

Aberdeen City Council

Section 75 Planning

Internal Audit Report
2014/2015 for Aberdeen
City Council
April 2015

	Target Dates per agreed Internal Audit Charter	Actual Dates	Red/Amber/Green and commentary where applicable
Terms or reference agreed 4 weeks prior to fieldwork	N/A	27 th January 2015	Green – <i>Replacement review for music services</i>
Planned fieldwork start date	2 nd February 2015	2 nd February 2015	Green
Fieldwork completion date	13 th February 2015	16 th March 2015	Red – <i>Samples provided late due to ACC IT issues and close out meeting not possible until March.</i>
Draft report issued for Management comment	23 rd March 2015	9 th April 2015	Red – <i>Delayed due to IA manager annual leave</i>
Management Comments received	23 rd April 2015	20 th April 2015	Green
Report finalised	30 th April 2015	28 th April 2015	Green

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Submitted to Audit and Risk Committee	11 th May 2015	11 th May 2015	Green
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Internal audit work will be performed in accordance with Public Sector Internal Audit Standards. As a result, our work and deliverables are not designed or intended to comply with the International Auditing and Assurance Standards Board (IAASB), International Framework for Assurance Engagements (IFAE) and International Standard on Assurance Engagements (ISAE) 3000.

1. Executive Summary

Report classification	Total number of findings					
	Critical	High	Medium	Low	Advisory	
Medium risk	← Section 3 →					
	Control design	-	-	2	2	-
	Operating effectiveness	-	-	-	1	-
	Total	-	-	2	3	-

Summary of findings

- 1.01 Section 75 Planning agreements are agreements between a property developer and the Council to agree obligations, usually payment of money, to mitigate the impact of a development on Council services. These agreements are usually a prerequisite to planning permission. We have looked at Section 75 Planning agreements with regard to controls in place over the negotiation of the agreements and the controls for the collection and spending of the resulting funds from April 1st 2014 to 1st February 2015.
- 1.02 We have made two medium risk findings as a result of our review and three low risk findings. The two medium findings are summarised below :
- The Council budgets for some large developments, for example schools, include as yet unpaid developer funds. The receipt of developer funds is however inherently uncertain, as there is a risk that Section 75 obligations can be amended if a developer makes a successful Section 42 application to the Scottish Ministers. This risk relating to the uncertainty in the funding is not documented in any of the Council's risk registers. It is therefore unclear as to how this risk will be mitigated for those projects that include developer contributions in their budgets. These total £2.38m of funding in the 2015 budget.
 - The system that registers building completions, and therefore is used to identify when obligations for developer contributions are to be paid, records completions by ward. However, Section 75 agreements are recorded by developer, not by ward, creating a difficulty when trying to identify agreements that are due for payment. Currently there is no control to reconcile this data creating a risk that payments due from developers are missed.
- 1.03 Generally the process for the management of Section 75 agreements was good. The department having an awareness of most of the issues we have noted. There are

a number of points of good practise that we have noted during our review. These include the integration of the Section 75 agreements process in to the Local Development plan and the alignment of policies with the Scottish Government Circular 3/2012 on 'Planning Obligations and Good Neighbour Agreements'. Other examples of good practice include the existence of a central database to record all Section 75 documents and the appointment of a single responsible officer to run the Section 75 process.

Management comments

The audit of S75 agreements has been helpful in confirming the processes and procedures recently put in place to ensure the effective management of developer contributions. As stated by the auditors, we are aware of the issues highlighted in the audit findings and have already identified actions to resolve them.

