

Dumfries and Galloway Council

LOCAL DEVELOPMENT PLAN 2

Developer Contributions to Upgrade the Water Supply at Gretna Border

Draft Supplementary Guidance - November 2019



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1 INTRODUCTION AND BACKGROUND

1.1 This supplementary guidance outlines the approach and the mechanisms that will be used by the Council to secure infrastructure contributions from developers to upgrade the water supply at Gretna Border.

1.2 Development in Gretna, Gretna Green and Springfield has been limited for a considerable number of years because of a lack of water supply. The Scottish Government, Scottish Water and the Council have been working closely to find a solution to resolve these issues.

1.3 Scottish Water provide water and sewerage services across Scotland and they are accountable to the public through the Scottish Government. They are currently funded to upgrade the water and waste water treatment works and the associated mains; these are known as part 4 strategic assets. There is currently capacity at the supplying water treatment works. Any other parts of the infrastructure that require to be upgraded need to be paid for by the developer with Scottish Water making a reasonable cost contribution to the work. In the case of Gretna Border, it is the water service reservoir at Winterhope in the vicinity of Kirkpatrick Fleming, fed from the Black Esk Reservoir and associated pipe work which are parts 2 and 3 of the infrastructure that require to be upgraded.

1.4 In 2009, Scottish Water identified the following 3 phases of upgrades;

- Phase 1 has resulted in the replacement of approximately 3.2 kms of water main from Winterhope water treatment works. This was designed to provide 50 connections and some improvement to the water pressure. Completed and all water connections have now been taken up.
- Phase 2 to involve the provision of a new water service reservoir or alternative solution. The delivery of this phase to be timed to meet the emerging demand for new housing. It would create additional capacity and improve existing water pressure. Not implemented as yet.
- Phase 3 to involve further pipe work upgrades. This stage would provide the capacity needed for the remaining sites identified in Local Development Plan 2 (adopted October 2019). It would also be the final stage in improving water pressure for existing customers. Not implemented as yet.

1.5 Under Scottish Water's current funding regime, parts 2 and 3 of the infrastructure would normally require to be paid for by developers and or landowners. As there are a number of developers and landowners in the Gretna Border area, it would be difficult to co-ordinate and apportion payment.

1.6 All additional water connections released following Phase 1 upgrade works have now been allocated and Scottish Water have advised that there is no further capacity available in the Gretna area. In LDP2, the Gretna Border Settlement Overview states:

“Scottish Water advises that the existing water network in Gretna requires upgrade work to be carried out to accommodate new development. Phase 1 of the works to the water network has been completed to allow a limited number of new connections. Major upgrade works are required to create a new Water Service Reservoir and extensive water main upgrades. Developer contributions will be required for these proposed works which will be set out in supplementary guidance.”

1.7 During the last 2 years, a series of meetings have taken place between the Council, Scottish Government and Scottish Water to identify an agreed solution. These discussions led to the infrastructure constraints being brought to the attention of the Minister for Local Government, Housing and Planning. A partnership approach has been taken to develop these proposals to ensure that stakeholders are able to appropriately contribute to resolve this issue.

1.8 The agreed way forward is for Scottish Water to front fund the works to upgrade the water supply. They have agreed to do this “at risk”, pending the agreement of financial contributions from the Council and Scottish Government. A report to the Council’s Finance, Procurement and Transformation Committee of the 29 October 2019 agreed to allocate £500,000 as a contribution to the total works of £5.5 million. Following payment of the £500,000 to Scottish Water, this balance would be treated as a negative service reserve which will be reduced as developer contributions are received. It is likely to take a number of years for the money to be recouped in full and current indications are the Council’s financial contribution will be recovered.

1.9 Scottish Water have reviewed the solution proposed in 2009 and concluded that a new water service reservoir and pipeline are still required. The total costs have been estimated by them to be in the region of £5.5 million and they have agreed to the principle of contributing £2.5 million. Subject to finance arrangements and relevant permissions being in place, a site start will take place during spring 2020 with works scheduled to complete around March 2021. Scottish Water have advised that if the final cost exceeds this estimate, they will absorb the additional costs and carry out the works “at risk”. The Council would contribute £500,000 to the project to be reduced as developer contributions are received over a number of years.

1.10 The developer contributions are set out at para 3.7 dependent on the type of development. The delivery of a water service reservoir will support the aspirations of the Council’s LDP and Strategic Housing Investment Plan (SHIP) while aiding the delivery of the Council’s priority to ‘Build the Local Economy’. It will also ensure Gretna Border is well placed to accommodate development that may come forward as a result of the Borderlands deal.

