

REPORT TO: CITY DEVELOPMENT COMMITTEE - 27 SEPTEMBER 2010

REPORT ON: RESOURCING A HIGH QUALITY PLANNING SYSTEM - A CONSULTATION PAPER

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 430-2010

1 PURPOSE OF REPORT

- 1.1 The report seeks to confirm the views of the Council in response to the Consultation Paper issued by the Directorate for the Built Environment, Scottish Government entitled "Resourcing a High Quality Planning System - A Consultation Paper". The Consultation Paper was issued in July 2010 and responses are invited by 15 October 2010.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee:
- a endorses Appendix A to this report as the Council's formal response to the Consultation Paper; and
 - b authorises the Director of City Development to issue the formal response to the Scottish Government by 15 October 2010.

3 FINANCIAL IMPLICATIONS

- 3.1 Although neither this report nor the Consultation Paper have any direct financial implications for the Council the ultimate decisions arising from it have the potential to have fundamental implications for income streams in respect of fees for planning applications.

4 BACKGROUND

- 4.1 The purpose of the Consultation Paper is to seek views on how the planning service could be more effectively resourced and focused on the quality of service. This includes seeking views on options for amending the fee structure for planning applications.
- 4.2 The paper recognises that whilst allocating additional resources to the planning service is not necessarily or always the solution it may be a first step in some instances and for some authorities. All authorities need to consider how the planning service can add more value, for example through the medium of service planning.
- 4.3 Resources and fees are recognised as key issues for planning authorities and the development industry. The current economic and financial climate has reinforced the need for change and to deliver robust sustainable solutions. The current structure and fee levels often do not reflect processing costs, with income from smaller uncomplicated developments arguably subsidising the cost of processing applications for larger, complex developments. It is acknowledged that the planning application fee is a small proportion of, not just the total development costs, but also

the cost of submitting a planning application for larger developments, yet it remains the most important consent required by a developer.

- 4.4 While the modernised planning system, implemented in 2009, has taken some duties away from authorities, for example the requirement for structure plans across Scotland, it has also brought additional duties for planning authorities such as neighbour notification. These, and other issues, have been brought into sharp focus in the current economic climate highlighting that the current resourcing of the planning system is no longer sustainable.
- 4.5 This consultation paper should be seen as part of the wider package of measures currently being implemented to support modernising the planning system. "Delivering Planning Reform" provided a common statement and a shared commitment among stakeholders to promote better joint working and encourage a change in culture. A wide range of measures to support this are either completed or underway.
- 4.6 Scottish Ministers are committed to ensuring that issues relating to resources and quality of service are linked. The Scottish Government remains committed to the continuing improvement of planning performance to ensure the delivery of a quality service. It therefore expects planning authorities to continue to improve beyond their existing performance level to ensure planning makes a significant contribution to increasing sustainable economic growth.
- 4.7 It is Scottish Government policy that developers should pay for the work involved in deciding planning applications, whilst other functions which are largely for the wider public good should be resourced by local authorities.
- 4.8 Fee levels generally were raised by 10% in April 2010 for the first time since April 2007, on the basis of earlier research and evidence from the planning authorities that performance was improving and recognising the importance of resourcing planning authorities effectively. Scottish Ministers have said that they may consider a further increase if planning authorities can continue to demonstrate convincing and sustained improvements in performance.
- 4.9 The Consultation Paper poses a series of 25 questions. Appendix A to this report summarises the issues to which the questions relate and makes suggestions as to Council responses.
- 4.10 Copies of the Consultation Paper have been deposited with Group Secretaries Alternatively the paper can be accessed at:

<http://www.scotland.gov.uk/Publications/2010/07/07154028/0>.
- 4.11 Responses from this consultation will be used to identify a preferred approach and develop an alternative fee structure which will then be subject to further consultation. Any amendment to the 2004 Regulations or the creation of a new set of fees Regulations, would be subject to affirmative Parliamentary procedures and approval.