2. Background and scope

Background

Negotiation

- 2.01 The Council sets out the criteria it uses to assess the requirement for the Section 75 Contribution for a development in the Local Development Plan (LDP) and its supplementary materials. These set out the Council's policies in line with the 'Scottish Government's Circular 3/2012: Planning Obligations and Good Neighbour Agreements'. This is approved by the Communities, Housing and Infrastructure Committee to ensure that the policy is compliant with their strategy. It is also reviewed by the Scottish Government for compliance with relevant rules including the Circular.
- 2.02 The process of negotiating a Section 75 agreement begins when the Council receives an inquiry or a formal application for planning permission. This leads to the Directorate Support team being notified and they approach all key contacts nominated by each service to get an estimate of the cost of mitigation for that service. This is then compiled into a 'wish list' of the amount of mitigation the Council will be seeking. There is a requirement to do this in a proscribed time limit to comply with regulations. The limit is 14 days for a small development, typically building of a single dwelling, and 28 days for a large one, e.g. the building of large estates.
- 2.03 This is then passed to the negotiation team within Aberdeenshire Council. This team is run as shared service by Aberdeenshire on behalf of themselves and Aberdeen City Council. They use a formula as set out in the LDP to calculate the obligations and then negotiate with the developers for the contributions. They then come back to the Council and ensure all the areas of the Council seeking funds are happy with the amount they have. If the areas seeking funds are not, an agreement is sought between them and if no agreement can be reached then this has to be approved by the Finance, Policy and Resources Committee.

Documentation

- 2.04 Once these contributions are agreed then an appropriate document is drawn up for smaller developments this is likely to be a voluntary planning agreement. However, for larger developments this requires a Section 75 agreement and this will be drafted with the help of ACC's legal department.
- 2.05 These are then added to a database of all contributions as pending along with all the information about the allowed usage of these funds. A case file is also opened against the planning reference number and this is used to store the agreement and any other documentation relating to the agreement. This database is used to run reports monitoring the status of all Section 75 agreements and to track them to ensure the contributions are spent once paid.

Budgeting and spending of contributions

- 2.06 When ACC is paid by the developer a pro-forma is sent to the relevant departments detailing the amounts of money available and the uses it can be put towards. This has to be returned, completed, to the Planning and Monitoring officer before the money can be released. This pro-forma is reviewed to ensure compliance with the terms of the Section 75 agreement. A finance allocation code is allocated to allow the money to be transferred to the service's budget to offset the cost of the work done.
- 2.07 Until this happens the money is kept in a separate bank account and is accounted for in a separate mini-ledger. This completely segregates these contributions and ensures that money can only be spent when an allocation code is issued. Generally this money is therefore not accounted for in budgets until it is received, however for large long term projects such as schools a funding line is put in to the capital budget to record the financing of the project.
- 2.08 The presumption is not to budget for the money prior to receipt as once developers have planning permission they only have to pay the money when they reach a set stage in the construction process, and this progress can be uncertain. This means that there is no guarantee as to when and if this money will come in, as developers are under no obligation to use planning permission. However, some of the large contributions towards significant capital projects are budgeted ahead of receipt of the funds. This is done through the Council's capital budgeting procedures and is listed as one of the funding sources.

Amendment of agreements

- 2.09 There is also a risk that the developers could seek an amendment to the Section 75 if they believe that a change in the economics of the project means that the contribution they would have to pay would make the project no longer financially viable. This has never happened in Aberdeen to date, however Aberdeenshire has recently received one such application and Aberdeen is alert to the possibility that they might receive such an application.
- 2.10 If an application for an amendment to a Section 75 agreement was received it would be treated as a new planning application and would require the Aberdeenshire negotiations team to renegotiate the contribution. This would then have to go back to the planning committee to reapprove the planning permission and the new agreement.

Monitoring

- 2.11 To ensure that the money is spent in the allotted time the Planning and Monitoring officer meets with the key contact in each sector on a quarterly basis to go through the Section 75 money attributed to those sectors and currently uncommitted. This is to give key contacts an idea of how much money they need to spend and when. They then discuss projects that this money could be spent on in the relevant areas.

Scope and limitations of scope

- 2.12 The detailed scope of this review is set out in Appendix 2. We have undertaken a review of the design and operating effectiveness of the Council's Section 75 Planning controls. Our work was undertaken using a sample based approach.