1.11 Financial contributions in relation to new development connections are defined within the Water Industry (Scotland) Act 2002. Developers are required to meet costs of providing additional local capacity subject to a reasonable cost contribution from Scottish Water. Given the scale of the investment required, it is unlikely that a private developer would be willing to make the financial commitment required. The Council has submitted an expression of interest to the Scottish Government’s Housing Infrastructure Fund (HIF) for their £2.5 million contribution to the works. The (HIF) aims to support the delivery of housing by providing financial assistance to unblock infrastructure constraints. The table below sets out the proposed investments from each partner:

Partner	Allocation (£)
Scottish Water	2,500,000
Scottish Government	2,500,000
Dumfries and Galloway Council	500,000
Total	5,500,000

1.12 To secure the upgrade, the Council has agreed to pay Scottish Water a £500,000 contribution when work is initiated. The draft Supplementary Guidance and the level of developer contributions was agreed at the Council’s Economy and Resources Committee of 19 November 2019. Financial support from the Council enables Scottish Water to secure the funding to implement and complete overall improvements to the mains water supplies at a total estimated cost of £5.5million. The Council will then re-coup its contribution through developer contributions which have been set at an affordable and realistic amount. Developers will only be required to pay the relevant contribution until the Council’s financial contribution has been recovered in full.

2. LEGAL AND POLICY BACKGROUND

2.1 Local authorities have powers to enter into agreements with applicants and landowners to regulate planning matters and manage developer contributions under Section 75 of The Town and Country Planning (Scotland) Act 1997 and Section 69 of the Local Government (Scotland) Act 1973.

2.2 Circular 3/2012 Planning Obligations and Good Neighbour Agreements provides Scottish Government advice on this matter. The circular makes it clear that planning agreements have a limited but useful role to play in the development management process but they should only be sought where they are required to make a proposal acceptable in planning terms. The agreement should serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should be relevant to development plans. The agreement must be related to the development proposed either as a direct consequence of the development or arising from the cumulative impact of development in the area. The agreement must be proportionate in scale and kind to the development being considered and reasonable in all other respects.

2.3 LDP2 Policy OP3: Developer Contributions provides the policy framework.

Policy OP3: Developer Contributions

Developer contributions will be sought where a development proposal (or a combination of developments) creates an identified need: to secure the mitigation required to address an adverse environmental impact; or to provide for new, extended or upgraded public infrastructure facilities or services. Contributions secured through a planning obligation or other suitable legal agreement, as necessary, will be consistent with the tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Developers will be required to make a fair and reasonable contribution (financial or “in kind”), proportionate to the scale and nature of the development, towards these additional costs or requirements, relative to:

- affordable housing;
- open space and green networks;
- leisure, recreation and tourism infrastructure;
- education;
- biodiversity;
- community facilities, including health facilities;
- waste management infrastructure;
- offsite infrastructure works including transport infrastructure.

The proposals listed in the settlement statements and shown on the Inset Maps will be subject to a planning obligation or other suitable legal agreement to secure the required contributions towards the Relevant actions specified in the Council’s Action Programme. For other proposals, individual assessments may be necessary to identify the impact arising from the development and the mitigation required.

Supplementary guidance provides further details on the scale and nature of developer contributions; any exceptions that may apply; and the submission of development appraisal information where development viability issues arise.

Guidance on measures to conserve and enhance biodiversity is provided in the Local Biodiversity Action Plan.

3. IMPLEMENTATION

3.1 The requirement for developer contributions in respect of upgrading the water supply will be discussed with the landowner or developer at the outset, either at the initial pre-application meeting or as soon as the planning application has been submitted. These discussions will cover how much is to be paid and depending on the scale of the development what the best method will be to secure the payments.

3.2 The Council are only seeking developer contributions until the £500,000 (index linked to an appropriate construction industry index from the date of payment to Scottish Water) plus any legal costs is repaid. The Council will incur additional costs in drawing up each planning obligation. This additional cost will be added to the initial Council outlay and developer contributions are paid to the Council until the full cost is reimbursed.