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.
- 5.2 In accordance with the Council's policy an Equality Impact Assessment of the consultation paper was undertaken using the Rapid Impact Assessment Tool to determine whether the proposals implementation by Scottish Government is likely to lead to prejudice in terms of race, ethnic background, disability, sexual orientation, gender, religion or belief and age.
- 5.3 No evidence of likely prejudice in any of the 6 strands listed above was detected.
- 5.4 The Equality Impact Assessment will be made available on the Council's website at <http://www.dundee.gov.uk/equanddiv/equimpact>.

6 CONSULTATIONS

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

7 BACKGROUND PAPERS

- 7.1 Resourcing a High Quality Planning System - A Consultation Paper - Directorate for the Built Environment, Scottish Government July 2010.
- 7.2 Equality Impact Assessment.

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APPENDIX A - SUGGESTED COUNCIL RESPONSES

Summary of Issues	Question	Suggested Response
In Delivering Planning Reform the private sector committed to improving the quality of applications, thereby reducing delays at validation and the need for repeat consultations with agencies over missing or inadequate information, thus enabling faster streamlined decision making by planning authorities. Concerns have been expressed that this commitment to improve the quality of submissions has not yet been met by all parties. It has been advocated that planning authorities should establish consistent minimum quality standards for a range of typical applications, through Supplementary Planning Guidance. It has also been suggested that when an application is submitted and it is not of high enough quality then it should not be registered. It was also felt that where certain companies were regularly submitting poor quality applications they should be highlighted and brought to the attention of their umbrella organisation/trade association.	<u>Quality</u> Q1 What measures could be implemented that would improve the quality of applications and supporting information?	Unfortunately, approximately 30% of applications received prove to be invalid on receipt despite specific guidance published in legislation and informally by Council's. Therefore, further guidance from Scottish Government to applicants would be useful. However, it would need to be quite varied to cover a wide range of situations. This would help to ensure that applications are subject to minimum delay both at the registration stage and subsequently. It is recognised that such guidance cannot possibly cover all circumstances but it is recognised that further legislation would be impracticable.
Pre-application discussions, although not mandatory, are encouraged so that they deliver greater certainty and reduce risks for developers and local authorities, particularly for major developments. As a result of pre-application discussions, the planning authority should have identified all the necessary information they require to be able to process the application whilst the developer has an understanding about how and when their application will be processed. A number of planning authorities in England have established a charge for pre-application discussions. Research supports a strong case for introducing a charge although many have concerns that charges may reduce the willingness of developers to engage with the planning authority.	<u>Pre-application Discussions</u> Q2 Would you be in favour of the introduction of a charge for pre-application discussions? In considering your response, should this be a one-off payment or should it be discounted against the subsequent submission of a planning application?	Yes. There should be a charge which would benefit genuine proposals and discourage "fishing" exercises and wildly speculative schemes. It would also force applicants and agents to seriously consider the planning aspects of their proposals (eg reading local plans, checking pd regs, etc) in advance. Any charge could potentially be linked to the scale of the development (say 10% of the planning fee). It seems fair that this (or a portion of it) might be set against the eventual fee if a planning application was submitted say within one year.