3. Detailed findings and recommendations

3.01 No clear ownership of the risk of non-payment of Section 75 obligations– Control design

Finding		
<p>There is currently no clear ownership of the risk of non-payment of Section 75 obligations and the impact of their non-payment on capital budgets. Developers may ask for amendments to be made to their obligations due to changes in the economics of a development through a Section 42 application to the Scottish Ministers. If this application was accepted it could result in the amount of developer funds available being reduced. This creates a risk of a deficit in capital funding where these contributions have been added to the budget for a project.</p> <p>We could not find a departmental or project risk register in which the risk that developer contributions are not paid is recorded, nor documentation of what mitigation is in place to protect against this risk. Currently it is unclear whether this risk lies with the sector budget holders or with capital finance. The only risk recorded is a generic funding risk with the mitigation being to request further funding from Finance. The current value of budgeted developer contributions is £2.38m.</p>		
Risks		
Changes in developer obligations may impact on the Council’s capital budgets and ability to deliver capital projects.		
Action plan		
Finding rating	Agreed action	Responsible person / title
Medium	It should be established where the risk of non-payment of Section 75 developer contributions sits within the organisation and a risk should be placed in the corresponding risk register. This should then be regularly reviewed to ensure an appropriate level of mitigation is in place.	Steve Whyte (Head of Finance)

Target date:

30-Jun-15

3.02 No control to identify Section 75 agreements due for payment – Control design

Finding

Currently lists of Section 75 agreements are maintained by the Planning and Monitoring Officer. Planning are supposed to update these lists when they are notified of building completions that ‘trigger’ the payments by the developers agreed in the Section 75’s. However, we have found no effective control to do this as planning do not have a system that identifies ‘trigger’ points as they are reached. This is because the data recorded by planning is recorded by ward area, not by developer, and therefore it is difficult to match the two datasets together to identify when payments are due. In discussion with management they believe this may result in payments due from developers being missed. It is not possible to quantify whether payments have not been received as there has been no reconciliation performed to reconcile the two datasets.

Risks

There is a risk that as developers do not pay until requested that payments would be significantly delayed or may not be paid as a result of the inability to identify when payments are due.

Action plan

Finding rating	Agreed action	Responsible person / title
Medium	The team at ACC are currently having discussions to establish if a new IT system could be brought in to allow the completion of Section 75’s to be registered automatically. In the interim, a reconciliation will be performed to reconcile outstanding Section 75 agreements to completions for the period.	David Marshall (Planning and Monitoring Officer)
		Target date:
		March 2016

3.03 No management monitoring of unspent funds received from Section 75 agreements – Control design

Finding

There is no reporting to management of unspent funds from Section 75 agreements. This means that there is no review by management of the progress made towards spending outstanding funds. As Section 75 agreements can include requirements to spend any developer contribution within a specified timeframe, without review there is a risk that the unspent funds will not be expended in the required timelines.

The Section 75 team are aware of this and have proposed to set up a report to be circulated to the Heads of Services' of the affected departments for their review.

Risks

There is a risk that if this is not reviewed regularly and formally then Section 75 funds may not be spent in the time frame required by the agreement.

Action plan

<u>Finding rating</u>	<u>Agreed action</u>	<u>Responsible person / title</u>
Low	Management will develop a 'reversed ageing report' showing total uncommitted funds against the time left to spend those funds. The report will be circulated for management review amongst relevant Heads of Service.	David Marshall (Planning and Monitoring Officer)
		Target date:
		30 June 2015

3.04 Uncertainty as to who occupies key roles in process– operating deficiency

Finding

We have sampled two of the areas that should have Departmental main points of Contact and found that in Education there are currently three people being copied in to emails regarding Section 75 agreements. This has been noted because it could lead to confusion about who is to respond. On enquiry with the Section 75 team it was highlighted that the points of contact in each service for Section 75 planning have not been fixed following reorganisations. This has led to emails requesting information being copied to large numbers of people and a lack of clarity as to who should be dealing with the Section 75 issues in each sector.

Risks

There is a risk that the lack of a clear key contact leads to confusion and delay in agreeing the amounts required from the Section 75 agreements at the negotiation stage. There is also a risk that if the person attending the quarterly meetings is not the key contact for that department they may not be able to ensure that the money is committed to projects at the appropriate times.

