

ABERDEEN CITY COUNCIL

---

COMMITTEE	Council
DATE	21 <sup>st</sup> June 2017
REPORT TITLE	Proposed Planning Obligations Supplementary Guidance.
REPORT NUMBER	CHI/17/155
DIRECTOR	Bernadette Marjoram
REPORT AUTHOR	David Dunne

---

**1. PURPOSE OF REPORT:-**

- 1.1 The purpose of this report is to seek Members' approval to modify the Planning Obligations Supplementary Guidance, approved by Council on the 15<sup>th</sup> of March 2017. This approval is sought following a direction issued by Scottish Ministers to the Council, as part of their approval process for Supplementary Guidance.

**2. RECOMMENDATION(S)**

- 2.1 It is recommended that the Council:
- a. Agree the modifications to the Planning Obligations Supplementary Guidance required by Scottish Ministers in their letter of 14th May 2017, attached in Appendix 1, and set out in the Planning Obligations Supplementary Guidance attached in Appendix 2.
  - b. note that charges for Stopping Up Orders / Traffic Regulation Orders and the preparation of Legal Agreements will continue to be reasonably and fairly applied

**3. BACKGROUND/MAIN ISSUES**

- 3.1 Statutory Supplementary Guidance forms part of the Local Development Plan and has the same status for decision making in line with Section 25 of the Town and Country Planning (Scotland) Act 1997, as amended.
- 3.2 Adopting Supplementary Planning Guidance.  
The process for adopting Supplementary Planning Guidance has a number of steps which must be completed to comply with the Town and Country Planning (Scotland) Act 1997, as amended. Those steps are as follows:-

- i. Officers prepare Proposed Supplementary Guidance.
- ii. The Proposed Supplementary Guidance is presented to Committee for approval to undertake a public consultation (generally 4 weeks).
- iii. The result of the public consultation and any amendments to the Proposed Supplementary Guidance are reported back to Committee for approval to send the guidance to Scottish Ministers for their approval.
- iv. After a period of 28 days, Scottish Ministers may approve the guidance for adoption, request any extension of time to consider the guidance or issue a direction to alter the guidance before it may be adopted.
- v. If a direction is issued the Local Authority must make that change in order to adopt the guidance as statutory Supplementary Planning Guidance.

3.2.1 At the Council Meeting of 14<sup>th</sup> December 2016 (Report Number CHI/15/158, Agenda Item 7(j)), members agreed to issue Proposed Supplementary Guidance, including Planning Obligations, for public consultation. The consultation period ran for six weeks and the results and amended guidance were reported back to the Council Meeting on the 15<sup>th</sup> of March 2017 (Report Number CHI/17/015). At that meeting Members approved the revised guidance and instructed Officers to issue the guidance to Scottish Ministers for their approval.

3.2.2 On 18<sup>th</sup> April 2017 Scottish Ministers wrote to the Council approving 43 of the 44 Supplementary Guidance documents. They also requested an additional 28 days to consider the Proposed Planning Obligations Supplementary Guidance.

### 3.3 Direction from Scottish Ministers

On the 12<sup>th</sup> May 2017 Scottish Ministers wrote to the Council notifying that,

*“Scottish Ministers give notice that the supplementary guidance ‘Planning Obligations’ may not be adopted until modifications specified in Annex A to this notice have been made.”*

The Annex A modifications were as follows,

- i. *Amend the third paragraph of section 3.2 on page 3 of the Supplementary Guidance: Planning Obligations, to remove the sentence which reads:  
‘The applicant will be required to cover the costs of preparing and registering the Planning Obligation and will be responsible for their own legal costs.*
- ii. *Amend the table on page 8 of the Supplementary Guidance: Planning Obligations, to remove the final entry relating to Traffic Regulation Orders/Stopping Up Orders*

These changes were required on the basis that they are not covered by the Town and Country Planning (Scotland) Act 1997.

- 3.4 Established practice of charging for these services and separate legislation  
The recovery of the fees mentioned above is either provided for by separate legislation and/or is established custom and practice among Scottish Local Authorities. As such removing the specific wording from the Planning Obligations Supplementary Guidance required by the Scottish Ministers does not impact on the Councils ability to apply such charges.

