

**THE HIGHLAND COUNCIL**

**PLANNING ENVIRONMENT & DEVELOPMENT COMMITTEE**

**19 NOVEMBER 2008**

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| Agenda Item |  |
| Report No   |  |

**DEVELOPER CONTRIBUTIONS**

**Joint Report by Director of Planning & Development and Depute Chief Executive and Director of Finance**

**SUMMARY**

This report highlights the outcomes of a recent report commissioned by the Finance and Planning & Development Services to carry out a health check of our current approach to Developer Contributions. A number of improvements to current process were recommended and these are presented for discussion and implementation.

**1. BACKGROUND**

- 1.1** Earlier this year the Planning & Development and Finance Services commissioned Sector/Cushman and Wakefield to carry out a “health-check” on the Council’s current approach to delivering and managing the development contributions process and to make recommendations on any improvements required.
- 1.2** The principle behind Developer Contributions is that developers should contribute to the additional strain on the public purse occasioned by their developments. This is often done through agreements under Section 75 of the Town and Country Planning (Scotland) Act 1997. There are other means by which the Developer Contributions can be managed including Planning Conditions or by a straightforward payment made by the developer.
- 1.3** Major development proposals create pressure on the Council and its partners’ ability to fund infrastructure provision. Developer Contributions, properly addressed, can provide a substantial contribution to infrastructure costs and assist in the creation of sustainable communities.
- 1.4** Recent benchmarking discussions with Scottish Borders Council, West Lothian Council and Aberdeenshire Council have demonstrated the value in having in place systems for the effective negotiation and implementation of developer contributions as part of a robust long term development strategy set out in a Development Plan.
- 1.5** The current economic climate may make the payment of developer contributions towards infrastructure provision more challenging. The outcomes of the recent Housing seminar on the impacts of the credit crunch included reference to the fact that a more flexible approach towards contributions would be appropriate possibly in respect of phased payments. Infrastructure will however still need to be provided, and what is important is that certainty is provided, to landowners, developers and indeed public agencies, of the scale and level of contributions

which will be sought or used as the basis of negotiation. This report sets out the process for achieving these levels of certainty.

## **2. SECTOR/CUSHMAN & WAKEFIELD REPORT RECOMMENDATIONS**

**2.1** Although they recognised that the Council is not alone in facing challenges in relation to its approach to developer contributions, the consultants identified a number of potential improvements to our current practice. As the appendix to this report summarises, a number of recommendations have been made covering the three strands of:

- Policy and Strategy
- Negotiation; and
- Administration, Governance and Delivery.

## **3. Policy and Strategy**

**3.1** The key to introducing a better system of dealing with developer contributions is having an agreed and accepted policy approach. Sector felt that the current approach across the Council could be improved. Whilst the policy for affordable housing was delivering very well indeed, other Service strategies were not as effective. The delivery of a revised more comprehensive approach by the other services is therefore essential.

**3.2** A revised policy can be used in two ways. Firstly, it can be applied to the Local Plans to provide a strategic forward view of what infrastructure improvements and additions will be required to address existing deficiencies and accommodate new demands (thereby linking to the Council's capital programme). Secondly, it provides a basis upon which developer contributions can be sought. Crucially, without a strong basis for seeking contributions, the Council may find it difficult to justify the levels it seeks. This is a risk for the Council, and a potentially significant one in the current economic climate.

**3.3** Over the course of this year there has already been steady progress in bringing forward a more comprehensive developer contributions policy across the Council, although work remains to be done. In particular, the following pieces of work are beginning to bring benefit:

- a Strategic Education Planning Group was set up to assist with the identification of needs arising from new developments, and to establish a robust process for identifying the requirements for contributions where appropriate;
- work on supplementary planning guidance on open space provision will assist in defining the requirements for contributions (dealt with elsewhere on this agenda);
- discussions have taken place with TEC Services on waste management facility provision, and a revised policy will ensure that larger developments are providing the appropriate level of recycling provision;
- work on the affordable housing guideline has been completed and work is underway on a Housing Need and Demand study which will support the delivery of further housing in the coming years.