Action plan

Finding rating	Agreed action	Responsible person / title
Low	Heads of Service will appoint an appropriate 'point of contact' for their service with responsibility for responding to requests regarding Section 75 agreements.	Margret Bochel (Head of Planning and Sustainable Development)
		Target date:
		September 2015

3.05 The Service Level Agreement with Aberdeenshire Council for the shared service is unsigned – Control operation

Finding		
At the time of our audit the Service Level Agreement with Aberdeenshire Council had not been finalised or signed by either party. The lack of a signed agreement means that there is no formal contract in place between Aberdeen City Council and Aberdeenshire Council to govern the work of the shared service negotiations team. This agreement is still outstanding since the establishment of the shared service centre with Aberdeenshire Council in May 2013.		
Risks		
There is a risk that if the service level agreement is not signed that there is no formal agreement to prevent misunderstanding as to the nature and scope of the service provided by Aberdeenshire Council.		
Action plan		
Finding rating	Agreed action	Responsible person / title
Low	The Service Level Agreement with Aberdeenshire Council for the shared service negotiations team supporting Section 75 planning will be finalised at the earliest possible opportunity.	Margaret Bochel (Head of Planning and Sustainable Development)
		Target date:
		September 2015 (Dependent on response from Aberdeenshire Council)

Appendix 1 – Basis of our classifications

Individual finding ratings

Finding rating	Assessment rationale
Critical	<p>A finding that could have a:</p> <ul style="list-style-type: none"> • Critical impact on operational performance; or • Critical monetary or financial statement impact; or • Critical breach in laws and regulations that could result in material fines or consequences; <i>or</i> • Critical impact on the reputation or brand of the organisation which could threaten its future viability.
High	<p>A finding that could have a:</p> <ul style="list-style-type: none"> • Significant impact on operational performance; or • Significant monetary or financial statement impact ; or • Significant breach in laws and regulations resulting in significant fines and consequences ; <i>or</i> • Significant impact on the reputation or brand of the organisation.
Medium	<p>A finding that could have a:</p> <ul style="list-style-type: none"> • Moderate impact on operational performance; or • Moderate monetary or financial statement impact; or • Moderate breach in laws and regulations resulting in fines and consequences; or • Moderate impact on the reputation or brand of the organisation.
Low	<p>A finding that could have a:</p> <ul style="list-style-type: none"> • Minor impact on the organisation’s operational performance; or • Minor monetary or financial statement impact; or • Minor breach in laws and regulations with limited consequences; or • Minor impact on the reputation of the organisation.
Advisory	A finding that does not have a risk impact but has been raised to highlight areas of inefficiencies or good practice.

Report classifications

Findings rating	Points
Critical	40 points per finding
High	10 points per finding
Medium	3 points per finding
Low	1 point per finding

Report classification	Points
Low risk	6 points or less
Medium risk	7– 15 points
High risk	16– 39 points
Critical risk	40 points and over

Appendix 2 – Agreed Terms of reference

Background

Section 75 of the Town and Country Planning (Scotland) Act 1997 ('the 1997 Act') gives planning authorities the ability to enter into planning obligations with developers and landowners to restrict or regulate the development or use of land. Agreements between the land owner and the planning authority under Section 75 are entered voluntarily and can include positive obligations, such as developer contributions.

Aberdeen City Council, in line with other Planning Authorities in Scotland, operates a system of developer contributions in relation to Infrastructure and Affordable Housing requirements resulting from certain planning applications. These contributions must be utilised by the Council within a set timeframe and can include conditions to be met by the Council before the money can be used. There is a shared Section 75 Planning team that works for both Aberdeen City Council and Aberdeenshire Council to manage of Section 75 Planning for both local authorities.

