

## Members' Library Service Request Form

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Document Title	Response to Scottish Government's Infrastructure Levy Discussion Paper

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**REPORT TO:** Members' Library Service

**MEETING DATE:**

**BY:** Head of Development

**SUBJECT:** Response to Scottish Government's Infrastructure Levy Discussion Paper

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## **1 PURPOSE**

- 1.1 To inform members that the Council has submitted a response to the Scottish Government's Infrastructure Levy Scotland (ILS) Discussion Paper on 27 September 2024. The Planning Service Manager has delegated power to respond to this consultation, however due to the potential financial implications the response paper was taken to CMT on 18 September. Additional points and clarifications were subsequently made to the response as a direct result. The discussion paper was the first phase of consultation regarding the Infrastructure Levy, a formal consultation on the regulations is expected in early 2025.
- 1.2 The Council received acknowledgement from Scottish Government that our response has been submitted on Friday 27 September 2024.

## **2 RECOMMENDATIONS**

- 2.1 Members are advised to note the Council's response is attached to this paper as Appendix 1 and to be aware that, should a levy be developed further, there will be further Scottish Government consultations in relation to the Infrastructure Levy regulations over the next year. The response is generally supportive of the introduction of an Infrastructure Levy to support cumulative infrastructure that cannot be directly related to individual developments therefore no S75 contributions can be sought and is therefore complementary to S75 contributions. The response seeks more detail to be included within the regulations to eliminate the risk of legal challenges to councils and for the Scottish Government to recognise and provide additional funding for the preparation and implementation of the regulations to local authorities but also more funding for the development of infrastructure.

- 2.2 That Council officers will actively engage with Scottish Government on the Infrastructure Levy proposed regulations, with the Planning Obligations Officer being the primary contact point for this consultation area and the lead officer in submitting East Lothian Council's consultation responses on ILS.
- 2.3 A member briefing will be undertaken prior to any East Lothian Council response being drafted to the Infrastructure Levy draft regulations consultation.

### **3 BACKGROUND**

- 3.1 The Planning (Scotland) Act 219 introduced powers for Scottish Ministers to regulate for infrastructure levy. These powers are subject to a sunset clause which means unless the regulations are in force by 24 July 2026 the powers will lapse.
- 3.2 The Scottish Government prepared and published a discussion paper on the Infrastructure Levy in early June 2024, raising several points on which they wanted feedback prior to preparing a consultation paper on the infrastructure levy regulations. Responses to the Discussion Paper were required to be submitted to Scottish Government on or before 30 September 2024.
- 3.3 The next stage will be for the Scottish Government to produce draft regulations for public consultation. This stage is anticipated to be in late 2024 to early 2025.
- 3.4 It should be noted that the National Planning Framework 4 (NPF4) promotes an infrastructure first approach to land planning and place making and requires infrastructure needs to be identified and understood early in the planning process. The Council needs to consider what types of infrastructure projects are required to support growth, and support the establishment of 20-minute neighbourhoods, where high quality and accessible infrastructure is key to community living.
- 3.5 The infrastructure levy purpose is to support the interaction between the public and private sectors in growing and building communities with good strong infrastructure foundation. Currently S75 agreements with planning obligations are used to mitigate against cumulative impacts. However, unless there are direct, quantitative links with the development (meets all the tests in Planning Circular 3/2012), the Council cannot request further financial contributions, as the [Elsick case](#) Supreme Court Decision demonstrated. This case highlighted the need to have a further system that allows for wider cumulative impacts to be addressed over a wider area. This opens opportunities for new cross border/ regional infrastructure which is difficult using the existing mechanisms.
- 3.6 The infrastructure levy is intended to complement the existing S75 system and create an additional fair and effective system for securing contributions for required infrastructure requirement on a wider scale which would not be able to be sought under circular 3/2012.