3.3 Large schemes will be given the option of phasing their development and paying the contribution prior to work commencing on each phase. These schemes will require a planning agreement to be entered into in terms of section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) and planning permission will only be issued once the planning agreement has been concluded. Preparation of the agreement will be progressed during the processing of the planning application to minimise the risk of any delay in issuing the planning permission. If the contribution is to be paid in whole in advance of planning permission being issued then an agreement in terms of section 69 of the Local Government (Scotland) Act 1973 will be appropriate. To minimise this cost, it is proposed to use a standard Planning Agreement templates, a draft's of which are attached as **Appendix 1** to this guidance.

3.4 As the water supply improvement works for which the financial contribution is required are not in the control of the applicant, Scottish Water has indicated to the Council (as the planning authority) that the works will be completed around March 2021. This ensures that the requirement for the planning agreement is reasonable.

3.5 The table below lists the amount of developer contribution that will be required for each type of development. They were agreed by the Council's Committee on Economy and Resources on 19 November 2019. The payment rates will be index linked (using the appropriate construction costs index) once the Council has made its payment to Scottish Water. The rates will then be reviewed on an annual basis from date of implementation. The contributions for residential developments also applies to projects implemented by Registered Social Landlords (RSLs).

Payment Rates

Type of Development	Amount to be paid per connection
Residential	£1,250 per connection
Commercial	£1,250 per 500 square metres
Industrial	£1,250 per 500 square metres
Retail	£1,250 per 500 square metres
Business	£1,250 per 500 square metres
Nursing/Residential Care Home	£1,250 per 10 bed spaces
Nursery School	£1,250 per 10 child places

3.6 Developers will be able to make their payment to the Council by electronic means.

3.7 The water supply issue has been ongoing for a number of years which has resulted in some developers using boreholes to serve their development. Scottish Water has advised that any properties wishing to move from a borehole to a public supply should contact them in the first instance. These connections will be required to make a developer contribution to the Council.

4. MONITORING AND MANAGEMENT OF CONTRIBUTIONS

4.1 The Council will regularly monitor the uptake of developer contributions until the £500,000 has been repaid in full (increased by construction costs index) plus any additional costs incurred by the Council in drawing up legal agreements. This will provide certainty to developers so they know when they no longer have to pay a developer contribution to the Council.

4.2 The management of contributions will be carried out by the Council. Developer contributions will be secured within the relevant accounts within the Council and will be clearly ring fenced for the purpose specified in the planning obligation. A planning obligation secured through an appropriate legal agreement will provide developers with the opportunity to seek repayment of all/ part of the contribution that have not been allocated within a certain timeframe for the use of which the contribution was intended. Timescales may vary pending on the circumstances of a development and the requirement of the contribution.

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APPENDIX 1 -

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MINUTE OF AGREEMENT

between

THE DUMFRIES AND GALLOWAY COUNCIL

and

[developer to be detailed]

2019

To be prepared

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AGREEMENT

between

THE DUMFRIES AND GALLOWAY COUNCIL, a local authority in terms of the Local Government etc. (Scotland) Act 1994 and having its principal offices at Council Offices, English Street, Dumfries ("**the Council**")

and

[●] being a company incorporated under the Companies Acts (Registered Number [●]) and having its registered office at [●] ("**the Developer**")

or

[●] residing at [●] ("**the Developer**")

1. WHEREAS:-

- 1.1 the Council is the planning authority for the Dumfries and Galloway area for the purposes of the Planning Act;
- 1.2 the Developer has made the Application in respect of the Development;
- 1.3 the Development engages LDP2 Policy OP3 and the Public Water Contribution Guidance which require the Developer to make a contribution towards public water infrastructure upgrading works;
- 1.4 the Council is minded to grant planning permission for the Development.

NOW THEREFORE it is agreed as follows:-

2. DEFINITIONS

- 2.1 In this Agreement, unless the context otherwise requires or admits, the following expressions have the following meanings:-
 - 2.1.1 **Agreement:** means this agreement [together with the plan and schedule annexed hereto] and any deed or document subsequently entered into between the Council and the Developer which is expressed to be supplemental to or an amendment to this agreement;
 - 2.1.2 **Application:** means the application for planning permission in respect of the Development submitted to the Council and allocated reference number [●];

