IMPLICATIONS

- 5.1 There are no direct legal implications arising from the recommendations of this report.
- 5.2 The framework for planning obligations, including the scope and purpose of a planning obligation, conditions, registration and enforcement, is set out by Section 75 of the Town and Country Planning (Scotland) Act 1997.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Strategic Risk	Although this report is for noting only, as outlined above if developers fail to make their anticipated DO payments this may have an impact on the delivery of projects within the capital programme	M	Regular monitoring will ensure that any emerging risks associated with DO receipts for projects within the capital programme (eg if a developer falls behind with their DO payments or makes a request to modify or renegotiate their existing DO commitments) will be reported via the internal DO Working Group and, if necessary, escalated at a corporate level via the Risk Board
Compliance	None identified as a result of this report	N/A	N/A
Operational	None identified as a result of this report	N/A	N/A
Financial	Although this report is for noting only, as outlined above if developers fail to make their anticipated DO payments this may have an impact on the funding available for projects within the capital programme and may result in increased costs for the Council	M	Regular monitoring will ensure that any emerging risks associated with DO receipts for projects within the capital programme (eg if a developer falls behind with their DO payments or makes a request to modify or renegotiate their existing DO commitments) will be reported via the internal DO Working Group and, if necessary, escalated at a corporate level via the Risk Board
Reputational	Although this report is for noting only, failing to collect and use DO towards enhancements to local infrastructure and facilities could result in reputational damage for the Council as a “place leader”	L	Continuing to collect and use DO in accordance with development plan policy

Environment / Climate	None identified as a result of this report	N/A	N/A
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7. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
Impact of Report	
Aberdeen City Council Policy Statement	<p>Although this report is for noting only, the continued collection and use of DO will help to support delivery of the following policy statements;</p> <ul style="list-style-type: none"> • Economic Policy Statement 4 - Increase the city centre footfall through delivery of the City Centre Masterplan / Union Terrace Gardens • Economic Policy Statement 9 - Maximise community benefit from major developments • People Policy Statement 1 - Completion of the school estate review and development of estate strategy for next 5-10 years • People Policy Statement 10 – Build 2,000 new Council homes and work with partners to provide more affordable homes
Aberdeen City Local Outcome Improvement Plan	
Prosperous Economy Stretch Outcomes	Although this report is for noting only, the continued collection and use of DO towards enhancements to local infrastructure and facilities will help to support the general delivery of sustainable economic growth
Prosperous People Stretch Outcomes	Although this report is for noting only, the continued collection and use of DO towards enhancements to local infrastructure such as education facilities will help to support the general delivery of LOIP Stretch Outcomes 3 and 5 with respect to educational attainment
Prosperous Place Stretch Outcomes	Although this report is for noting only, the continued collection and use of DO towards enhancements to local infrastructure such as core paths and sustainable transport facilities will help to support the general delivery of LOIP Stretch Outcome 15 with respect to walking and cycling targets
Regional and City Strategies	Although this report is for noting only, the continued collection and use of DO towards enhancements to local infrastructure and facilities will help to support the general delivery of Regional Economic Strategy objectives with respect to sustainable economic growth

8. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	Full impact assessment not required
Data Protection Impact Assessment	Not required

9. BACKGROUND PAPERS

None

10. APPENDICES

None

11. REPORT AUTHOR CONTACT DETAILS

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