- 3.7 Following the publication of the discussion paper, the Council's Planning Obligations Officer prepared a draft feedback paper and emailed it to internal colleagues requesting feedback by the end of July to ensure all services which could potentially benefit from the infrastructure levy would have their views expressed within the Council's feedback response to the Scottish Government. This deadline for responses was extended to 6 August.
- 3.8 Strategy, Policy & Development Manager (Amenity Services), Service Manager, Strategic Asset & Capital Plan Management and the Planning Policy and Strategy team responded to the document and added some further comments on the initial responses to the questions. These responses have all be considered and integrated into the Council's response.
- 3.9 The response paper was then taken to CMT on 18 September 2024 by the Planning Service Manager and Planning Obligations Officer, where several points were raised on the responses to questions which were answered however this led to further clarification and additional information being added to strengthen Council overall response.
- 3.10 The Council's response paper was finalised after further input from Executive Director for Council Resources.

#### **4 POLICY IMPLICATIONS**

- 4.1 There will be a requirement to ensure there is a hook for Infrastructure Levy within East Lothian's Local Development Plan 2. This will need to be flexible and caveated as until the consultation process has been completed on the ILS, the Council will not know if ILS will be introduced and if so the actual ILS regulations.
- 4.2 The ILS may alter the Council ability to collect S75 land and financial contributions in the future and this may impact our affordable housing policy.

#### **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

#### **6 RESOURCE IMPLICATIONS**

- 6.1 Financial -The ILS could have significant positive benefits in terms of helping support green and blue infrastructure which currently the Council cannot obtain S75 contributions towards due to the planning test requirements in Circular 3/2012.
- 6.2 Until the regulations are known the cost implications for implementing them will be unknown. The evidence base for the ILS will require significant

resource input however part of this will already be needed to support the LDP2.

- 6.3 Personnel - The ILS, dependent on the regulations could have significant resources implications in terms of the calculation, management, and implementation of the Levy for local authorities.

## 7 BACKGROUND PAPERS

- 7.1 [Planning \(Scotland\) Act 2019](#)
- 7.2 [Infrastructure Levy for Scotland: Discussion paper](#)
- 7.3 [National Planning Framework 4](#)
- 7.4 [The Elrick Supreme Court](#)
- 7.5 [Introduction of an Infrastructure Charging Mechanism in Scotland: research Project, 20/11/2017](#) by Peter Brett Associates. IL based on Gross Development Value per sqm of the floor space of the development
- 7.6 Scottish Government published conclusions – [Places, People & Planning consultation, and Position Statement- June 2017](#)

Appendix 1- East Lothian's Infrastructure Levy Scotland response paper

<b>AUTHOR'S NAME</b>	Ray Montgomery
<b>DESIGNATION</b>	Head of Development
<b>CONTACT INFO</b>	Shirley Curran
<b>DATE</b>	28 October 2024

