

## ABERDEEN CITY COUNCIL

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COMMITTEE	Communities, Housing & Infrastructure
DATE	1 November 2016
DIRECTOR	Pete Leonard
TITLE OF REPORT	Developer Obligations
REPORT NUMBER	CHI/16/218
CHECKLIST COMPLETED	Yes

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### 1. PURPOSE OF REPORT

To report back to the Committee on revised working procedures for the delivery of Developer Obligations, including methods for community groups, community councils and local members to be involved in the decision making process regarding allocation of funds.

### 2. RECOMMENDATIONS

It is recommended that the Committee:-

- Agree to the revised proposed working procedures which will be implemented as soon as possible;
- Agree to the recruitment of a new Developer Obligations Officer and
- note the involvement of community and elected members in the developer obligation process

### 3. FINANCIAL IMPLICATIONS

The financial implications will include the new post, amended Service Level Agreement with Aberdeenshire Council and supporting services and technology. These will be funded from the Planning and Sustainable Development budget within Communities, Housing & Infrastructure. These costs will include the following:-

- A new Developer Obligations Officer at (grade G15 £40,327-£46,099) plus associated costs.
- The revised service level agreement (current cost £44,186.02)
- There may also be software/technological costs surrounding the new Planning Database system (iDox) system, however these will be met from existing budgets.

### 4. OTHER IMPLICATIONS

In relation to the time for implementation it would be expected to be as follows:-

- Recruitment of the new Developer Obligations Officer, 3-6 months from approval of this paper, dependent on recruitment.
- Implementation of the new procedure within 6-9 months. Again this will be from approval of this paper and will be dependent on recruitment and ongoing discussion with Aberdeenshire Council around the service level agreement.

Much of the revised process will be dependent on technology and while the new iDox is now being implemented this may also impact on timeframes. It is still expected that any works required could be completed within the 9 month timeframe.

## 5. BACKGROUND/MAIN ISSUES

At the Communities, Housing & Infrastructure Committee of 25 August 2016 it was agreed that officers would “report on revised working procedures which will be reported back to the November meeting of this Committee and investigate the viability of including community groups, community councils and/or local members in the decision making process with regards to the allocation of funds from Developer Contributions.” Item 25, Communities, Housing and Infrastructure Committee, 25 August 2016 attached as Appendix A.

### 5.1 Revised process

The revised process has a number of separate but interrelated strands which are discussed below. While the key elements of this have been set out, there is both an expectation and desire for the new Developer Obligations Officer to input into the overall process. The procedures are still subject to finalisation by the departments involved.

#### 5.1.1 Revised Procedure

The purpose of the revised procedure is to produce better outcomes from the Developer Obligations process. This will be achieved through better internal management, in the form of a dedicated officer to act as a central contact point, better engagement with consultees for calculation of developer obligations and finally engagement with consultees and elected members on the release of funds for individual projects. The process diagram below (Fig.1) gives a high level overview of how this process would work, with more detail provided below that on the major components of the process.

The planning application stage is by far the most complex stage of this process and a more detailed breakdown of how this stage would work is provided in 5.1.5 and Fig.2.

## PROCESS DIAGRAM (Fig.1)

### **Pre-Planning Application Stage**

At this stage the role of the Developer Obligations Officer will be to provide advice to the Planning case officer and the applicant on the expected level and type of obligations that may be sought.

### **Planning Application Stage**

At planning application stage the role of the Developer Obligations Officers and the Shared Developer Obligations Team will be to work with all parties to the application to co-ordinate communication with consultees, applicants and elected members and ensure timely responses to the case officer. The case officer will be an integral part of this process and will remain as the final arbiter of the recommendation in the report of handling on the application.

### **Post Application Stage**

At this stage the Developer Obligation Officers role will be to oversee the collection, management and release of developer obligations for identified projects. This will involve supporting the asset management team in their monitoring of developments and releasing of funds for projects, as well as liaising with Elected Members and consultees.

#### **5.1.2 Role of the Developer Obligations Officer (Team Leader)**

The role of the Developer Obligations Officer will include but not be limited to the following roles/tasks:-

- Manage the Developer Obligations process acting as the Council's lead and coordinator, meeting with clients, liaising with the Developer Obligations team, liaising with case officer, elected members and other elected officials as required.
- Contribute to working parties considering the operational implications of Developer Obligations initiatives, developments or changes in legislation and represent the Council in all forms of agreements with developers, partners and stakeholders.
- Ensure developer obligations are optimised on behalf the Council and that legal and financial risks to the Council, are considered and managed.
- Lead on the on-going development of Developer Obligations strategy and policy, and contribute to the implementation and monitoring of legislation and regulation.
- Contribute to the assessment of service user needs and development, design and improvement of the Developer Obligations section and to the Business service of Legal & Governance.
- Liaise with in-house solicitors regarding the terms of agreements.
- Lead on the provision of training on Developer Obligations.
- Contribute to the long term planning of the section's physical and information resources, and pursue and implement innovative ICT approaches within the service.
- Line Manage any additional support staff as may be required in the future.