- 2.1.3 **Decision Notice:** means the Decision Notice granting planning permission in relation to the Development pursuant to the Application to be issued by the Council in terms of this Agreement;
- 2.1.4 **Development:** means the construction of [●] at the Subjects in accordance with the Planning Permission;
- 2.1.5 **Education Act:** means the Education Scotland Act 1980;
- 2.1.6 **LDP2:** means the Dumfries and Galloway Council Local Development Plan which was adopted by the Council in accordance with the Planning Act on 3 October 2019;
- 2.1.7 **LDP2 Policy OP3:** means the Council's policy OP3: Developer Contributions as contained in the LDP2 which provides that developer contributions will inter alia be required where a development proposal (or a combination of developments) creates an identified need to provide new, extended or upgraded public infrastructure facilities or services relative to education;
- 2.1.8 **Planning Act:** means the Town and Country Planning (Scotland) Act 1997 as amended by the Planning (Scotland) Act 2019;
- 2.1.9 **Planning Permission:** means the planning permission for the Development under the terms and conditions of the Decision Notice to and all associated drawings and documentation referred to therein, or which impliedly forms part thereof, and any amendment or amendments thereto;
- 2.1.10 **Public Water Contribution:** means the sum of [●] THOUSAND POUNDS (£[●]) STERLING as calculated in accordance with the Public Water Contribution Guidance;
- 2.1.11 **Public Water Guidance:** means the guidance in relation to developer contributions in relation to public water contributions contained in SPG Developer Contributions and SPG 9;
- 2.1.12 **Subjects:** means ALL and WHOLE [●];
- 2.1.13 **SPG 9:** means the Council's non-statutory supplementary guidance on developer contributions for the upgrade of the water supply at Gretna Border adopted on [];
- 2.1.14 **SPG Developer Contributions:** means the Dumfries and Galloway Council Local Development Plan Supplementary Guidance in relation to Developer Contributions which was adopted by the Council in accordance with the Planning Act on [];
- 2.1.15 **Working Days:** means any day excluding Saturday or Sunday on which Scottish clearing banks are open for business.

3. DEVELOPER CONTRIBUTIONS

3.1 PUBLIC WATER CONTRIBUTION

- 3.1.1 The Developer shall pay the Public Water Contribution to the Council within 10 Working Days of the last date of execution of this Agreement.
- 3.1.2 If the Public Water Contribution is not paid in accordance with clause 3.2.1, the Developer shall pay interest to the Council on the unpaid Public Water Contribution at the rate of 4 basis points above the base rate of the Bank of Scotland plc in force at the applicable time.
- 3.1.3 The Council shall use the Public Water Contribution in accordance with LDP2 Policy OP3 and the Public Water Contribution Guidance towards one or more of the following: (1) the upgrade of the water supply at Gretna Border; (2) reimbursing the Council in relation to funding previously provided by the Council in relation to the upgrade of the water supply at Gretna Border; (3) any other purpose relating to the upgrade of the water supply at Gretna Border.
- 3.1.4 If the Public Water Contribution, or any part thereof, is not disbursed or allocated by the Council or reimbursed to the Council for the purposes provided in clause 3.1.3 within [] years of the date of receipt by the Council of the Public Water Contribution, the Council shall, subject to the terms of this clause, return the Public Water Contribution or any part thereof either not disbursed or allocated, without interest, to the Developer and the Developer will have no further liability hereunder. Where the Council has allocated all or part of the Public Water Contribution for the upgrade of the water supply at Gretna Border within the said [] year period, the Council shall have a further period of [] years from the expiry of the [] year period to spend those monies so allocated.

4. ISSUE OF DECISION NOTICE

The Council shall issue the Decision Notice within 10 Working Days of the later of (1) the last date of execution of this Agreement; (2) the date of payment of the Public Water Contribution (and any interest due thereon); and (3) the payment of the expenses due in terms of clause 12.

5. NON IMPLEMENTATION OF PLANNING PERMISSION

Even if the Planning Permission were to expire without having been implemented, the Public Water Contribution shall not be refunded to the Developer (except in accordance with clause 3.1.4).

6. STATUTORY SUCCESSORS

The expression the Council shall include any statutory successors to the Council.

7. REPLACEMENT OR AMENDMENT OF LEGISLATION OR POLICY

- 7.1 It is agreed and declared that any references to any Act of Parliament shall include any amendment, modification, extension, re-enactment or replacement thereof for the time being in force and shall include all instruments, orders, notices, plans, regulations, bye-laws, permissions and

directions for the time being made, issued or given thereunder or deriving validity therefrom.

- 7.2 It is agreed and declared that any references to any development plans, planning policies, and supplementary planning guidance shall include any amendment, modification, extension, re-enactment or replacement thereof for the time being in force.