## INFRASTRUCTURE LEVY SCOTLAND DISCUSSION PAPER- EAST LoTHIAN COUNCIL COMMENTS

### SECTION 8 - ISSUES FOR DISCUSSION

Section	ELS Comments
8.1.1	<p data-bbox="315 359 913 387"><b>Setting the payable amount -8.1.1 Unit of charge</b></p> <p data-bbox="367 394 1576 422">a) Do you agree that the charge should be based on a calculation per square metre of development?</p> <p data-bbox="465 469 2154 746">Yes, East Lothian Council agree that the cost should be per m2 of development. The costs of any infrastructure development associated with the Levy are likely to increase over time whilst the charge remain static, therefore there requires to be a suitable mechanism to increase (uplift) the charge over time, to reflect this increase in cost of providing the infrastructure intervention over the period of the plan. Indexation (BCIS All-in Tender Price Index or Retail Price Index) may be useful or alternatively annual updates of charge amounts based on market evidence. The latter maybe better as indices have not kept up with construction rises in recent years. However, we have concerns that this would be more resource intensive for Council unless a rate was agreed at a national level by Scottish Government. Noting that current BCIS indexation rates have not kept up with the construction cost rises over the last four-year period causing Councils across Scotland significant gaps in infrastructure project funding, therefore impacting other local authority spending and borrowing capabilities currently and for the foreseeable future.</p> <p data-bbox="465 793 2154 855">The use of cost per sqm ensure that smaller residential units are not adversely discriminated against as they will pay a smaller levy than larger dwellings.</p> <p data-bbox="465 901 2154 963">There will however require to be different rates for residential properties and commercial/ industrial premises as there are significant difference in land values. There may be a requirement to have several different rates for commercial premises depending on their proposed use class.</p> <p data-bbox="315 1010 1070 1038">Are there any options or issues we have not considered above?</p> <p data-bbox="465 1085 2154 1251">Commercial developments that utilise outdoor space (aquaculture, renewables, and outdoor leisure development), rather than buildings but place significant pressure on infrastructure within East Lothian and elsewhere require to be captured in some way. For example, a tourist attraction like a farm park or golf course. The pressure on infrastructure come from the visitor numbers these types of development attract, which utilises outdoor space rather than any buildings, as the main attraction is the outside facilities/ or event held on the land (e.g. Scottish Golf Open). These developments need supporting infrastructure to be provided in surrounding areas, which has as a cost associated.</p>

	<p>b) Should the area of the development be calculated by internal or external measurement?</p> <p>It should be based on external measurement rather than internal measurement as this will be quicker and more straight forward for planning officers to get information from the planning application directly rather than having to calculate net internal area. Reduces opportunities to challenge as two parties may not agree on net internal area.</p> <p>c) How should existing property that is demolished or redeveloped be treated in the calculation</p> <p>There should be discounts for brownfield and redevelopment sites to encourage development and ensure level playing field with greenfield development. This may be better to be undertaken an individual assessment basis. This is due to the various costs associated with each site and their proposed end use. If this is taken forward, it would be essential that there are clear definitions of “demolished” and “redeveloped.”</p> <p>Any existing property floorspace lost through demolition should be netted off from the total new floorspace delivered, providing the demolished property was in the same use within the 5-year period prior to the demolition. To be consistent with our approach for S75s we propose that the levy is only applied to the additional net new floorspace.</p> <p>For all types of property with the same end use class order, it is critical that the previous demolished sqm is deduced before ILS calculations to not adversely impact the viability of new residential or employment generating developments.</p> <p>For residential properties if there were any dwelling previously occupied and demolished these should be reduced of the proposed new number of dwellings produced through the new development. However, this should only apply if the building(s) has been in use over the last five-year period. Conversion of old, empty, or derelict buildings should be charged.</p>
8.1.2	<p><b>Setting the payable amount – 8.1.2 Setting the Levy Amount</b></p> <p>a) Do you agree that the Levy should be charged as a set amount per square metre?</p> <p>Yes, as it should be reflective of the residual land value which takes account of the costs including S75 and ILS. There should be different rates set for distinct types of land use to ensure that there are no viability issues.</p> <p>b) (i) Is it helpful to use average sale values to set the amount of the Levy?</p> <p>Only if the average sales costs are up to date and there are enough sales within the area, otherwise this could lead to inaccurate/ skewed values, especially if it is a large geographical area with few developments.</p>

(ii) What other methods could be used?

As mentioned above in our answer to 8.1.2 a) we believe the cost should be set amount per sqm and should be at different set rates for distinct types of land use.

c) 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?

The average amount could be calculated across the authority area based on the infrastructure requirements (excluding infrastructure that will be subject to S75) and then for each zone within the area then the value can be adjusted/modified to reflect the zone where the proposed development lies. For residential development this should be sub housing market areas however the zones for commercial property can be set local authority wide.

d) Do you agree that local authorities should set the zones across which the amount is set?

Local authorities have the knowledge and understanding of the markets within their areas and where the boundaries are for these market areas, therefore we agree that each Local Authority should set their own zones and the Levy value within these zones. Clear guidance from SG on the evidence base required is needed to ensure no legal challenges, which could be resource, time and financially consuming for LAs if challenged by developers.