- Work is underway with ECS as to how the Facilities Planning Model can be used to inform developer contribution requirements for leisure and “wrap-around” facilities in the future.
- The A96 Corridor Framework and developer protocols are being used as the basis of discussion with a number of significant developers in the area, albeit that work is ongoing with Scottish Government Planning and Transport Scotland on the actual implementation of any funds gathered. The Planning & Development Service has tendered for a Strategic Development Adviser to assist with this in the short term, until longer term arrangements are put in place.

**3.4** It is intended that new Supplementary Guidance on Developer Contributions covering all of the uses set out above, will be brought to the January 2009 Planning Environment and Development Committee. This will form an important first step towards ultimately having a comprehensive policy approach in place through the Local Development Plan process.

## **4. Negotiation**

**4.1** The consultants have noted that even where there is an appropriate policy base there is a need to have in place effective negotiation arrangements. These arrangements should feature:

- A project management approach to the delivery of major planning applications;
- A negotiation framework that provides those negotiating with clear guidance and remit;
- A corporate approach to support those negotiating in delivering the most appropriate developer contributions;
- Access to specialist professional assistance including property, legal and finance as appropriate, utilising external specialist advice as required; and
- Processes that ensure propriety and protect those negotiating on behalf of the Council from accusations of malpractice.

**4.2** The proposed new approach to dealing with major developments has been the subject of a separate paper on this agenda. This demonstrates the key role that early and effective discussions on the impacts of large scale developments on Council delivered Services can have. There is still however a requirement for the detailed negotiation to be carried out on behalf of the various Council Services involved by someone with the appropriate commercial background.

**4.3** The Council has attempted to fill the post of a “Planning Gain Negotiator” on two occasions, without success. It is recommended, and experience in Scottish Borders Council supports this, that attempts are made to appoint to that post again, albeit with some change to job title and job description. A key benefit is that there is a consistent approach to negotiation rather than the ad hoc approach currently employed. This post is currently shown as part of the Planning & Development establishment, albeit that it was expected to be funded from developer contributions already gathered and to become self-funding over time.

## **5. Administration, Governance and Delivery**

**5.1** The consultant's view was that the administration of developer contributions in Highland requires some improvement, in order to achieve the following outcomes:

- a single comprehensive record of each Section 75 agreement;
- identified responsibility for the monitoring and tracking of agreements and the associated financial and other contributions; and
- a coordinated approach to management and decision making with regard to monies received and spent.

**5.2** The consultants have recommended that a relatively senior administrator post be created with the following responsibilities to back up the negotiator role:

- Overall responsibility for administration of agreements.
- Implementation of improved procedures and guidance.
- Maintaining the database of agreements;
- Providing monitoring reports on forecasts of receipts due, receipts received, and discharge of obligations.
- Tracking agreements from the time of them being made through to the point where they are fully discharged by the receipt of monies from or fulfilment of other requirements by the developer and the spending of the monies and discharge of other responsibilities by the Council;
- Administering and playing a key part of the any Project Teams set up to work on major planning applications; and
- Working with Finance to ensure that the accounts and the database are reconciled.

**5.3** The process map at the back of this report sets out where this administrative role will form a key part. It is recommended that this post is funded out of existing developer contributions received, where the obligation has been discharged, but the monies not yet removed from the developer contributions budget.

**5.4** In terms of governance, the proposals for a more effective approach to dealing with pre-application advice and for determining major planning applications will ensure that:

- developer contributions work is coordinated;
- major issues are dealt with appropriately;
- there are proper approvals in place for securing and spending developer contributions; and
- there is a truly corporate approach to working with developers to deliver infrastructure improvement.

**5.5** The consultants felt that the most effective way of achieving such arrangements would be to implement a Developer Contributions Project Team or Teams. These groups would have the responsibility of:

- Meeting to discuss the issues surrounding particular planning applications that are complex or causing difficulty;
- Discussing and agreeing the programme of expected contributions and their planned application;
- Considering and agreeing the application of funds received, which should be carried out in conjunction with the monitoring and control of the capital programme;
- Identifying the balance currently in the accounts and make recommendations as to their use; and
- Considering and making recommendations on the general issues relating to Developer Contributions, including short-term and longer-term improvements to process and procedures.

**5.6** Whilst the first two of these recommendations will be picked up by improved processes for dealing with major planning applications (*as dealt with elsewhere on this agenda*), the last three are critical improvements to business process. It is recommended that these elements are dealt with through the corporate capital programme group, with appropriate input from relevant officers in legal, finance and planning. The new post(s) would have a central role in directing the work of the officer group. It may also be appropriate for this group to be responsible for an annual report on developer contributions to be reported to either the Resources Committee or Audit & Scrutiny Committee.