- Lead on and manage the collection arrangements of monies arising from developer obligations and monitor associated financial income.

#### **5.1.3 Revised Service Level Agreement**

Discussions are currently underway with Aberdeenshire Council about a revised service agreement. These discussions are based on the proposed procedures set out in this paper.

The last service level agreement is attached as Appendix B

#### **5.1.4 Revised legal procedures**

A Planning and Environment team has been formed in the Council's legal department. The intention is for section 75 agreements to be drafted by the in-house solicitors in this team.

In addition, a draft section 75 template has been prepared. The purpose of this document is to reduce the time spent agreeing S75's by having a range of established clauses for different types of developments. This draft has now been completed and is currently out for final consultation with the development industry.

#### **Member / Community engagement**

While in principle there is nothing to prevent this, the legal and policy tests for developer obligations should be followed at all times. Planning obligations should only be sought when they meet the tests set out in Appendix D. Failure to determine obligations in accordance with the tests could result in the applicant applying to the Council to discharge or modify the obligations. If the Council refuses the application, the applicant can then appeal to the Scottish Government. There is also the risk that third parties could challenge the planning obligations on the basis of developer contributions.

#### **5.1.5 Planning applications**

The Planning Applications stage is the most complex part of the developer obligations process. It involves a wide range of internal and external consultees, developers and legal representatives trying to achieve agreement on a broad range of issues all within a time sensitive planning process. The revised procedure and the new officer as outlined earlier, are aimed at streamlining the process to achieve better outcomes for the community, the development industry and the Council. The diagram below, (Fig.2) focuses on the planning process and sets out how the current procedure works. While much of this procedure would remain consultation is currently underway with stakeholders to update this to improve the procedure and reflect elected members requirements.

## Planning Application Stage (Fig.2)

(The Diagram represents the current process and will be updated to reflect the changes.)

1. RECEIPT OF PLANNING CONSULTATION (Developer Obligations Team)

2. CONSULTATIONS EMAILED TO SERVICES (Developer Obligations Team, Services & NHS Grampian):

- Housing (Graeme Stuart)
- Education (Andrew Jones) - as per agreed format as separate email
- Community Facilities (Linda Clark & Jo Mackie)
- Core Paths (Karen Van Eeden) **Only one consultee here please EP Team not Core paths and Open Space**
- Sports & Recreation (Steven Shaw & Jo Hall)
- Open Space (Deb Munro)
- NHS Grampian (John Gill & Allan Robertson) - only if a masterplan site
- **Transportation (should include both strategic and local transport contribution)**

*Copied to Service Development & Performance Improvement (Val Johnston & Louise Fox)*

3. ISSUE OF ASSESSMENT REPORT (14 days/28 days from Stage 1) (Developer Obligations Officer)

Emailed to Agent (Agents asked to respond within 5 days confirming whether agreement to report detail.  
Update Case Officer if Extension Required

*Copied To Case Officer and Service Development & Performance Improvement (Val & Louise)*

4. ANY REVISIONS TO ASSESSMENT REPORT (Developer Obligations Officer)

Liaison with Housing Service on Affordable Housing Requirements & Liaison with Services in Relation to Queries

Developer Obligation to Update Case Officer if any Delays

5. FINAL CONSULTATION RESPONSE TO PLANNING SERVICE (Developer Obligations Officer)

Final Agreed Assessment Report Emailed to Case Officer Along With Cover Email Consultation Response Summarising the Agreed Developer Obligations and Including Education Statement

If Application is to be a Section 75 Agreement then Instruction with Relevant Sections Completed will also be attached.

*Copied to Finance (David Marshall) & Service Development & Performance Improvement (Val & Louise)*

6. COMPLETION OF SECTION 75 INSTRUCTION (Case Officer & Transportation)

Instruction with as much detail as possible completed will be sent at Stage 5

Case Officer to Send Section 75 Instruction to Transportation & Complete Any Planning Instructions

7. INSTRUCTION OF LEGAL (Case Officer)

This can be done as soon as agreement reached. Case Officer to date instruction and emailed to Legal

*Copied to Service Development & Performance Improvement (Val & Louise)*

8. CONFIRMATION FROM LEGAL (Legal)

Legal to Confirm Receipt of Valid Instruction and Solicitor Actioning Agreement to Case Officer

9. CONCLUSION OF SECTION 75 (Legal)

Legal to Email Signed Section 75 To Case Officer, Developer Obligations Officer (General Email), Finance (David Marshall) & Service Development & Performance Improvement (Val & Louise), Housing (Graeme Stuart & Lynne Ritchie)

### 5.1.6 **Community / Elected member involvement**

Developer contributions are intended to ensure that developers make appropriate provision for any losses, or supply additional facilities that are required to mitigate the impact of a development in the local community. Contributions are utilised for the provision of additional capacity, through new build, extension or reconfiguration of existing space to allow more activities to take place. It is critical that projects are identified as early as possible in order to comply with the policy tests shown in Appendix D.

