

REPORT TO: DEVELOPMENT QUALITY COMMITTEE - 16 MARCH 2009

REPORT ON: REVISION OF CIRCULAR 12/1996: PLANNING AGREEMENTS

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 66-2009

1 PURPOSE OF REPORT

- 1.1 The report seeks to confirm the views of the Council in response to the consultation paper Revision of Circular 12/1996: Planning Agreements issued by the Scottish Government in December 2008 and to authorise the Director of Planning and Transportation to issue the response to the Scottish Government by 27 March 2009.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee:
- a endorses the recommendations contained in Annex A to this report as the Council's formal response to the consultation paper; and
 - b authorises the Director of Planning and Transportation to issue the formal response to the Scottish Government by 27 March 2009.

3 FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications for the Council arising from the terms of this report.

4 BACKGROUND

- 4.1 Rather than undertake a review now of Planning Obligations as committed under the 2006 Act, the Scottish Government has decided to focus, in this consultation paper on how best to make the current system of planning agreements set out in Section 75 of the 1997 Act operate more effectively. Further reforms may be introduced in due course.
- 4.2 Members may view the consultation paper at www.scotland.gov.uk/Topics/Built-Environment/planning/news/consult. The main proposed changes to the Circular are summarised below. The Council has been asked to respond to a series of 12 questions based on its consideration of the proposals. These are outlined in Annex A together with draft recommended responses.
- 4.3 It is Scottish Government's view that planning agreements have a limited but useful role in the planning system and should only be used where it is considered that a condition would not be sufficient and where it would not be appropriate to grant permission without some form of restriction, limitation and/or compensation. Their purpose is to provide a mechanism which would enable certain obstacles to the grant of planning permission to be overcome and development proposals allowed to proceed with potential negative impacts on land use, the environment and infrastructure reduced, eliminated or compensated for.

4.4 The proposed Circular carries forward and emphasises many of the guiding principles outlined in the current Circular 12/96. These have been updated in the content of the Scottish Government's requirements that a properly functioning planning system should support the purpose of increasing sustainable economic growth. This is to be achieved through a plan led system in which communities are involved positively and where individual planning applications are transparently decided in line with the development plan, taking account of other material considerations.

4.5 Accordingly the proposed Circular places a strong emphasis on:

- achieving a more open and transparent process which provides opportunities for public involvement;
- the importance of effective management of the process of developing, negotiating and concluding agreements as part of the planning process;
- the role of the Strategic Development Plan or Local Development Plan in setting out a clear understanding of infrastructure requirements and, from that, policy on planning agreements;
- the early identification of expected contributions in Supplementary Guidance;
- a clear presumption that planning agreements should only be used where they meet the policy tests set out in the Circular;
- the early and appropriate identification of heads of terms;
- the swifter issuing of planning permission following finalisation of planning agreements; and
- the importance of monitoring to ensure that agreements are implemented.

5 POLICY IMPLICATIONS

5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

6.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Head of Finance and Assistant Chief Executive have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

7.1 The following background papers are of relevance:

- a Revision of Circular 12/1996: Planning Agreements - Scottish Government - December 2008.
- b Circular 12/1996: Planning Agreements - Scottish Government - April 1996.