## **6. Financial Implications**

**6.1** Discussions will take place with Personnel on the appropriate grading for the 2 posts. It is assumed, for costing purposes, that the two posts including oncosts may require the provision of £100k p.a.

**6.2** There would be no financial implication for Council budgets, as the posts would be funded from planning gain contributions. The Negotiations Officer post is on establishment but the supporting administrative post is not and would require to be referred to the Resources Committee. As the number of contributions increases and to ensure the timeous conclusion of Section 75 legal agreements it may prove prudent to offer some contribution income to fund extra legal assistance.

**6.3** Over the medium term, the additional posts set out within this report can be met from future developer contributions. Within the A96 protocol, which has been shared with developers, there is a clear assumption that a small percentage of contributions would be related to the Council's administration functions. In the short-term, and until A96 and other contributions are received, the posts can be met from currently held contributions where obligations have already been discharged. The Scottish Government is to issue further guidance on developer contributions and Highland Council policy will require to align with this.



## 5 Recommendations and Action Plan

### 5.1 Recommendations

5.1.1 Highland Council is certainly not alone in facing challenges regarding its S75 arrangements and in many cases the specific issues are not unusual in authorities across Scotland and the UK. In the previous chapters of the report we have set out a number of recommendations aimed at enabling the Council to improve its performance on Developer Contributions. In this section we reprise these recommendations under the relevant Chapter headings.

#### ***Policy and Strategy***

5.1.2 It is recommended that the Council:

- ◆ Ensures that the Council ensures that each of the service areas that wish to seek developer contributions have in place appropriate approved policy and evidence bases;
- ◆ Considers a formula approach to the calculation of the developer contributions or other funding that it requires as a consequence of new development;
- ◆ Considers its approach to commuted sums for maintenance.
- ◆ Introduce Supplementary Planning Guidance on Developer Contributions linked to the new Local Plans; and

- ◆ Construct the SG using a formula approach based where appropriate on the work done with respect to the A96 Corridor.

#### ***Negotiation***

5.1.3 It is recommended that the Council:

- ◆ Identifies an individual within each service area with specific responsibility for coordinating the responses to consultation on Developer Contributions from Development Management;
- ◆ Refers all development briefs to the Area Developer Contributions Project Team to coordinate input on developer contributions; and
- ◆ Has as part of its Development Management arrangements specific consultation on Developer Contributions for every application or substantive pre-application discussions where it is considered likely that developer contributions may be appropriate.
- ◆ Requires a development appraisal where the economic viability of the development is raised as an issue by prospective developers;
- ◆ Ensures that property expertise is available to this negotiating developer contributions by reaching an arrangement with internal and/or external specialists; and

- ◆ Ensures that finance and legal specialists are available, along with service representatives, to support the negotiations.