8. STATUTORY POWERS

This Agreement is entered into under and in terms of Section 69 of the Local Government (Scotland) Act 1973 as amended.

9. DISPUTE RESOLUTION

Any difference or dispute arising as to the interpretation or meaning of this Agreement or any other matter arising therefrom shall be submitted to the final decision of an arbitrator mutually appointed or failing agreement to such appointment to be appointed by the Sheriff Principal of the Sheriffdom of South Strathclyde, Dumfries and Galloway on the application of either party, and such arbitration shall be carried out in accordance with the Arbitration (Scotland) Act 2010 and the Scottish Arbitration Rules which form Schedule 1 to that Act.

10. JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of Scotland and, save for arbitration in terms of clause 9, the parties hereto submit to the exclusive jurisdiction of the Scottish Courts.

11. REGISTRATION

The parties hereto agree to the registration hereof for preservation and execution in the Books of Council and Session.

12. EXPENSES

The Developer shall pay to the Council within 10 Working Days of the last date of execution of this Agreement the sum of [●] together with VAT thereon as a contribution towards the Council's costs in connection with the preparation, execution and registration of this Agreement and the sum of £22 in relation to the registration fees payable for registering and obtaining two extracts of this Agreement. IN WITNESS WHEREOF these presents typewritten on this and the [●] preceding pages are executed as follows:-

Sealed with the Common Seal of and subscribed for and on behalf of DUMFRIES AND GALLOWAY COUNCIL by

Proper Officer

Signature:

Full Name

at [_____]

on _____ 2019
Date

Subscribed for and on behalf of [_____]
by

Signature: Developer

Witness to Developer Signature

Full Name

Full Name

Designation

Address

at _____
Place

on _____
Date

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Agreement

between

Dumfries and Galloway Council

and

[●]

with the consent of

[●]

Subjects: [●]

Ref: [●]
FAS: [●]

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Section 75

1. Definitions
2. Interpretation
3. Relevant Searches and issue of planning permission
4. Material Operation
5. Obligation
6. Late Payment
7. Notices
8. Legal Expenses
9. Execution and Registration
10. Prohibition against alienation prior to registration
11. Enforcement
12. Validity of provisions
13. Modification or discharge
14. Dispute resolution
15. Creditors consent
16. Jurisdiction

Minute of Agreement

In terms of Section 75 of the Town and Country Planning (Scotland) Act 1997,

between

- 1 **THE DUMFRIES AND GALLOWAY COUNCIL**, constituted under the Local Government etc. (Scotland) Act 1994 and having their Council Headquarters at Council Offices, English Street, Dumfries, the Planning Authority for the Dumfries and Galloway area for the purposes of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as the "**Council**"); and
- 2 [●] being a company incorporated under the Companies Acts (Registered Number [●] and having its registered office at [●]

or

[●] residing at [●]

(who and whose successors as owners of the Subjects or any part thereof are hereinafter referred to as the "**Landowner**");

with the consent of
- 3 [●] (the "**Creditor**");

Considering that:

- (A) The Planning Application has been submitted to the Council in respect of the Development.
- (B) The Council is entitled in terms of *inter alia* Section 75 of the Act to enter into planning obligations with any person in respect of land within the Council Area for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified.
- (C) The Landowner is the heritable proprietor of the Subjects and is therefore able to enter into planning obligations as provided for in Section 75 of the Act.
- (D) The Council has resolved to grant the Planning Permission for the Development subject to the Landowner entering into this Agreement.
- (E) The Development engages LDP2 Policy OP3 and the Public Water Contribution Guidance which require the Landowner to make a contribution towards public water infrastructure upgrading works;
- (F) The Creditor, as heritable creditor in the Standard Security, has agreed to consent to the Landowner entering into this Agreement.