The present procedure for identifying a project for contributions is carried out on a reactive basis. Once the need for a developer contribution has been identified, services are given two weeks to detail what mitigation works would be carried out should monies be secured. There is currently no set procedure for elected member input or community groups or councils input. While Service representatives do their best to gain comment from community groups, it is not always possible for them to get comprehensive feedback which helps to inform the final decision on which project will be funded from contribution(s). There is simply not enough time for the relevant dialogue to take place and for communities to come forward with ideas which satisfy the policy tests.

#### **Citywide Asset Plans**

The current “reactive” way of dealing with assessments is not best practice. It is proposed that the new Developer Obligations Officer will work with Asset Management, the Local Development Plan Team, Elected Members and Community Councils to undertake an asset review. The purpose of this Asset Plan would be to work alongside the local development plan and identify projects across the city. The collected data would be held in an asset review database that would be continuously reviewed and updated. This information would then be used to inform the decision making process. The data would require regular review to ensure data is relevant.

It is proposed that Elected Members and Community Councils would be consulted on the updating of these Asset Plans. This would allow any capacity issues which have been discussed with the wider community, to be made known. Projects within the Asset Plan could then be used to inform the Developer Obligations process.

Elected Members in relevant ward(s) would be contacted by the co-ordination team at the same time as service representatives to offer comment on potential use of contributions.

Responses could be collated and issued to service representatives to help inform the decision where monies are spent.

It must be remembered however that regardless of the desires of a party to the process, all contributions sought must comply with the policy tests as set out in Appendix A. One of the Developer Obligations Officers roles, as noted earlier, will be to advise both the elected members and community groups on the suitability of contributions sought.

### **5.1.7 Collection of the Developer Obligations**

A crucial aspect of the Developer Obligations process is monitoring the progress of developments to ensure obligations are invoiced for at the appropriate stage. These stages are set out in the conditions to the planning application or within the S75 legal agreement and are referred to as trigger points. At present monitoring these trigger points is complex as the combined data from planning applications, legal agreements, project details and income / expenditure is held in a standalone database. Officers must rely on quarterly completion reports to identify when developments have commenced and in turn which trigger points have been reached. The database currently does not link to either planning or building control records.

A significant piece of work has taken place to move all of the planning and building control data to an integrated "Idox" computerised application system. The developer contribution database is to be combined with this system, to allow improved monitoring of trigger points. The data will be available to all involved in the procedure whenever building control officers update completions, allowing invoices for payments to be issued as soon as a trigger point has been reached. Both officers and developers will benefit from shared data and the new, integrated database. Relationships have been built up with several developers who have acknowledged the benefit of being forthcoming with payments to avoid interest penalties. The standard Section 75 template, in addition to the standard assessment report will greatly assist developers in identifying trigger points for payment.

#### **Collection of Contributions**

At present, the Council operates a system for payment which can prevent the release of planning consent in some instances. Once an invoice has been issued, or a development agreed in principle, it is common practice for a cheque to be sent to Planning Officers. Often this can take weeks to be presented to the appropriate officer and clear.

Again to streamline the process it is proposed that a generic email address is set up to allow all developers the opportunity to make contact with officers and make payment by way of a BACS transfer.

#### **Services**

All of the services in the council who deliver projects fully or partly funded through developer contributions have a nominated service representative who is responsible for the coordination of contributions in their service. The Developer Obligations Officer as part of their role will liaise with these officers on a regular basis.

### **5.1.8 Management of the Developer Obligations**

#### **Project delivery / Monitoring spend**

When a project has been identified and the funds have been received in part or full, there is currently no process of governing the delivery of the project. While the monetary values of some contributions are low and others are simple "one – off" payments, many are large projects,

which can carry a significant risk to the Council if not monitored appropriately. It is apparent that some projects require monitoring in the same fashion which projects from the non – housing capital programme are.

It is recommended that significant projects which are funded by developer obligations which require governance are included as part of the non – housing capital programme of works and subject to the same governance. This would take the form of project status reports, risk registers and reporting to the appropriate Committee.

### **Enforcement**

Officers will continue to enforce the conditions set out in a legal agreement or assessment report through officers monitoring the status of each contribution and holding regular discussions with all service representatives. This will also be monitored by the Developer Obligations Officer and the Developer Obligations Team in consultation with the case officer/building standards.