### ***Administration, Governance and Delivery***

5.1.4 It is recommended that the Council:

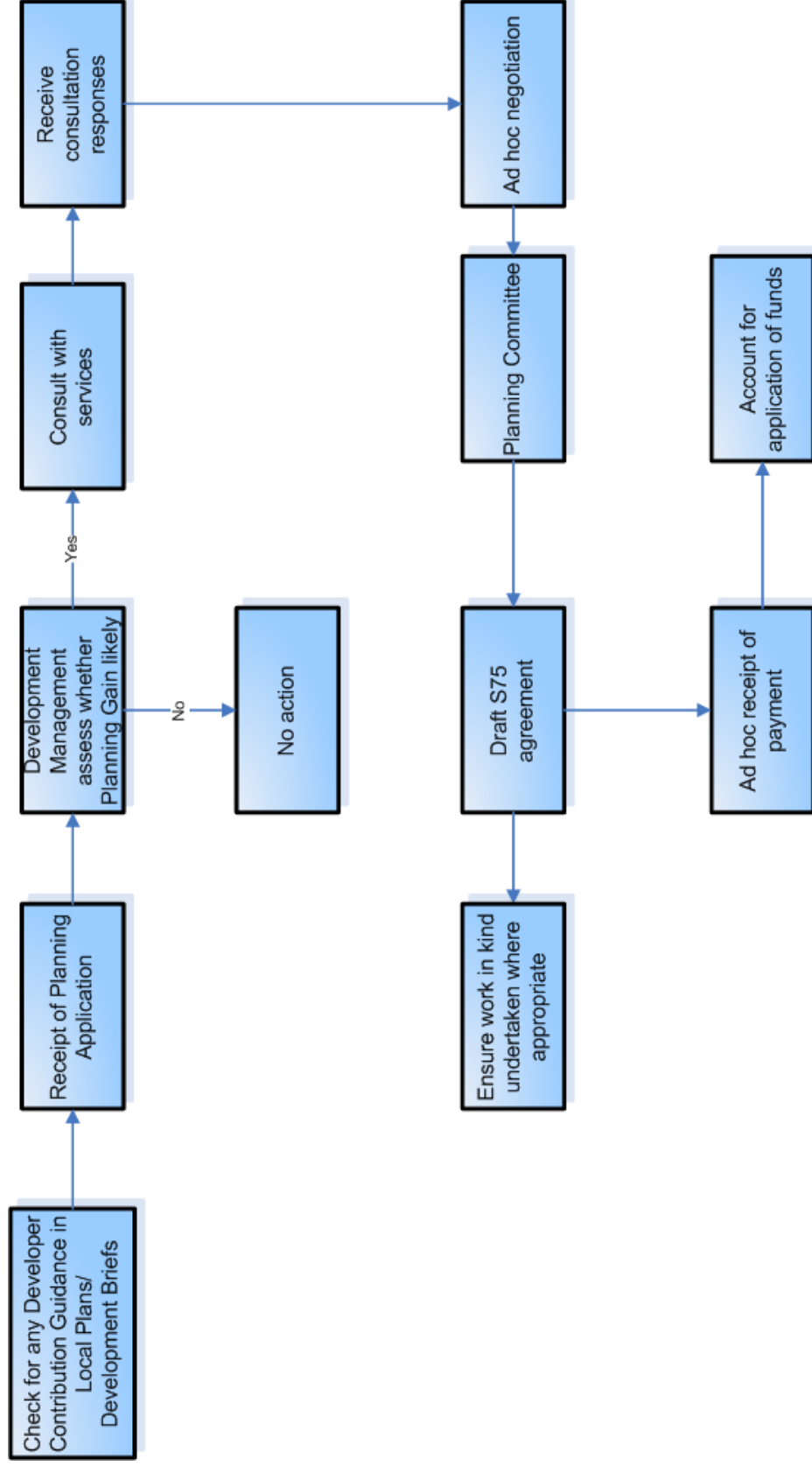
- ◆ Appoints a relatively senior administrator to coordinate the Developer Contributions related processes followed on due course by clerical assistance;
- ◆ Ensures that professional property expertise is available as required for Development Management;
- ◆ Deals proactively at a corporate level with the existing Developer Contributions balances that are held.
- ◆ Considers entering into partnership arrangements with developers in the A96 Corridor with a view to them doing the monitoring of Developer Contributions.
- ◆ Uses the existing Excel spreadsheet information in Finance as a basis for the development of a comprehensive Developer Contributions database;
- ◆ Considers the use of an Access database in that regard.
- ◆ Ensures the proactive application of the balances on the Council's balance sheet;

- ◆ Considers its approaches to the administration of commuted sums.
- ◆ Prepares an annual report on Developer Contributions for Planning Committee setting out the results of the year and the issues arising along with recommendations for action;
- ◆ Establishes a Developer Contributions Project Team(s) to coordinate the overall approach to Developer Contributions with representatives from Planning, Legal, Finance and relevant services and chaired by a senior officer of the Council; and
- ◆ Considers whether the establishment of 3 Area Developer Contributions Project Teams would be appropriate.

## **5.2 Action Plan**

- 5.2.1 If the Council is to achieve the improvements in its securing and application of Developer Contributions it needs to do so in a planned manner. We have constructed an outline action plan, which is set out on the following page. The Council needs to give appropriate corporate support and endorsement to the achievement of the plan and will also require to resource its delivery.
- 5.2.2 The officers Project Team that we recommended is established should be given responsibility for the overall management and coordination of the delivery of the action plan.

## 8 Appendix 3 Diagram showing current approach



## 9 Appendix 4 Diagram showing recommended approach