*Stopping Up Orders / Traffic Regulation Orders*

- 3.4.1 The request to remove these charges was based on the fact that while the Stopping Up Orders are covered by the Town and Country Planning (Scotland) Act, Traffic Regulation Orders are not and are dealt with under different legislation. As such these charges may still be applied by the council under the following legislation:-
- Section 135 of the New Roads and Street Works Act 1991 provides for recovery of the costs of temporary traffic orders.
  - Section 210 of the Town and Country Planning (Scotland) Act 1997 allows for recovery of costs of stopping up orders.

*Charging for Legal Agreements*

- 3.4.2 Again the request to remove this charge was based on it not being covered by the Town and Country Planning (Scotland) Act 1997, however it is well established custom and practice among local authorities in Scotland to recover these costs from applicants.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 Allowing for the continued application of established practice there will be no financial implications arising from the proposed change to the Planning Obligations Supplementary Guidance. Set out below, for information, is the expected incomes from both processes.
- 4.2 Charges for the preparation of Section 75 Legal Agreements (S75)  
Since the introduction of the S75 template Council has applied a charge of £750 per legal agreement, with a possible increase where the template is deviated from. It was projected that for the coming financial year this would equate to £11,250, based on 15 S75s for the year.
- 4.3 Charges for Traffic Regulation Orders/Stopping Up Orders  
Traffic Regulation Orders/Stopping Up Orders are charged at £2,000 per order plus the cost of infrastructure to support the order (signage, bollards etc). The Council process on average two Stopping up Orders a year equating to approximately £5,000 in any financial year.

#### **5. LEGAL IMPLICATIONS**

- Non-compliance with legislation  
As noted in 3.2-3.4 above, failure to make the changes listed in the Scottish Ministers direction prevents us from adopting the guidance as Statutory Supplementary Guidance under the Town and Country Planning (Scotland) Act 1997. Failure to do so would weaken the

Councils position in agreeing S75 legal agreements and planning obligations on new developments.

- Legal challenge  
Again failure to adopt the guidance would weaken the Councils position in and open up S75 legal agreements to possible challenge on the basis that Local Planning Advice does not carry the same weight in decision making terms as Supplementary Guidance.

## **6. MANAGEMENT OF RISK**

- Financial  
The failure to secure fees for both the preparation of Section 75 Legal Agreements and Traffic Regulation Orders/Stopping up Orders would have a financial impact on service budgets.

As these charges are based on applications submitted it is not possible to give exact figures for future years however an estimate of the impact is noted in Section 4, points 4.2 and 4.3 above, these would represent reasonable projections.

- Employee  
There will be no employee impacts from this report.
- Customer / citizen  
While there are no direct customer impacts from approving the recommendations in this report, failure to do so may delay the Councils ability to process S75 legal agreements and by extension impact on the customers experience.
- Environmental  
There will be no environmental impacts from this report.
- Technological  
There will be no technological impacts from this report.
- Legal  
Legal implications are set out in Paragraph 5 above.
- Reputational  
Again while there are no direct reputational impacts from approving the recommendations in this report, failure to do so may delay the Councils ability to process S75 legal agreements and by extension damage the Councils reputation.

## **7. IMPACT SECTION**

### **Economy**

While there are no expected direct impacts on the wider economy, the failure to secure payment for the services mentioned could impact on speed of delivery of these services and by extension on the wider economy. It may also impact on other services which the Council provides via budgetary constraints.

### **People**

There are no expected impacts on people as the report relates to a method of charging for two services related to proposed new developments.

### **Place**

There are no expected impacts on place as the report relates to a method of charging for two services related to proposed new developments.

### **Technology**

There are no expected impacts on Technology as the report relates to a method of charging for two services related to proposed new developments.

## **8. BACKGROUND PAPERS**

- Town and Country Planning (Scotland) Act 1997

## **9. APPENDICES (if applicable)**

- Appendix 1 – Letter from the Scottish Government giving direction on changes required to the Planning Obligations Supplementary Guidance.
- Appendix 2 – Track changed version of Planning Obligations Supplementary Guidance showing required change.

## **10. REPORT AUTHOR DETAILS**

David Dunne  
Senior Planner – Development Plan Team  
[ddunne@aberdeencity.gov.uk](mailto:ddunne@aberdeencity.gov.uk)  
01224 523329

### **HEAD OF SERVICE DETAILS**

Eric Owens  
Eric Owens  
Head of Planning and Sustainable Development (Interim)  
[eowens@aberdeencity.gov.uk](mailto:eowens@aberdeencity.gov.uk)  
01224 523133