Charges for pre-application discussions could be introduced as a full, or partial, discount against the full planning application once received. This could help reduce concerns that a charge for this service could discourage some potential developers from early engagement with the planning authority.		
The Scottish Government considers that all public bodies, even those that are already working in an efficient way, can do more to deliver further efficiency. Local authorities are already testing and using some alternative models to deliver a more efficient service that fully utilises the available skills and resources: • Shared Services • Joint Commissioning and Accreditation • Outsourcing • Peer Review and Sharing Best Practice	<u>New Ways of Working</u> Q3 Are you supportive of the ways of working identified above? If so, is there a particular approach that you consider could make a difference to the performance of the planning system? If yes, which one and why?	Yes. 1 Shared Services - may be possible but practical difficulties may arise eg the apportioning of costs. 2 Joint Commissioning and Accreditation - this has minimum application in mainstream development management. 3 Outsourcing - not considered practical in development management. 4 Peer Review and Sharing Best Practice - a very useful practice which is already in place through benchmarking.
The quality of the planning service is not easy to assess. Speed of decision making is an important consideration but as important is the quality of engagement and communication with applicants, consultees and local communities. Accessibility and openness of officials can also help to ensure there are no surprises and that suitable solutions to complex issues are found. Ultimately it is about achieving positive outcomes, including quality places and ensuring development contributes to sustainable economic growth. Provisions were included in the 2006 Act for the creation of a formal framework for the assessment of planning authorities. However, in light of the recommendations of the Crerar Review and the Concordat with local government, the Scottish Government does not intend, at present, to introduce statutory planning assessments but rather to work with authorities to promote a framework of self-assessment which reflects the new relationship with local government, the new approach to audit and inspection and a culture of continuous improvement that is generated from within the planning service.	<u>Reviewing Performance</u> Q4 What do you consider constitutes a high performing planning system? In considering your response, please reflect on the roles and responsibilities of the various parties in the planning system including developers, planning authorities, key agencies as well as other stakeholders. Are you aware of any existing appropriate frameworks currently being used that could be used? If not, are there any themes or indicators that could be considered as part of a framework to monitor the planning system? In considering your response we would welcome views on the introduction of such a framework as well as who is best placed to carry out this assessment.	This question is fundamental and lies at the centre of the debate prompted by this consultation paper. High performance should relate more to quality as opposed to speed of decision making. This view has been consistently expressed by the Council and its stakeholders in feedback surveys. It is considered that current performance indicators are defective as they only relate to speed. So far the Council's feedback surveys have related solely to development management but in future should relate to the planning service as a whole.

Service improvement plans, which were introduced as part of planning reform, are a key tool for planning authorities to aid identification of areas for improvement on an annual basis. These are key to adding value to the planning service and it is vital that they provide measurable outcomes. Balanced Scorecards have also been developed by some authorities to deliver improvements.		
It is widely recognised that there is a need to change the current fee structure. Options offered in the Consultation Paper are: Option 1 - Fee linked to the value of the project with no maximum fee. Option 2 - Time based charging. Option 3 - Allowing Planning Authorities to set their own fees. Option 4 - Linking fees to the hierarchy of developments. Option 5 - Maintain and adjust the current model.	<u>Fee Options</u> Q5 Do you think the Scottish Government should amend the current fee structure? Which is your preferred option (1, 2, 3, 4 or 5)? (Please give any comments on why these are your preferred/least favoured options). Which is your least preferred option (1, 2, 3, 4 or 5)? What alternative approaches do you feel the Scottish Government should consider, if any? In considering your response please give any comments on why the option you identified above are your preferred/least favoured.	Yes. Option 5 is preferred with a much higher maximum fee and a higher change of use fee. The current system is generally satisfactory and provides certainty with a one off payment based on floor area. However, the maximum fee is way too low and change of use applications should be based either on floorspace or equivalent. The revised up front fee should be sufficient to also cover statutory advertisement costs. Option 1 has the obvious advantage of the fee being proportionate to the scale of project by capital value. However, this does not always equate to the degree of processing work involved. Option 2 is considered unworkable. There would be uncertainty on fee payable and why should an applicant be penalised because of significant issues outwith their control eg level of objection etc? Option 3 is not supported as variations between authorities would lead to confusion. Option 4 is considered problematic from an administrative viewpoint although Scottish Government should consider the possibility in combination with Option 5.