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

Yes, as there maybe significant issues in some areas due to viability or regeneration reasons that a levy should be reduced or not charged to assist grow or counteract decline.

In terms of regional infrastructure projects there will be a requirement for agreement with neighbouring authorities/ regional partners on the level of levy which needs to reflect the proportionate impact on each of the Local Authority and sets of the mechanism for procurement of works, delivery, and payment. Noting that the Levy share should be transparent to ensure fairness and equality between local authorities contributing to regional infrastructure interventions basis on set criteria and measurable outcomes.

f) How could amounts for commercial and industrial development be set?

The amount should be set for each type of commercial and industrial use within a particular cluster based on current market value within the local authority area. It may be appropriate to have an independent 5-year qualified RCIS surveyor to undertake this valuation work, however this would be an additional cost to Councils that is not accounted for in current budgets or resource allocations from SG. The set values will require to be increased through some form of inflation or indexation mechanism but to assure costs are in with market they will need to be reviewed professionally every five years.



8.1.3	<p><b>Setting the payable amount – 8.1.3 The ILS and other demands on value</b></p> <p>a) Would it be helpful for local authorities to have discretion to waive or reduce the ILS in individual cases?</p> <p>Yes, it would be beneficial to ensure development that may be in the public interest/ area’s interest to come forward which could not sustain the ILS and S75 contributions, therefore it would be up to the LA to decide which contributions to reduce to ensure development can progress as viability not impacted adversely. Also to ensure that the required infrastructure is in place for the development not to adversely impacting the existing area and communities. There would require to be criteria or exemptions mentioned in authority documents to ensure the process is transparent and fair. Furthermore, the planning report should clearly highlight the reasons for any reductions or exemptions to ensure these are on record for public view.</p> <p>Ideally the regulations would determine which type of infrastructure the ILS will be utilised for and what S75 will be used for. If necessary, Circular 3/2012 should be modified at the same time as the regulations for ILS are finalised, to eliminate/reduce any potential for legal challenges. SG stated at HOPS meeting on ILS discussion paper on the 28 August 2024, that the Levy purpose is to fill the gap that S75 cannot request financial contributions for, as the planning tests in the Circular 3/2012 cannot be met, as very difficult to demonstrate a direct impact as it is a cumulative impact of growth. It is critical that Local Authorities can prioritise the use of ILS for wider infrastructure requirements that is critical in supporting growth, communities and addressing the climate and nature emergency, whilst being able to use S75 agreements to fund Affordable Housing provision, additional schools, local transportation, and local amenity infrastructure required to accommodate the proposed development.</p> <p>b) Should the impact of planning obligations and other charges / requirements be considered in this assessment?</p> <p>The overall costs associated with contributions from S75, and ILS should all be considered in the assessment to ensure levels are not set to high which could potentially stifle development and have knock on impact on sustainable economic development within the Local Authority area.</p>
8.2	<p><b>What kind of development should pay the Levy?</b></p> <p>a) Do you agree that residential institutions should be excluded from the Levy?</p>

	<p>No, residential institution can generate the need for additional infrastructure – active travel, transportation, leisure, and civic infrastructure. In some cases, like care homes the actual residents do not require to travel but the employees and other required goods and service can place additional pressure on infrastructure.</p> <p>b) Should the Levy be charged on all or some types of affordable housing? The majority of AH should be charged with as it has significant impact on infrastructure, however it is critical that this does not add development costs to affordable housing but reduces land value.</p> <p>c) How should commercial development, purpose-built student accommodation and build-to-rent housing be treated? These should be charged as generate a requirement infrastructure but the way they are charged may require to be different and a payment post completion rather than upfront due to the funding models.</p> <p>d) Should renewable energy infrastructure and related development also be subject to the Levy? How might that impact on voluntary community benefits? Renewable infrastructure developments suggested here (wind turbines, pipelines etc) are generally on countryside sites and they have direct impacts on nature and greenspace during construction, ongoing operating and can widen accessibility to remote areas through the development of tracks to install, maintain and dismantle renewable infrastructure therefore consideration within the levy should be given to an ILS Levy contribution to Countryside Ranger Service for monitoring of development and mitigation measures and other nature enhancements to increase the biodiversity value and promote climate change resilience through supporting adaptations.</p> <p>The community benefits are separate from S75 contributions and ILS payments. The Levy would assist the wider population and be of benefit to more people than the community benefits funds as there would be area wide infrastructure enhancements.</p>
8.2.1	<p><b>Exemptions</b></p> <p>a) Do you agree that householder development should be excluded from the Levy? Yes- There is little additional burden on infrastructure, and the costs of administrating would be more than the income.</p> <p>b) Should self-build housing and very small developments be exempt? No, as cumulatively small development can have a significant impact on infrastructure and these types of development can be very profitable in East Lothian.</p>

