

ANGUS COUNCIL

INFRASTRUCTURE SERVICES COMMITTEE

3 MARCH 2009

**SUBJECT: SCOTTISH GOVERNMENT CONSULTATION PAPER
REVISION OF CIRCULAR 12/1996 : PLANNING AGREEMENTS**

REPORT BY DIRECTOR OF INFRASTRUCTURE SERVICES

<p>Abstract: This report comments on and provides a suggested basis for the Council's response to the Scottish Government Consultation Paper on the Revision of Circular 12/1996: Planning Agreements.</p>

1 RECOMMENDATION

1.1 It is recommended that the Committee:-

1. note the content of the Consultation Paper "Revision of Circular 12/1996: Planning Agreements" which seeks to make the current system of planning agreements – set out in Section 75 of the Town and Country Planning (Scotland) Act 1997 and implemented through Circular 12/1996 – operate more effectively in order that planning agreements can be taken forward in a more transparent and consistent manner;
2. agree this report as the basis for the Council's suggested response to the Scottish Government; and
3. note that an officer group is currently considering the policy implications of planning agreements within Angus.

2 INTRODUCTION

- 2.1 The Scottish Government published the Revision of Circular 12/1996: Planning Agreements Consultation Paper on 24 December 2008. The period for consultation extends until 10 April 2009.
- 2.2 The Scottish Government announced in August 2009 that it had postponed a planned review of Planning Obligations under the Planning etc (Scotland) Act 2006 to avoid placing additional burdens on the development industry during the current period of economic uncertainty. Subsequently the Scottish Government decided to focus on how to make the current system of planning agreements operate more effectively in order that they can be taken forward in a more transparent manner.
- 2.3 The revision of Circular 12/1996 is intended to address existing shortcomings in the Circular and to create a more efficient, transparent, predictable and streamlined means of developing, concluding, registering and monitoring planning agreements.
- 2.4 The key aims and objectives of the revised Circular are:-

- To clarify the scope, use and limitations of planning agreements under S75 of the Town and Country Planning (Scotland) Act 1997;
- To set out clearer guidance for relevant stakeholders on policy implementation and monitoring of planning agreements;
- To help improve the efficiency and speed at which planning agreements are processed and aid the delivery of development and regeneration projects; and
- To ensure that the views of relevant stakeholders are considered throughout the review process in order to gain support for the finalised revised Circular.

2.5 The review of Circular 12/1996 will examine particular core principles, including:

- The use, scope and limitations of planning agreements;
- The speed at which planning agreements are processed;
- Openness and access to planning agreements by the public;
- Mechanisms for arbitration during negotiation of planning agreements;
- Financial viability of development proposals; and
- Accountability over the long term use of financial contributions.

2.6 This report highlights the key elements of the proposed review of Circular 12/1996 and examines the potential impact on the development management process. As is now common with Scottish Government consultations papers, reaction and comment is sought from a range of users through a series of questions (12) to the proposed policies and procedures. These are set out in Appendix 1 of this report and together with the main body of the report form the suggested response by Angus Council. Currently an officer group is considering the policy implications of planning agreements within Angus.

2.7 The contents page from the consultation paper Revision of Circular 12/1996: Planning Agreements is attached as Appendix 2 to this report. A full copy of the consultation paper has been placed in the Member's Lounge or alternatively can be viewed at <http://www.scotland.gov.uk/Publications/2009/01/12105731/0>.

3 REVISION OF CIRCULAR 12/1996: PLANNING AGREEMENTS – SUMMARY OF KEY POINTS

The Use Of Planning Agreements: Scope And Limitations

3.1 This section of the revised circular restates the Scottish Governments belief that planning agreements have a useful but limited role to play in the development management process where they can be used to overcome obstacles to the grant of planning permission when this cannot be achieved by the use of planning conditions. Where the planning authority consider that a planning agreement is necessary, there must be a relevant planning purpose and any agreement must always be directly related and proportionate in scale and kind to the impact of the development. Planning agreements should only be sought where they meet all policy tests detailed below.

Policy Tests:**Sequential Test of Necessity:**

- 3.2 This has been set out as an additional test but was implicit in the original Circular 12/1996. Application of such a sequential test is normal practice in development management in Angus. Where appropriate and considered adequate to control the proposed development, planning conditions are normally used. Planning Agreements and particularly Section 75 Agreements are only used where necessary to ensure the desired planning outcome. As suggested by the draft revised circular Section 75 Agreements are used sparingly and only where the matters require to be imposed on successor developers, owners or phases of development.

Planning Purpose Test:

- 3.3 The current Circular sets out that planning authorities should satisfy themselves that the planning agreement sought serves a planning purpose which is related to the use and development of land with no additional guidance on how this should be determined. The revised guidance confirms the requirement for a planning purpose but extends this to state that the judgement of planning purpose must be rooted in the planning authority's development plan and any associated supplementary planning guidance. The purpose of this is to enable developers to be aware of what may be required of them when applying for planning permission. Although the Angus Local Plan Review as modified does include details of certain requirements from allocated sites, preparation of supplementary guidance detailing (on a settlement by settlement basis) what developer contributions may be required would bring added transparency to the development management process.