The cost of determining large applications is rarely recovered. The current fee cap is considered by many not to be adequate. Others consider that this should be limited to service improvements. An overall increase in the maximum threshold could benefit authorities processing a proportionally high number of major applications whilst others would benefit only marginally. Imposing this additional financial burden at a time of economic downturn has disadvantages.	<u>Fee Maximum</u> Q6 Do you consider that the maximum fee level should be raised? If so, what would you consider to be an appropriate maximum level and should this higher fee be dependent on a defined service and timescales being delivered by the planning authority?	Yes. The maximum fee should be £250,000 as in England. Fees should generally reflect the cost of processing applications and there should not therefore be a provision for repayment due to time delays.
A broad range of consultees are involved in the processing of planning applications, both internal within the authority and other consultees such as agencies. It has been suggested that the time dedicated to provide this service by those outwith the direct realms of the planning application fee should be acknowledged. There are also pressures to commit fees to those other parts of the local authority that help and advise in the planning process, to ensure resources and priority are given to this task.	<u>Allocation of the Fee</u> Q7 Do you consider that other consultees should charge the relevant authority for their input on planning applications?	No. If this happens and the planning authority needs to recoup the cost of processing applications then fees will have to go up even more and this may not be acceptable. External consultees have recently reappraised their input to the development management process and in most cases their input is becoming less and less. Sharing the fee with internal consultees is not supported as the Council must be seen to be providing a corporate service and fee scales should take this into account.
It has been argued that a system of discounts, rebates or other incentives could help to deliver improvements in the performance of the planning system, for example the whole or partial return of the planning fee should a decision not be made within the set or agreed period. Planning authorities have expressed concern about the fairness of this approach, where delays could lie outwith their control. An alternative to rebates could be to introduce discounts, for example linked to electronic applications which are helping to deliver efficiencies and savings through lower costs and time savings.	<u>Incentives</u> Q8 Do you consider the use of rebates, discounts or other incentives a useful tool in delivering a more efficient service? If so, what would be an effective discount, rebate or other incentive?	No. In response to Question 4 it is not considered that speed of decision making is a good indicator of quality and in any event timescales are often controlled by others. Rebates/discounts where delays occur are therefore not supported. There appears to be no good reason for providing lower rates for electric submissions.

The current Regulations require the full fee to be paid at the time of submission of the application. However, some developers favour an approach of staged or phased payments which they feel would encourage the planning authority to remain focused on processing applications. At present only the relevant milestones within the process are at validation, neighbour notification and decision. It has been suggested that pre-application discussions, the discharging of conditions and planning agreements were potential points for staged payments. The recovery of payments could be potentially difficult especially where it is anticipated an application may be refused.	<u>Staged/Phased Payments</u> Q9 Do you think the introduction of staged payments would encourage more efficient service and be helpful to developers? If so, are there any particular stages within the process that should trigger a payment?	No. One off payments are simple to administer and avoid delays and the administrative costs of requesting further stage payments.									
Some planning authorities have argued that there should be a single fee to absorb all other costs and charges including recovering the costs related to publishing planning applications in local newspapers. This would avoid planning authorities have to pursue the applicant for further costs before being able to issue a decision. It has been suggested that any change in planning fees should be used to ensure that everything required of a planning application is paid for up front. An alternative would be to add a small percentage increase to the planning fee to ensure the cost of advertising is recovered without the need for recharging applicants and pursuing payment which again leads to delays within the system and processing times of the application.	<u>One Off Single Fee</u> Q10 Do you consider there should be a single fee?	Yes. There are significant administrative savings with a one-off fee system which provides for certainty and consistency of approach.									
The breakdown of the annual returns from local authorities for 2008/09 reveals differentials in terms of the numbers and proportions of different types of applications that authorities in different parts of Scotland receive. For example that the proportion of small housing developments under 10 units are a significant proportion of some rural authorities' applications when compared to urban authorities: <table data-bbox="103 1278 405 1370"> <tr> <td>Dundee</td> <td>-</td> <td>6.5%</td> </tr> <tr> <td>Eilean Siar</td> <td>-</td> <td>39.9%</td> </tr> <tr> <td>National</td> <td>-</td> <td>17.0%</td> </tr> </table>	Dundee	-	6.5%	Eilean Siar	-	39.9%	National	-	17.0%	<u>Regional Variances</u> Q11 Should the charging scheme take into account the regional variations in types of applications and the varying nature of local authorities? If so, what factors should be considered?	No. A national fee provides certainty for applicants and agents and allows a national planning portal to operate. If application fees genuinely reflect the cost of processing then this should not be a major factor.
Dundee	-	6.5%									
Eilean Siar	-	39.9%									
National	-	17.0%									