Now therefore the Council and the Landowner [with the consent of the Creditor] as witnessed by their execution hereof Do Hereby Agree as follows:

1 Definitions

"**Act**" means the Town and Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act 2019 and any other variation or amendment from time to time or any re-enactment thereof;

"**Agreement**" means this agreement [together with the plan] [and schedule annexed hereto] and any deed or document subsequently entered into between the Council and the

Landowner which is expressed to be supplemental to or a modification of this minute of agreement;

"**Commencement of Development**" means the first date on which a Material Operation (as such term is defined in Section 27(4) of the Act) in relation to the Development is carried out;

"**Completion**" means the date of issuing of the earlier of a Certificate of Temporary Occupation or Completion Certificate by the Council's Building Standards Department;

"**Date of Material Operation**" means either the date intimated to the Council in accordance with the provisions of clause 4 hereof, which failing the date determined by the Council in accordance with the provisions of clause 4 hereof;

"**Development**" means the construction of [●] at the Subjects in accordance with the Planning Permission;

"**Index**" means the All-in Tender Price Index forecast figures as published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors on a quarterly basis, or if that ceases to be published or the basis upon which such index is calculated is substantially changed or rebased, such substitute or alternative index most likely to achieve an equivalent result as the parties may agree or, in the absence of agreement, as shall be determined pursuant to clause 14 of this Agreement;

"**Index Linked**" means increased in accordance with the following formula:-

$$\frac{b \times c}{a}$$

Where: a equals the Index published as at the final date of signing of this Agreement, b equals the Index as at the date of payment of the relevant sum to be indexed, and c equals the relevant sum to be indexed;

"**Keeper's Acknowledgement**" means the receipt issued by the Registers of Scotland in respect of the registration of this Agreement in the Land Register of Scotland;

"**LDP2**" means the Dumfries and Galloway Council Local Development Plan which was adopted by the Council in accordance with the Planning Act on 3 October 2019.

LDP2 Policy OP3: means the Council's policy OP3: Developer Contributions as contained in the LDP which provides that developer contributions will inter alia be required where a development proposal (or a combination of developments) creates an identified need to provide new, extended or upgraded public infrastructure facilities or services relative to education.

"**Material Operation**" means the initiation of development of land in accordance with Section 27(4) of the Act;

"**Parties**" means the Council, the Landowner [and the Creditor];

"**Plan**" means the plan annexed plan annexed and subscribed as relative hereto;

"**Planning Application**" means the application for planning permission for the Development submitted to the Council and allocated planning reference number [●];

"**Planning Permission**" means the planning permission for the Development under the terms and conditions of the decision notice to be issued by the Council under reference [●] and all associated drawings and documentation referred to therein, or which impliedly forms part thereof, and any amendment or amendments thereto;

"Prescribed Rate" means interest at the rate of 4% per annum above the base lending rate (or such substitute rate as may be promulgated from time to time) from time to time of The Royal Bank of Scotland plc;

"Public Water Contribution" means the sum of (a) [●] THOUSAND POUNDS (£[●]) STERLING [Index Linked] t, as calculated in accordance with the Public Water Contribution Guidance;

"Public Water Contribution Guidance" means the guidance in relation to developer contributions in relation to public water contributions contained in SPG Developer Contributions and SPG 9;

"Relevant Searches" means (i) a legal report against the Subjects with personal searches against all parties except the Council, (ii) where the Landowner is a company incorporated under the Companies Acts a charges and company file search against such parties, and (iii) unless the Subjects comprise the whole of a registered title a level 3 plans report;

"Schedule" means the schedule annexed and signed as relative hereto;

"Self Evidencing Manner" means subscription in terms of Sections 3, 7 and 8 and Schedule 2 of the Requirements of Writing (Scotland) Act 1995;

"SPG 9" means the Council's non-statutory supplementary guidance on developer contributions for the upgrade of the water supply at Gretna Border adopted on [];

SPG Developer Contributions: means the Dumfries and Galloway Council Local Development Plan Supplementary Guidance in relation to Developer Contributions which was adopted by the Council in accordance with the Planning Act on [];

"Standard Security" means the standard security granted by the Landowner over the Subjects registered [●];

"Subjects" means ALL and WHOLE [●];

"Working Days" means any day excluding Saturday or Sunday on which Scottish clearing banks are open for business.

2 Interpretation

2.1 In this agreement:

2.1.1 Words importing one gender shall be construed as importing any other gender.

2.1.2 Words importing the singular shall be construed as importing the plural and *vice-versa*.

2.1.3 Words importing personal shall include firms, companies and corporations and *vice-versa*.

2.1.4 Where any party comprises more than one person, the obligations and liabilities of that party under this agreement shall be joint and several obligations and liabilities of these persons.

2.1.5 References to any Act of Parliament shall include any modification, extension or re-enactment thereof for the time being in force and shall include all instruments, orders, notices, plans, regulations, bye-laws, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.

2.1.6 References to any development plans, planning policies, and supplementary planning guidance shall include any modifications thereof and any replacement

development plans, planning policies or supplementary guidance adopted or issued from time to time.