	<p>In East Lothian over the ten years between 2012/13 to 2022/23 there were 582 small sites given planning permission. In the same period the number of completion certificates issued for small sites was 234 units. The small sites make up approximately 2.5% of the EL housing completions annually (23 units on average per annum). These developments are exempted from S75 contributions under LDP policy DEL1 and yet collectively they place pressure on our infrastructure and the ILS would ensure they contributed to providing additional infrastructure at LA level.</p> <p>c) Are there any other types of development that should be exempted?  Hospitals – as any contributions associated with their development can be addressed through S75.  Public Amenities such as play areas, cemeteries, allotment sites, sports pitches, etc.  Permitted Development Right developments should be exempted.</p> <p>d) Should there be exemptions for charities or other types of developer?  Concern that businesses will adapt their delivery model and create charitable arm to avoid ILS charges.</p> <p>e) To what extent should exemptions be set nationally, or at local authorities’ discretion.  It would be better to have exemption set at a national level to reduce challenges to Local Authorities. However also allow flexibility for individual local authorities to set local exemptions to reflect local situations and needs, which they can provide justification in charging schedule.</p>
8.3	<p><b>When should the Levy be calculated and paid?</b></p> <p>a) When would be the best time for the Levy to be calculated and paid?  Calculation at planning application stage when the development details are fully known, although having indicate approximate value at pre-app would be of assistance. Noting that if a Planning Permission in Principle, then the ILS will require to be calculated at each AMSC application when the actual development details (floorspace) of each phase are known.</p> <p>Payment of ILS should be ideally on release of planning permission however this may not work as there is no guarantee of any development commencing, therefore the levy payment should be collected on commencement of development or through set triggers the Local Authority sets prior to planning permission being issued, as we currently do for S75 agreement financial payments.</p> <p>In general, landowners will either be paid at planning permission being granted or on commencement of development by developers. Furthermore, there is a concern in relation to the lag time between planning permission being issued (levy amounts being set within the planning</p>

	<p>application process) and the actual infrastructure project works implementation timescale, especially when reliant on several developments coming forward to finance the infrastructure project works through cumulative levy payments. This can cause significant risk to Councils, as the levy amount raised may not then cover the percentage or overall infrastructure project cost at the time of implementation, due to construction and labour costs increasing significantly over time. This will lead to a significant gap in funding for infrastructure works that needs to be tackled at national level to enable Scotland’s sustainable growth. This lag period cost implications require to be addressed within the regulations and included in the levy cost.</p> <p>It is important to capture the increase in land value from the planning permission there could be on issuing of building warrant and where this is not required then on commencement of development. It is important that the necessary infrastructure can be delivered to support growth, as early as possible for a variety of positive reasons including changing lifestyle habitats. NPF4 advocates infrastructure first however in current climate Local Authorities can afford to build significant infrastructure without some form of funding commitment from SG towards assisting the cost if construction costs significantly rise above the levy contribution taking financial borrowing into consideration.</p> <p>In terms of commercial development, it may be better to charge on completion of development as there will be no income from the development until premises are completed and operational. Often the value is in the building not the land.</p> <p>In terms of commercial development, it may be better to charge on completion of development as there will be no income from the development until premises are completed and operational. Often the value is in the building not the land.</p> <p>b) What arrangements could be made in the case of development benefitting from PDRs? Exempted as to difficult to implement and calculate for LAs. More resources would be utilised than made.</p> <p>c) Is any special statutory provision needed to manage arrangements in LLTNPA Not applicable to East Lothian.</p>
8.4	<p><b>Who should be liable to pay?</b></p> <p>a) Do you agree that the owner of the land at commencement of development should be liable to pay the Levy?</p> <p>Yes- they should be responsible if the owner at this stage and should have paid the price for the land, taking into consideration any Levy and S75 contribution prior to purchasing through their development viability assessments.</p> <p>The regulations require flexibility as many land deals may have been concluded prior to Levy being implemented. Interim guidance required.</p>