The fee for the making of a material change in use of a building or land (other than relating to a dwelling house or minerals) is currently a flat rate. There may be some changes of use which require detailed consideration by the planning authority, and so there may be a case that such developments should be charged appropriately and proportionately.	<u>Change of Use</u> Q12 Do you consider it appropriate to amend the fees for changes of use? If so, how should this be calculated?	Yes. This should be based on floorspace but perhaps at a lesser rate than new development. For example, at present a change of use from a shop to a hot food take-away can take a considerable amount of case officer time for a flat fee of £319.
The quantity of information submitted as the Environmental Statement can be extremely substantial. Specialist skills and expertise may be required in order to address some of the more complex areas, requiring staff to receive specialist training or seek input from outwith the planning service or local authority.	<u>Environmental Impact Assessments</u> Q13 Do you consider that submission of an EIA should warrant an additional fee? If so, what might an appropriate charge be?	Yes, in principle. If the maximum fee is substantially increased and fees are weighted to increase the loading for major application then this may help. Scottish Government should consider doubling the standard fee in respect of "major" category applications requiring the submission of an Environmental Statement.
Fees for applications for planning permission in principle are calculated at half the fee for a full planning permission. Considering and establishing the concept of development through a planning permission in principle application can require considerable work from planning authorities and agencies, especially where the proposal is not in line with the development plan. However, this may be at a stage where the landowner or developer has not secured their development finance so they may not wish to see higher fees at a stage which could have a higher level of uncertainty and risk attached.	<u>Fees for Application for Planning Permission in Principle</u> Q14 Do you agree the applications for planning permission in principle should continue to be charged at half the standard fee?	Yes. For applications which progress to the details stage, fees become payable for applications in respect of the discharge of conditions attached to a planning permission in principle.
The fees for Hazardous Substances consent sit within the Town and Country Planning (Hazardous Substances) Regulations 1993. The fee levels of £200, £250 and £400 have not increased in the last 17 years.	<u>Hazardous Substances Consent</u> Q15 Do you agree that the fees for Hazardous Substances Consent should be increased in line with inflation?	Yes. For the reason specified.

Currently there is no separate fee associated with discharging conditions. However, it has been suggested that developers' letters requesting discharge of conditions may not receive adequate resource and priority within authorities to ensure these are turned around within reasonable timescales. In England there are fees associated with the discharge of conditions attached to planning permissions. This is based on £85 per request, rather than by condition, allowing developers to group conditions together to be discharged. This is refundable if the planning authority has not responded within 12 weeks.	<u>Discharge of Conditions</u> Q16 Do you think there should be a fee payable for discharge of conditions. If so, should this be refundable where a decision has not been made within a set period of time.	In theory the planning system should be front loaded with very few conditions attached to each consent. In practice developers plead for these matters to be made the subject of planning conditions. Where conditions are applied, a considerable staff resource is involved in their purification. Accordingly, there should be a fee for the discharge of conditions and perhaps a performance indicator for dealing with such requests. Refunds are not supported (see answer to Question 8 above).
The conclusion of planning agreements can involve lengthy negotiations and significantly add to timescales. It has been suggested that to encourage local authorities to conclude planning agreements a separate payment could be made on their conclusion.	<u>Planning Agreements</u> Q17 Do you think there should be a fee payable on the conclusion of a planning agreement? If so, how should this be calculated?	No. As developers normally pay the legal costs of both sides, additional charges would seem unreasonable.
The Barker Review (2006) in England recommended that a local planning authority should be able to offer a premium service to applicants. This could provide scope for developers individually or collectively to opt to pay a set fee in return for the provision of a dedicated or liaison officer. Concerns have, however, been expressed that this could lead to a two tier system and whether it could bring the planning system's impartiality into disrepute.	<u>Tailored Services</u> Q18 Do you consider that the fee regime should include the ability to offer a tailored service for certain developments?	No. To offer such a service would require additional staff resources and may be perceived by the public as unreasonably favouring one applicant over another. It is the Council's view that a two tier service would potentially bring the planning services' impartiality into question.
Application fees for windfarms are based on the size of the site. The fee maximum is currently set at a site size of 5 hectares, which in some cases is not sufficient to recover costs under the present fee maximum. If the fee cap were to be increased, or removed then it can be argued that basing the fee on the area of the site would make the fee disproportionate. In England the calculation for the fee for a windfarm development is calculated by taking into account the land over which the blades of each turbine rotate plus the area of the footprint of any ancillary structures and engineering.	<u>Windfarms</u> Q19 Do you consider that fees for windfarms should be altered to reflect the nature of this industry? If so, do you agree with developing a scheme similar to that in operation in England, or are there alternative options?	This is not an issue in Dundee.