2.1.7 References to any part of the Subjects shall, where the context so requires, include references to the successors in title to that part of the Subjects.

3 Relevant Searches and Issue of Planning Permission

3.1 Once the Agreement has been submitted for registration and the Keeper's Acknowledgement has been issued, the Landowner shall exhibit updated Relevant Searches (but not a plans report) to the Council brought down to a date not earlier than the date following the date of the Keeper's Acknowledgement.

3.2 Provided that the Relevant Searches do not contain anything which in the opinion of the Council would adversely affect the ability of the Landowner to enter into this agreement and create valid planning obligations, and payment has been made in terms of clause 8, the Council will within ten (10) Working Days issue the Planning Permission.

4 Material Operation

Before the Material Operation is commenced at the Subjects following the Planning Permission, the Landowner shall intimate in writing to the Council the Date of Material Operation, being the anticipated date of the effecting of such Material Operation at the Subjects, and in the event of such intimation not being made timeously before the date of effecting of the Material Operation at the Subjects, the Council shall intimate in writing to the Landowner the Date of Material Operation, the Council being entitled to intimate retrospectively the Date of Material Operation.

5 Developer Contributions

5.1 Public Water Contribution

5.1.1 The Landowner shall pay the Public Water Contribution to the Council prior to Commencement of Development.

[Placeholder for bespoke alternative payment mechanism addressing payment of contributions on a deferred and/or instalment basis]

5.1.2 The Council shall use the Public Water Contribution in accordance with LDP2 Policy OP3 and the Public Water Contribution Guidance towards one or more of the following: (1) the upgrade of the water supply at Gretna Border; (2) reimbursing the Council in relation to funding previously provided by the Council in relation to the upgrade of the water supply at Gretna Border; (3) any other purpose relating to the upgrade of the water supply at Gretna Border.

5.1.3 If the Public Water Contribution, or any part thereof, is not disbursed or allocated by the Council or reimbursed to the Council for the purposes provided in clause [5.1.2] within [] years of the date of receipt by the Council of the Public Water Contribution (where payment is in instalments, the [] year period will run from the date of payment of the last instalment), the Council shall, subject to the terms of this clause, return the Public Water Contribution or any part thereof either not disbursed or allocated, without interest, to the Landowner and the Landowner will have no further liability hereunder. Where the Council has allocated all or part of the Public Water Contribution for the upgrade of the water supply at Gretna Border within the said [] year period, the Council shall have a further period of [] years from the expiry of the [] year period to spend those monies so allocated.

6 Late payment

In the event of there being a failure by the Landowner to pay in full any sum or sums due under this Agreement on the due date for payment, interest at the Prescribed Rate will accrue on any sum or sums outstanding from in each instance the due date for payment thereof until payment in full thereof (including interest).

7 Notices

All notices which require to be given in terms of this Agreement shall be in writing and shall be deemed to be sufficiently served if signed by or on behalf of the party issuing the notice and sent by pre-paid recorded delivery or registered post addressed:

7.1 in the case of the Council, to the Council at Dumfries and Galloway Council, Kirkbank, English Street, Dumfries DG1 2HS or to such other address as the Council may have notified the other parties previously in writing;

7.2 in the case of the Landowner at its registered office as specified above and, for subsequent persons or entities with an interest in the Subjects (if a body corporate) at its registered office or head office, or (if an individual) at his last known address in the United Kingdom or (if a partnership) to the partnership and any one or more of the partners thereof at its last known principal place of business in the United Kingdom or (in any case) at such address as the heritable proprietor of the Subjects may have notified in writing to the other parties,

and any such notice shall be deemed to have been served on the second business day after the date on which the same was posted (excluding weekends and public and statutory holidays).

8 Legal Expenses

Prior to issue of the Planning Permission the Landowner shall pay to the Council (1) the sum of £[●] (being a fee of £[●] plus VAT) as a contribution towards the Council's legal expenses in connection with the negotiation, drafting, adjustment, conclusion, execution and registration/recording of this agreement, and (2) the sum of £[●] in respect of the registration dues payable on the registration/recording of this agreement.

9 Execution and Registration

9.1 The Parties will execute this Agreement in a Self Evidencing Manner.

9.2 The Landowner warrants that, as at the date of their execution of this Agreement, they are the heritable proprietors of the Subjects.

