

**CONSULTATION BY THE SCOTTISH GOVERNMENT****REVISION OF CIRCULAR 12/1996: PLANNING AGREEMENTS****REPORT BY DIRECTOR OF DEVELOPMENT SERVICES**

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**1.0 INTRODUCTION**

- 1.1 Following the announcement by the First Minister on 19 August 2008 that the planned review of Planning Obligations under the Planning etc (Scotland) Act would be postponed in order to avoid additional burdens on the development industry during the current period of economic uncertainty, the Scottish Government decided to focus on how to make the current system of planning agreements under s.75 Town and Country Planning (Scotland) Act 1997 operate more effectively in order that agreements can be taken forward in a more transparent and consistent manner.
- 1.2 Advice on the use of s.75 Agreements is currently given in Circular 12/1996: Planning Agreements. Research findings suggest that conflicts can still arise between planning authorities and developers during the negotiation of an agreement. The Scottish Government is seeking comments by 10 April 2009 on a proposed revised Circular, developed with input from key stakeholders from both the public and private sectors.
- 1.3 The full consultation paper can be viewed at the Department of Development Services or on the Government's web site at [www.scotland.gov.uk](http://www.scotland.gov.uk).

**2.0 RECOMMENDATIONS**

- 2.1 It is recommended that:
- (i) Members note the contents of this report.
  - (ii) Forward the Council's comments as detailed in Appendix A.

**3.0 SUMMARY OF THE MAIN CHANGES**

- 3.1 The Draft Circular reiterates the familiar tests that planning agreements should meet
- *Necessary to make the proposed development acceptable in planning terms*

- *Serve a planning purpose and be relevant to the published development plan*
- *Directly relate to the proposed development*
- *Fairly and reasonably relate in scale and kind to the proposed development, and*
- *Be reasonable in all other respects*

These criteria are helpfully amplified.

3.2 The Draft Circular suggests that, where planning permission cannot be granted without restriction, the planning authority should *with the developer*, consider the following options *in sequence*

- *Use of a planning condition following the guidance in Circular 4/98;*
- *Use of a legal agreement under different statutes where, for example , the obligations of a developer can be met by a one-off payment;*
- *Use of a Section 75 Agreement only where successors in title must be bound by an obligation*

3.3 The proposed changes to current guidance place more emphasis on certain aspects of the process, particularly on the early identification of requirements for planning agreements in development plans and supplementary guidance, including

- A fair and transparent process for setting policy for planning agreements and negotiating them
- Development of codes of practice for negotiating agreements
- The adoption of formal policies in the development plan on the use of agreements
- Items for which contributions will be sought should be set out in the development plan and be subject to scrutiny
- Supplementary guidance should not be applied to development proposals until it has been formally agreed by the planning authority following consideration of representations

#### **4.0 KEY ISSUES RAISED BY THE CONSULTATION PAPER**

4.1 While the Draft Circular represents an evolution of current guidance which is largely followed by the Council, it would, if finalised, require the Council to

- *Formally adopt more detailed guidance on the use of planning agreements in development plans and supplementary guidance*
- *Develop codes of practice for negotiating agreements*

## 5.0 CONCLUSIONS

5.1 The draft Circular is in general a modest updating of existing guidance. However, its focus is perhaps unduly restricted to planning agreements which require contributions (planning gain) towards infrastructure etc from developers whereas s.75 Agreements are commonly used for a wide variety of other purposes, such as binding restrictions on the use or disposal of land or the securing of bonds for the restoration of sites.

## 6.0 IMPLICATIONS

**Policy:** The changes have no direct impact on Council Planning Policy.

**Financial:** None.

**Personnel:** The earlier identification of the need for an agreement and the adoption of model agreements or clauses might create some efficiency in drafting agreements with potential savings in staff time.

**Equal Opportunity:** None.

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## APPENDIX A – SPECIFIC 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?

Yes

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

*Yes. However, it would be helpful if the Circular included model forms of agreements.*

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?

*No. Advice as to the utility of suspensive conditions could be expanded. However, in view of the developing body of case law, it would perhaps be more appropriate to revise Circular 4/1998: Use of Conditions in Planning Permissions*

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?

*The explanation of the policy tests in the Draft Circular represents only a limited expansion of the tests in Circular 12/1996.*

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?

*There may be instances, particularly for proposals identified in the development plan, where the heads of terms for infrastructure contributions etc can be established in advance, especially if the revised Circular's recommendations regarding the development plan and supplementary guidance are put into practice*

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

*No. It should advise that concluded planning agreements should be attached to the planning register.*

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?

*Infrastructure provision can be achieved through the use of suspensive conditions and there has been developing case law on this (including decisions of Scottish Reporters). Updated guidance in a review of Circular 4/1998 might give authorities more comfort in avoiding the use of Agreements.*

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?

No.

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

*While the revised Circular's recommendations regarding the development plan and supplementary guidance should put planning obligations on a fairer and more consistent basis, the RIA perhaps underestimates the time and resources required to take these potentially detailed provisions through fair and open scrutiny to approval by planning authorities.*

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

*None identified*

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

*Equalities groups may have more opportunity for input to planning agreements.*

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

*None identified*

### **Further comment**

The draft Circular is in general a modest updating of existing guidance. However, its focus is perhaps unduly geared towards planning agreements which require developer contributions (planning gain) towards infrastructure etc.

Section 75 Agreements are commonly used for a wide variety of other purposes, such as binding restrictions on the use or disposal of land or the securing of bonds for the restoration of sites. Further guidance on these matters would be helpful.