Scope

We will review the design and operating effectiveness of the key controls in place over Section 75 Planning arrangements. Our review however, does not include an assessment of whether the Council actually has, or has not, complied with the legislation. The sub-processes included in this review are:

Sub-process	Control objectives
Compliance with Section 75 legislation and guidance	<ul style="list-style-type: none"><li data-bbox="689 951 1814 1050">• National policy and guidance as contained in the Scottish Government's Circular 3/2012: Planning Obligations and Good Neighbour Agreements is incorporated into the Local Development Plan and associated supplementary guidance.<li data-bbox="689 1070 1814 1134">• The Section 75 Planning team have a process in place for managing Section 75 Planning obligations.<li data-bbox="689 1155 1814 1219">• Roles and responsibilities are clearly defined within this process and key decision makers identified.<li data-bbox="689 1240 1814 1305">• Internal guidance/procedures are updated to reflect the most recent Government guidance and policies on Section 75 Planning.

Communication of Section 75 Planning obligations

- Obligations agreed with developers and landowners are communicated to the relevant project team and incorporated into capital finance planning.
- Amendments to capital finance planning as a result of Section 75 Planning obligations are approved by the appropriate Council committee.

Monitoring of Section 75 Planning obligations

- A responsible officer has been charged with ensuring compliance with Section 75 planning obligations
 - Compliance is proactively monitored, and reported to management, with action taken to address areas of non-compliance.
 - Records of developer contributions made in respect of Section 75 Planning obligations are complete and accurate.
 - The timeframes for utilising funds deposited as developer contributions are recorded and proactively monitored.
 - Any conditions related to the utilisation of funds are recorded and progress to meeting these conditions is regularly reviewed.
-

Limitations of scope

The scope of our review is outlined above. This will be undertaken on a sample basis.

Internal control, no matter how well designed and operated, can provide only reasonable and not absolute assurance regarding achievement of an organisation's objectives. The likelihood of achievement is affected by limitations inherent in all internal control systems. These include the possibility of poor judgment in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

Audit approach

Our audit approach is as follows:

- Obtain an understanding of the procedures in place through discussion with key personnel, review of documentation and walkthrough tests where appropriate.
- Identify the key risks in respect of monitoring compliance with laws and regulations
- Evaluate the design of the controls in place to address the key risks.
- Test the operating effectiveness of the key controls on a sample basis.

Appendix 3 – Limitations and responsibilities

Limitations inherent to the internal auditor's work

We have undertaken a review of Section 75 Planning, subject to the limitations outlined below.

Internal control

Internal control, no matter how well designed and operated, can provide only reasonable and not absolute assurance regarding achievement of an organisation's objectives. The likelihood of achievement is affected by limitations inherent in all internal control systems. These include the possibility of poor judgment in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

Future periods

Our assessment of controls relating to Section 75 Planning is as at February 2015. Historic evaluation of effectiveness is not relevant to future periods due to the risk that:

- the design of controls may become inadequate because of changes in operating environment, law, regulation or other; or
- The degree of compliance with policies and procedures may deteriorate.

Responsibilities of management and internal auditors

It is management's responsibility to develop and maintain sound systems of risk management, internal control and governance and for the prevention and detection of irregularities and fraud. Internal audit work should not be seen as a substitute for management's responsibilities for the design and operation of these systems.

We endeavour to plan our work so that we have a reasonable expectation of detecting significant control weaknesses and, if detected, we shall carry out additional work directed towards identification of consequent fraud or other irregularities. However, internal audit procedures alone, even when carried out with due professional care, do not guarantee that fraud will be detected.

Accordingly, our examinations as internal auditors should not be relied upon solely to disclose fraud, defalcations or other irregularities which may exist.

In the event that, pursuant to a request which Aberdeen City Council has received under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 (as the same may be amended or re-enacted from time to time) or any subordinate legislation made thereunder (collectively, the "Legislation"), Aberdeen City Council is required to disclose any information contained in this document, it will notify PwC promptly and will consult with PwC prior to disclosing such document. Aberdeen City Council agrees to pay due regard to any representations which PwC may make in connection with such disclosure and to apply any relevant exemptions which may exist under the Legislation. If, following consultation with PwC, Aberdeen City Council discloses any this document or any part thereof, it shall ensure that any disclaimer which PwC has included or may subsequently wish to include in the information is reproduced in full in any copies disclosed.

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