9.3 The Parties hereby agree that the Council shall be the last to execute this Agreement.

9.4 The Parties by execution hereof consent to registration of this Agreement in the Land Register of Scotland and to the recording of this Agreement in the Books of Council and Session for preservation and execution.

9.5 In the event that the application for registration described at clause 9.4 is rejected by the Registers of Scotland and that, as a result, the Council requests the Landowners to provide documentation, information or carry out actions of any kind, including amending the terms of the Agreement, to allow the Council to resubmit or submit fresh applications to complete to the issue by the Registers of Scotland of a fully registered Agreement, the Landowners will use all reasonable endeavours to promptly deliver such documentation and information to the Council and carry out such action to allow the Council to resubmit or submit fresh applications and to the issue by the Registers of Scotland of a fully registered or recorded Agreement.

10 Prohibition against Alienation prior to Registration

The Landowner shall not at any time before registration of this Agreement in the Land Register of Scotland, dispose of, sublet or otherwise grant to any other party an interest in their title to the Subjects or any part thereof, or enter into any missives or agreement to part with

ownership or possession of any part of the Subjects whether by way of sale, lease, licence to occupy or any other arrangement affecting the Subjects and confirm by their execution hereof that they have not, nor shall they grant any standard security over the whole or any part of the Subjects all except insofar as the same may be specifically agreed to in writing by the Council which agreement shall not be unreasonably withheld or delayed.

11 **Enforcement**

Without prejudice to any other remedy which may be available to the Council at law (in respect of all terms of this Agreement), the Council may, in pursuance of this agreement, avail itself where appropriate, of the remedies of interdict, specific implement and reduction.

12 **Validity of Provisions**

This Agreement is entered into under and in terms of Section 75 of the Act. Each of the terms of this Agreement has been and is agreed independently of the others and in the event of any term becoming or being held to be ineffective whether by operation of law or otherwise the remaining terms of this agreement shall continue in force. However, if and to the extent that any term, provision, condition or obligation contained in this Agreement is held in any proceedings to be a term, provision, condition or obligation which cannot be competently included in or enforced under an agreement entered into under and in terms of the said Section 75, such term, provision, condition or obligation shall, subject to the terms of this Agreement, be and remain enforceable to the same extent and effect as if this Agreement was an agreement in common form between the parties hereto.

13 **Modification or discharge**

In the event that the Landowner wishes to modify and/or discharge the whole or any part of this Agreement, the terms of Section 75A of the Act shall apply. The Landowner shall be responsible for the Council's reasonable legal expenses and outlays properly incurred in the negotiation, drafting, preparation, completion and registration of any discharge and/or modification hereto.

14 **Dispute Resolution**

Except as otherwise provided in this Agreement, Any difference or dispute arising as to the interpretation or meaning of this Agreement or any other matter arising therefrom shall be submitted to the final decision of an arbitrator mutually appointed or failing agreement to such appointment to be appointed by the Sheriff Principal of the Sheriffdom of South Strathclyde, Dumfries and Galloway on the application of either party, and such arbitration shall be carried out in accordance with the Arbitration (Scotland) Act 2010 and the Scottish Arbitration Rules which form Schedule 1 to that Act.

15 **[Creditor's Consent**

The Creditor hereby consents to the Landowner entering into this Agreement and to the Agreement being registered in the Land Register of Scotland and acknowledges that the Agreement binds the Subjects.]

16 **Jurisdiction**

This Agreement shall be construed in accordance with the laws of Scotland and shall fall within the exclusive jurisdiction of the Scottish courts. IN WITNESS WHEREOF these presents typed on this and the preceding [●] pages [together with the Plan] [and Schedule] are executed by the parties as follows:

Sealed with the Common Seal of and subscribed for and on behalf of DUMFRIES AND GALLOWAY COUNCIL by

Proper Officer

Signature:

Full Name

at []

on
Date

Subscribed for and on behalf of [] by

Signature: Developer

Full Name

Designation

at
Place

on
Date

Subscribed for and on behalf of [] by

Signature: Developer

Full Name

Designation

at
Place

on
Date

Subscribed for and on behalf of [] by

Signature: Developer

Full Name

Witness to Developer Signature

Full Name

Address

Witness to Landowner Signature

Full Name

Address

Witness to Creditor Signature

Full Name

Designation

Address

at

Place

on

Date

DRAFT

This is the Schedule referred to in the foregoing Section 75 Agreement between Dumfries and Galloway Council and [●] [with the consent of [●]]