	<p>b) If not, who should be liable, and how (and when) should they be identified?</p> <p>Individual homeowners should be exempted as to difficult to implement and calculate for LAs. More resources would be utilised than made.</p> <p>c) Should there be specific provisions to prevent liability for the Levy being passed on to homebuyers</p> <p>Not applicable, due to first response.</p>
8.5	<b>Appeal Process- No comment</b>
8.6	<p><b>Penalties and enforcement</b></p> <p>a) Should there be a penalty fee if the Levy is not paid on time?</p> <p>Yes, a penalty system is required to deter against non-payment.</p> <p>b) If so, should it be a fixed amount or a proportion of the amount due?</p> <p>The penalty should be proportional to the amount due therefore making it fairer to the developer/ owner.</p> <p>c) Should the penalty increase over time if the Levy is still not paid?</p> <p>Yes, the penalty should increase over time as the cost for implementing the infrastructure will increase or if developer with Council forward funding there will be financial costs associated with the borrowing.</p> <p>d) Should the local authority be able to require development to stop if the Levy is not paid? Would this be effective?</p> <p>Yes, development should be halted otherwise a developer could continue to develop and potential make profits and sell on without paying for the infrastructure required, which is not acceptable and should be a criminal offence as LA requires to provide supporting infrastructure. It will be expensive for Local Authorities (LA) to pursue payment especially if land sold on multiple times or too many parties. If development is stopped then power changes to the LA and the developer required to pay if they wish to continue to develop and gains sales or rental income. It is also important that the LA should be able to require development to cease if the Levy is not paid, without fear of compensation.</p>

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

There needs to be a process within the regulations on payment and breaches of payment this should be consistent across Scotland (all LAs)

- 1) Payment is due before or on the Commencement of Development date. (or at agreed triggers or for Planning in Principle Permissions)
- 2) If payment has not been received within two weeks of the Commencement of Development Date a Penalty Notice will be issued by the LA. The cost of issuing (Administration charge) and displacing the Penalty Notice on Site will be borne by the Applicant and added to the Levy due to the LA.
- 3) The Penalty Notice will highlight the planning permission reference Number, amount of Levy due, cost associated with Penalty Notice, the Levy and Penalty payment instructions, the penalties for overdue payment (increasing costs over time) and next step if no payment within one month of Commencement of Development date. This will also highlight any additional administration costs associated with issuing any further Notices.
- 4) Stop Notice will be issued to the Developer if payment has not been received within 1 month of commencement of development or agreed trigger points. No development will be allowed to be undertaken within the red boundary site until the Council has been paid. This will encourage payment as the development cannot continue to be developed therefore no potential for future income from sales or rental. Requirement to ensure no compensation claims against Councils if Stop Notices are issued, as this would prevent enforcement action from taking place if compensation was allowed due to financial risks for Councils.
- 5) The levy outstanding payment cost should be increased by 5% over and above the Bank of Scotland interest rate from the date payment was due until payment is received and there should also a fixed Penalty payment (sum to be agreed at national level) over and above.
- 6) Restart Notice (new type of Notice) can only be issued by Local Authorities when the full cost of the Levy, overdue interest on late payment and associated Penalty payment associated has been paid in full to the LA.