Given the long-term ongoing nature of these developments, monitoring provides communities with reassurances that their interests are protected and that the attached conditions are being adhered to. Planning authorities already have powers to monitor planning conditions and take appropriate enforcement action if necessary. However, monitoring must be funded from existing resources since current arrangements do not permit them to recover a fee from operators.	<u>Mineral and Landfill Sites</u> Q20 Should the Scottish Government take forward previous proposals to introduce a set fee payable by the operator for each visit subject to a maximum number of visits per annum or do you consider that monitoring costs should be borne by the planning authorities?	This is not an issue in Dundee.
Aquaculture has similar issues to that of windfarms, in that operators can occupy large areas but actually only part of these areas are subject to development. Again it may be necessary to consider the nature and scale of the development and ensure that fee levels are proportionate to the development carried out.	<u>Aquaculture/Fish Farming</u> Q21 Do you consider that a single level fee based only on the equipment above the surface, including feed barges and any associated equipment, is appropriate? If so, how should this be calculated.	This is not an issue in Dundee.
There is also a need to consider the issue of the fee for fish farm developments on land and in inland waters which were not covered by changes introduced in 2007 when planning controls were extended to marine fish farm developments.	Q22 Do you consider that a fee charged for the testing of areas for potential shellfish farms is appropriate?	This is not an issue in Dundee.
Concerns have been expressed that currently there is no planning application fee for buildings under 465m² which do not benefit from permitted development rights. This has led to a high proportion of buildings being erected just under this threshold which incur no fee but place the same demands on the planning authority.	<u>Agricultural Buildings</u> Q23 Where an application for an agricultural development under 465m² is not subject to permitted development should a fee be required to be paid based on the development size? Should this be a full fee or part fee? Q24 Should fees be reduced for agricultural developments above a certain size?	These are not issues in Dundee.

	<u>Any Other Comments</u> Q25 We welcome any other views and comments that you might have on Resourcing a High Quality Planning System that have not already been covered within this consultation.	It is recommended that the following issues are raised: - a "Free" Submissions - consideration should be given to abandoning the legislative provision whereby re-submissions are exempt from the payment of a second fee. - b Retrospective Applications - the case could be made for introducing increased fee levels in support of the enforcement function. - c Certificates of Lawfulness - best practice guidance should be prepared in respect of the usefulness or otherwise of formal Certificates (subject to a fee) in place of or to supplement the issuing of informal pre-application advice. - d Listed Buildings/Conservation Consent - consideration should be given to introducing fees on a similar basis for planning applications or alternatively fees for the recovery of advertising costs. - e Appeals and Local Reviews - consideration should be given to introducing fees for the making of an appeal to Scottish Ministers or Review to the local planning authority to defray administrative costs.
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