## 6. IMPACT

### **Improving Customer Experience –**

The establishment of a new Service Level Agreement will have a positive effect on community consultation when identifying assets and projects which can benefit from developer contributions.

### **Improving Staff Experience –**

All staff involved in the procedure will benefit from having more clearly defined roles and responsibilities. Existing short deadlines for responses may be increased for staff.

### **Improving our use of Resources –**

Continuing to work with Aberdeenshire Council with an amended Service Level Agreement would improve the overall process for project delivery.

### **Corporate -**

The continued use of a Service Level Agreement will enable Aberdeen City Council to continue joint working with Aberdeenshire Council.

### **Public –**

This report may be of interest to the public, as the intended outcome is to ultimately better manage the impact of new developments on Communities.

## 7. MANAGEMENT OF RISK

The purpose of the revised process including the new Developer Obligations Officer and Service Level Agreement is to reduce the risk inherent in the Developer Obligations process. One of the Developer Obligations Officers key roles will be that of co-ordination and oversight. The involvement of Elected Members and Community

Councils also helps to involve communities to achieve better outcomes. Finally the revised Asset Plans help to front load the process and make it proactive rather than reactive.

## 8. BACKGROUND PAPERS

Appendix A:- Item 25, Communities, Housing and Infrastructure Committee, 25 August 2016:

Appendix B:- Minute of Previous Agreement between Aberdeen City Council and Aberdeenshire Council (Service legal Agreement).

Appendix C:- Draft S75 Legal Agreement Templates  
(Available on-line)

<http://www.aberdeencity.gov.uk/nmsruntime/saveasdialog.asp?IID=72718&slD=15510>  
<http://www.aberdeencity.gov.uk/nmsruntime/saveasdialog.asp?IID=72720&slD=15510>

Appendix D:- Five Policy tests for Developer Contributions, extract from, Circular 3/2012: Planning Obligations and Good Neighbour Agreements

## 9. REPORT AUTHOR DETAILS

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Appendix A:- Item 25, Communities, Housing and Infrastructure Committee, 25 August 2016:

25	<b>Developer obligations</b>	<p><b>The Committee resolved:</b></p> <p>(i) to agree to Aberdeen City Council entering into a revised Service Level Agreement with Aberdeenshire Council with clearly defined roles, tasks and responsibilities. This will provide the benefits of a shared service with the addition of an in-house post which will provide a dedicated link within the Council.;</p> <p>(ii) to agree in principal to the creation of a new post to ensure effective management of the negotiation and consultation procedures which will be based in Marischal College;</p> <p>(iii) to agree to a further report on revised working procedures which will be reported back to the November meeting of this Committee; and</p> <p>(iv) to instruct officers to investigate the viability of including community groups, community councils and/or local members in the decision making process with regards to the allocation of funds from developer contributions, and that this is included in the report on revised working procedures expected at the November meeting of this Committee.</p>	Planning and Sustainable Development	David Marshall / Gale Beattie
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Appendix D – Five Policy tests for Developer Contributions  
(Circular 3/2012: Planning Obligations and Good Neighbour Agreements)

**1. Necessary to make the proposed development acceptable in planning terms**

Obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider objectives which are not strictly necessary to allow planning permission to be granted for the particular development. Where the need to improve, upgrade or replace that infrastructure does not arise directly from the proposed development then planning authorities should not seek to address this through a developer obligation.

**2. Serve a planning purpose and where it is possible to identify infrastructure provision requirements in advance, should relate to development plans.**

An obligation must be related to the use and development of land and be set out in the Development Plan. Information on the items for which contributions will be sought and the occasions when they will be sought require to be set out in the Development Plan. The methods and exact level of contributions required are set out in statutory supplementary guidance and this is to provide as much certainty as possible to the developer early in the process. It is therefore important to ensure that information on infrastructure and

community requirements to support a development are included at the development plan stage. For example, the replacement of a roof at the local village hall is not relevant to the planning process therefore could not be funded through developer obligations.

**3. Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area**

Any obligations must be directly related to the development. We are therefore obliged to clearly set out the purpose for which any contribution is required and the infrastructure to be provided. It is not sufficient to simply advise that an obligation is required for community facilities as we require to evidence that there is a clear link between the mitigation level sought and the development proposed.

**4. Fairly and reasonably relate in scale and kind to the proposed development**

Contributions should always be proportionate to the scale of the proposed development. Planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow permission to be granted for the particular development. For example, where there is an existing shortfall concerning sports facilities within a local community, the developer cannot be expected to fully meet this shortfall through obligations but could potentially make a proportionate contribution towards additional infrastructure required as a result of their development.

**5. Be reasonable in all other respects**

For example obligations could not be used to fund a private facility such as a golf club where only selected members would benefit.