8.7 **What should the Levy be spend on?**

a) Are any changes needed to the definition of infrastructure?

The term 'Infrastructure' in our view needs to be defined further, as it should be clarified that 'infrastructure' includes 'green and blue infrastructure' and 'active infrastructure', as set out above on page 6 and in line with NPF4 Policy 15, i.e. including but not limited to "playgrounds and informal play opportunities, parks, green streets and spaces, community gardens, opportunities for food growth and allotments, sport and recreation facilities" and "high quality walking, wheeling and cycling networks" (quoted from NPF4 Policy 15 - Local Living and 20 minute neighbourhoods).

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

This will be dependent on the stage each LA's LDPs is at in the process when the ILS secondary legislation is adopted, as some LDPs may be adopted prior to the ILS being adopted and therefore a new additional process will be needed to be undertaken before an authority can adopt ILS charging schedule. It should be noted that list can be provided and updated through the delivery plan associated with the Local Development Plan, which is regularly reviewed and require to Council for approval.

New LDPs are meant to be for 10-year period, therefore it is critical that new LDPs (East Lothian Council's LDP2) have the flexibility to introduce ILS. Interim guidance required within the ILS regulations to cover this situation where new LDPs are adopted prior to the regulations coming into force. The LDP Delivery Plan should highlight the infrastructure requirements for the Local Authority areas for the Plan period, but they may not include for regional infrastructure projects, due to the current vacuum in regional planning. There should be an opportunity for Local Authorities to have a separate list at this time when the ILS regulations are unknown.

It is important there is clarity of what the Levy will be collecting for and what S75 will be used to collect in terms of infrastructure development to eliminate the concerns about double dipping, to provide clear regulations for officers and to assist financial management of the ILS and S75 contributions from collection through to expenditure. This is critical as decisions for capital planning and borrowing will be taken based on forecast of income from ILS and Contributions and availability of other infrastructure funding streams to enable deliver infrastructure.

For example, East Lothian Council sees that ILS being used to fund strategic transportation, blue and green infrastructure to support climate change adaption and biodiversity and health infrastructure. Whilst S75 will be utilised for affordable housing, education, local transport interventions and amenity provision which can all meet the Circular tests.

It is critical that LDPs currently under preparation have hooks within the policies to allow Councils to collect ILS if their process is substantially complete prior to July 2026. This should enable the Council to apply ILS when the regulations become implementable. The LDP Delivery Plans should outline the infrastructure requirements of each local Authority area that we are seeking funds, including those to be delivered by through partial levy funding. These delivery plans should be able to be updated outside the 10-year LDP review process. However, if the ILS regulations are not introduced but adopted LDP refer to ILS their LDP policies, there may be a need for the SG to provide additional Development Planning regulations or SG guidance to address any challenges to LDP in this respect.

c) How could the costs of administering the Levy be covered?

From our understanding the English Community Levy Fund allows for offsetting of administration costs against the levy, as it recognises the administration burden of implementing the system, therefore it is critical that there is additional funding provided by Scottish Government to