ANNEX A - QUESTIONS AND RESPONSES

Question	Recommended Response
Q1 Does the revised Circular help users to identify various implementation stages of the Planning Agreements process and does the Circular follow a logical and transparent process?	Yes. The Council supports the main principles set out in the present Circular and is content that these have been repeated and emphasised in the proposed Circular. The proposed Circular follows a logical and relatively easily understood series of steps which carry clearly the Scottish Government's objectives.
Q2 Will the revised Circular help streamline the process of negotiating and concluding planning agreements?	If adhered to by planning authorities and developers the Circular should assist in achieving the speedier establishment of Heads of Agreement and the conclusion of early agreed drafts as a basis for the conclusion of legal formalities.
Q3 Does the revised Circular set out clear guidance on how to determine when a planning agreement, as opposed to a condition or other legal agreement is required?	It is considered that this has always been relatively clear as outlined in the present Circular but the way in which the proposed Circular is set out and worded emphasis the main points. The sequential approach to establishing "necessity" as set out in Para 11 is welcomed as is the general approach to the application of policy tests.
Q4 To what extent do you consider the policy tests in the revised Circular sufficiently explicit to ensure enable consistent interpretation by all who use the Circular?	Just as planning authorities are expected to be aware of the similar tests which apply to the application of conditions in Circular 4/98, they should now be equally aware that similar tests which are clear and unambiguous apply to the agreements process.
Q5 To what extent do you consider that planning agreements may be negotiated at pre-application stage in order to reduce unnecessary delay and cost?	Identifying whether a Section 75 agreement or similar is necessary may not be possible at the pre-application stage as it may not be possible to have identified all the issues or to have applied the tests for conditions prior to undertaking formal consultations based on a complete application for planning permission. However, this should be possible to reach a point fairly early on when the heads can be identified and worked on so that a recommendation to approve can sit alongside an advanced draft agreement.
Q6 Does the revised Circular offer adequate guidance on access to Planning Agreements by the public?	It is surprising that the proposed Circular does not provide specific advice on the placing of all concluded and recorded agreements in Part II of the Planning Register and that authorities should make such public documents available on their websites as part of the publicly available application file or separately. The Council believes that Heads of Agreement should be as detailed as possible and

	<p>outlined explicitly in the publicly available report on the application. However, it would not support any proposal to involve the public or community bodies in the negotiation process except of course if they were formal parties to the agreement. Clear and unambiguous Heads of Agreement endorsed by Members in Committee should be adequate enough for officers to negotiate and conclude the agreement without the further direct involvement of elected Members unless they are required to reconsider and vary the Heads of Agreement.</p>
<p>Q7 Are there other changes the system of mitigating impacts of development that would be effective in supporting sustainable economic growth in Scotland? If so, what are these and how would they function?</p>	<p>Although the question is not entirely understood it raises a difficulty for Councils in supporting proposals in such a way that the outcome supports both economic growth and sustainable development. The cost of mitigation measures to be delivered by the planning process to as near as possible deliver both objectives may be so unreasonable as to make the conclusion of an agreement difficult if not impossible.</p>
<p>Q8 The Planning etc (Scotland) Act 2006 when commenced makes new provisions on the use of unilateral obligations and variation of planning agreements. Do you consider that these will alter the process of negotiating and concluding a planning agreement as set out in this Circular?</p>	<p>Section 75 of the 1997 Act is to be replaced by Section 23 of the 2006 Act but these provisions have yet to be implemented and specific draft guidance issued for consultation. This section of the Act may raise specific legal issues and is best dealt with under a separation consultation paper.</p>
<p>Q9 Are there particular costs or benefits not addressed in the partial RIA? What are they?</p>	<p>Annex D to the consultation paper includes a Regulatory Impact Assessment (RIA) including a cost/benefit assessment. The Council supports the application of the tests set out in the proposed Circular, the use of agreements to deliver financial contributions for example in support of infrastructure and other community benefits. It also supports the conclusion in the RIA that it is not appropriate to provide a formulaic approach. It should be for Councils to develop and apply their own methodologies on a case by case basis. However, in supporting the greater use of references to Planning Agreements in development plans and supplementary guidance there is likely to be a skills deficit in those authorities without dedicated and appropriately qualified staff. This additional cost burden is not sufficiently discussed in the RIA.</p>

Q10 Will particular groups not identified by the partial RIA be affected by the revised Circular?	It is considered that the RIA does not sufficiently recognise the potential for financial savings for business as more efficient processes for concluding agreements are progressed in line with the terms of the Circular.
Q11 How might the revised Circular impact positively or negatively on equalities groups?	It is not considered that the proposed Circular has a negative impact on equalities groups and it has to be assumed in concluding agreements that parties will have appropriate regard to the needs of all groups in the community likely to be affected by the outcome.
Q12 Will any groups not identified already in the partial EqIA be affected by the revised Circular?	The Equalities Impact Assessment at Annex C of the consultation paper appears comprehensive.
Comments on any other part of the consultative draft are welcomed.	None identified.