Relationship to Proposed Development Test:

- 3.4 Both the existing and draft revised circular state that any planning agreement must relate directly to the development proposed. This is expanded in the revised circular requiring that there should be a direct functional or geographic link between the development proposed and the offered or requested developers contribution to mitigate the impact or effect of the development. Such a mechanism would mean that the Council would require to establish a direct link between the development and the developer contribution requested or offered. General, non-specific contributions would seem to lie outwith the scope of the revised guidance.

Scale and Kind Test:

- 3.5 The principle that any planning agreement should relate in scale and kind to the impact of the proposed development is continued from the current circular. The revised circular clearly sets out that contributions should be proportionate to the scale of the development proposed and that it would be unacceptable to attempt to extract excessive contributions from developers towards the cost of infrastructure or any extraneous benefits. In addition the guidance is clear that developer contributions should not be sought to resolve existing deficiencies in infrastructure or to secure contributions to the achievement of objectives that are not necessary to allow planning permission to be granted. Although the need to improve, upgrade or replace such infrastructure does not arise directly from the proposed development it would

however be inappropriate to grant planning permission for a development which would exacerbate a situation which is already unsatisfactory.

Reasonableness Test:

- 3.6 This test remains largely as set out in the current Circular 12/1996. Where the development proposed creates a need for additional or improved infrastructure or facilities, or has adverse or damaging impacts on the local environment that cannot be dealt with through the use of planning conditions, it is reasonable for the planning authority to use a planning agreement to secure developer contributions to overcome such difficulties which would arise from the implementation of the proposed development.

Process:

- 3.7 A key objective of the review by the Scottish Government is to improve the speed, efficiency and transparency of the process of preparing and agreeing planning agreements. To this end the Government has placed greater emphasis on:-
- more openness and transparency;
 - effective management of the process of developing, negotiating and concluding planning agreements as part of the planning process;
 - the role of the Strategic Development Plan and/or Local Development Plan in setting out infrastructure requirements and policy on planning agreements;
 - preparation of Supplementary Guidance setting out expected developer contributions;
 - presumption that planning agreements should only be used where they meet the policy tests set out above;
 - early identification of the matters to be covered in any planning agreement (heads of terms);
 - swifter issuing of planning permission following finalisation of planning agreement;
 - effective monitoring to ensure that planning agreements are implemented.
- 3.8 The draft revised circular sets out in broad terms how improvements to the process can assist in increasing the speed, efficiency and transparency of the preparation and conclusion of planning agreements. The role of development plans (Strategic Development Plan and Local Development Plan) and any associated supplementary guidance in identifying the level and scope of developer contributions required is emphasised. The Consultation Paper is clear that developer contributions can be only be sought by the planning authority where the assessed impact of development on local infrastructure and the environment warrant them and are required to avoid or mitigate any significant negative impact. Clearly if the proposed revisions to Circular 12/1996 are introduced Angus Council will require to consider the introduction of Supplementary Guidance to set out the scale and nature of development contributions required.

4 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications arising directly from the recommendations contained in this report.

5 HUMAN RIGHTS IMPLICATIONS

- 5.1 There are no human rights implications arising from this report.

6 EQUALITIES IMPLICATIONS

- 6.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.

7 CONSULTATION

- 7.1 The Chief Executive, Director of Corporate Services, Head of Finance and Head of Law & Administration has been consulted in the preparation of this report.

8 CONCLUSION

- 8.1 The draft review of Circular 12/1996 put forward in the Consultation Paper is generally to be welcomed. The paper clarifies and sets out clearly the tests which should be applied to establish the need for, range and scope of any planning agreement in respect of individual development proposals. In summary, developer contributions can only be sought by the planning authority where the assessed impact of development on local infrastructure and the environment warrant them and are required to avoid or mitigate any significant negative impact. Depending on the nature of the impact, contributions may be appropriate both on-site and off-site. While developer contributions can be sought to provide new or extended facilities required to accommodate the development, such as local school capacity, developer contributions should not be sought or used for improvements or other works unrelated to the direct impact of the development.
- 8.2 In addition to setting out these policy tests the Consultation Paper also sets out the process to be followed in achieving a more efficient, transparent and streamlined process.
- 8.3 The changes suggested to Circular 12/1996 do not alter or amend the intention behind the original Circular but rather expand on it and clarify its interpretation. This applies particularly to the proposed development test by introducing a requirement to demonstrate a functional or geographic link. This may have some implications for the range of developer contributions that can be sought from any individual development proposal. The guidance clearly indicates that the range and scale of development contributions required from development should be set out in the development plan and any associated supplementary planning guidance.

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NOTE

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

- Circular 12/1996: Town and Country Planning (Scotland) Act 1972 – Planning Agreements;
- Revision of Circular 12/1996: Planning Agreements – Consultation Paper, December 2008;

P&T/KMcG/IAL
9 February 2009

APPENDIX 1

RESPONSE TO QUESTIONS

1. Does the revised Circular help users to identify clearly the various implementation stages of the Planning Agreements process and does the Circular follow a logical and transparent process?