	<p>Local Authorities to ensure each Council has sufficient resources to implement and operate the ILS regulations, as there is no additional provision for the Council to add the costs of administration to the ILS. In most LAs the Planning Obligations Officer/ team would take this additional responsibility within their remit, however in some cases there is only one officer, and the ILS will create an extra additional burden for one person to deal with unless able to employ further assistance through more funding.</p>
8.8	<p><b>Accounting for levy income and expenditure</b></p> <p>a) Do you agree that the local authority should publish an annual report on infrastructure levy income and expenditure?</p> <p>Yes, this information is kept for S75, and we often get FOI request for this information therefore publishing annually would not be an issue and help reduce FOIs in the future. There should be a standard Scottish template to enable simple statistical analyse of data at a Scottish Government Level rather than different methods of reporting across all authorities.</p> <p>b) How many years should reporting cover – six, ten, or a different period?</p> <p>The period should cover all ILS payment into account for projects as these will differ in complexity and length, the expenditure to date on each project, the overall period should be for 10 years (same as LDP).</p> <p>c) Are any other provisions required on accounting or collection of the Levy?</p> <p>Ensure the money can be traced from source through to expenditure in LA accounts.</p>
8.9	<p><b>Additional Comments</b></p> <ul style="list-style-type: none"> <li>• Significant workload for Local Authorities, public sector partners, businesses, and communities to define what is needed in terms of future transportation infrastructure, educational infrastructure, local employment, active travel routes, utility infrastructure upgrades and expansion, renewable energy generation, biodiversity, green and blue infrastructure, climate mitigation and adaptation. The Local Development Plan will identify the majority of infrastructure projects, but where long-term requirements are uncertain due to current lack of regional infrastructure planning and certainty of national infrastructure funding sources, some infrastructure projects will need to be added to Delivery Plan lists at interim periods.</li> <li>• Noting that the definition of infrastructure project means a project to provide, maintain, improve, or replace infrastructure as set out in Annex A, Part 5 of the Planning (Scotland) Act 2019 Section 56. This is critical that infrastructure projects definition is interpreted correctly as the majority of infrastructure projects will be enhancements that increase capacity as well as extend the lifespan of the infrastructure rather than separate new standalone infrastructure. It is however critical that it is recognised by Scottish Government that Councils require</li> </ul>



to be awarded more revenue funding annually to maintenance and operate infrastructure developed from S75 contributions and future Levy funding.

- As Part 5 only allows the Levy to be spend on infrastructure project and none towards the administration costs of implementing and managing the Levy funding this has significant additional resource implications for Local Authorities, where planning and financial human resources are already stretched. Further funding should be allocated by Scottish Government to reduce this financial burden associated with the Levy away from local authorities unless further legalisation is approved to enable an administration fee to be applied to the levy fund.
- There will be a requirement for local authorities to updates and review the Levy value to ensure it is realistic, fair, and sufficient to help deliver required infrastructure projects required to support LDP development taking into consideration development viability issues. In most cases the levy value will need to be determined by independent suitable qualified professional and this cost needs to be additional to the existing local authority budget.
- The cost of Local Authority employing consultants to help with determining levy values is not accounted for in LA budgets and this will require to be undertaken every 5 years
- Concerns of costly legal cases if developer challenge ILS levy charges in local authority area therefore important for SG to set clear calculation methods that are utilised across Scotland in regulations and guidance were LA can modify ILS for local reasons.
- Maintenance costs associated with delivered infrastructure should be included in levy charge unless Scottish Government awarding Council more money to maintain new infrastructure.
- Concern that ILS will mean less SG/UK Government support for required major infrastructure projects, as since ILS tax should pay for these projects, rather than part of a cocktail of funding, causing negative impacts to existing communities and new residents. The Levy will not pay for the full costs of infrastructure projects required to support development.
- Impact on S75 contributions due to overall viability issues.
- Complexity of determining set levy values based on viability as these changes across Local authority areas and across Scotland.
- Landowners refusing to release land for development as not meeting their financial goals, causing land supply issue which will drive up prices even further, particularly in residential land sales with significant implications for affordable housing delivery which is currently at risk due to lack of government funding availability to deliver, with high construction costs.
- Concern that ILS expenditure is not politized through no other funding being available to support larger more complex infrastructure development therefore Council's may prioritise smaller projects which will not impact on capital funding but could lead to wider infrastructure deficits for the wider area. Requirement to have clear regulations on how Levy funding can be utilised by local authorities.
- Concerns raised about property market failure after LA implemented Infrastructure at significant capital borrowing therefore leaving LA in considerable debt. How long can LAs claim back sums from implemented infrastructure from new developments? Regulations need to allow lengthy periods for expenditure to assist LA in implementation.
- Concern raised that Affordable Housing providers cannot afford additional costs of levy unless taken off land value.