Suggested Angus Council response:

Yes. The revised Circular is clear in its layout and follows a logical and transparent process.

2. Will the revised circular help streamline the process of negotiating and concluding planning agreements?

Suggested Angus Council response:

Angus Council is unsure that the revised Circular will result in a streamlining of the process as much is dependant on cooperation between the applicant and their agents, and Angus Council in progressing legal agreements. The process will undoubtedly be significantly streamlined if more matters are dealt with through the use of planning conditions rather than agreements under Section 69 of the Local Government (Scotland) Act 1973 and Section 75 of the Town and Country Planning (Scotland) Act 1997. Such agreements are only used in Angus where the Council require to maintain the burden on successor developers and owners. The main issue is the administrative process of preparing, agreeing and recording a planning agreement. No guidance is currently available on how this process can be streamlined.

3. 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?

Suggested Angus Council response:

Yes. In applying the sequential test however, Angus Council will require to be satisfied that the measure adopted will achieve the desired planning outcome. Section 75 Agreements will remain the preferred option where the developer contributions sought from the development require to be carried forward to successor developers or owners. This is particularly applicable where development of a site will be in a number of phases over a number of years.

4. 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?

Suggested Angus Council response:

Although the policy tests have been clarified and are quite explicit, it is likely that there will still be arguments about whether the subject of the planning agreement is directly related to the impact of the development by either geography or function and whether the scale and kind of developer contributions sought are reasonable and proportionate to the impact of the development proposal.

5. To what extent do you consider that planning agreements may be negotiated at pre-application stage in order to reduce unnecessary delay and cost?

Suggested Angus Council response:

Although it is possible to progress/negotiate planning agreements at pre-application stage or prior to the determination of a planning application provided adequate information on the impact of the development on local infrastructure, services and facilities and the local environment and what would be required to mitigate these impacts is available. It is suggested that this approach may only be appropriate where the site involved is allocated and the developer contributions to be sought are set out in a Local Plan or supplementary planning guidance. It would not be appropriate to consider negotiating planning agreements at this stage where the development is or may be contrary to the extant development plan. Also concerned that a planning agreement negotiated at pre-application stage may precede a planning application by a considerable time when the circumstances have changed rendering a previous agreement obsolete. What is important is to establish that the principle and scale of contributions is going to be acceptable as this may assist in subsequent detailed negotiations.

6. Does the revised Circular offer adequate guidance on access to Planning Agreements by the public?

Suggested Angus Council response:

Yes. Angus Council already maintain a register of Section 75 Agreements. More recently concluded planning agreements, normally Section 75 Agreements, are available to the public through the Planning Application Public Access system.

7. 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?

Suggested Angus Council response:

The principal areas have been covered by the draft revised Circular.

8. 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?

Suggested Angus Council response:

Paragraph 6, page 4 of the Consultation paper sets out that the 2006 Act will introduce change to the planning agreement process, most notably including provisions regarding unilateral agreements and processes for modifying or discharging agreements (including appeals. While the revised Circular 12/1996 is concerned only with planning agreements under Section 75 of the Town and Country Planning (Scotland) Act 1997 it is clear that the underlying approach to planning agreements will remain unchanged. It is not possible to indicate what, if any, changes to the process will be necessary until after guidance to support the introduction of the provisions of the 2006 Act are published.

9. Are there particular costs or benefits not addressed in the partial RIA? What are they?

Suggested Angus Council response:

No.

10. Will particular groups not identified by the partial RIA be affected by the revised Circular?

Suggested Angus Council response:

The main groups appear to have been identified.

11. How might the revised Circular impact positively or negatively on equalities groups?

Suggested Angus Council response:

There are potential benefits to various groups in regard to access to local amenities, services and facilities and mitigation of any impacts on the local environment from proposed development. The exact nature of the benefits will be dependant on the matters covered by the clauses of any individual planning agreement. There are no obvious equalities groups which will be negatively affected.

12. Will any groups not identified already in the partial EqIA be affected by the revised Circular?

Suggested Angus Council response:

The main groups appear to have been identified.

APPENDIX 2

**Revision of Circular 12/1996: Planning Agreements
Consultation Paper****Contents Page****Introduction****Policy Context****Annex A : Draft Revised Circular 12/1996: Planning Agreements**IntroductionPolicy And Principles

Legislative Background

- The Town and Country Planning (Scotland) Act 1997 : Section 75 Agreements
- The Planning etc. (Scotland) Act 2006

The Use Of Planning Agreements : Scope And LimitationsPolicy Tests

Sequential Test of Necessity

Planning Purpose Test

Relationship to Proposed Development Test

Scale and Kind Test

Reasonableness Test

Process

Public Involvement

Effective Management of Planning Agreements

The SDP or LDP Led Approach

Policies and Supplementary Guidance

Planning Agreements and Development Management

Concluding Planning Agreements

Registering the Planning Agreement

Monitoring Planning Agreements

Variation/Modification of Planning Agreements

Manpower and Financial Considerations

Annex B : Draft Revised Circular 12/1996 : Planning Agreements**Annex C : Partial Equalities Impact Assessment (EqIA)****Annex D : Partial Regulatory Impact Assessment (RIA)**