

Report To: Safe, Sustainable Communities Committee **Date:** 18 January 2011

Report By: Corporate Director,
Regeneration and Resources **Report No:**
SSC/11/01/04/SJ/NMcL

Contact Officer: Development and Building Standards Manager **Contact No:** 01475 712420

Subject: Scottish Government Consultation: Resourcing a high quality planning system.

1.0 PURPOSE

- 1.1 The Scottish Government have consulted on the preferred approach to developing an alternative structure relating to fees payable in respect of planning applications. The scheme developed as a result of this consultation will be the subject of further consultation, and any amendment to current regulations or the creation of a new set of fees regulations would be subject to Parliamentary procedures and approval. Written responses to the consultation paper are invited by Friday 15 October 2010. The purpose of this report is to inform the Committee of the draft response submitted on behalf of the Council.

2.0 SUMMARY

- 2.1 The consultation posed 25 questions which were responded to as detailed in paragraphs 5.2 to 5.25.

3.0 RECOMMENDATION

- 3.1 It is recommended that the Committee agrees to the consultation response submitted to the Scottish Government.

Stuart Jamieson
Head of Regeneration and Planning

4.0 BACKGROUND

4.1 The Scottish Government's Modernising Planning Agenda has resulted in significant procedural changes aimed at delivering a modern planning system that is:

- **Efficient:** up to date development plans are to be at the heart of an efficient system that provides certainty for users and local people.
- **Inclusive:** local people are to be more involved in the decisions that shape the development of their communities.
- **Fit for purpose:** with a clear sense of priorities, and to address different issues in different ways.
- **Sustainable:** development is to contribute to economic growth that is sustainable. Planning will deliver sustainable development ensuring development is in the right place, and of, the right quality.

4.2 The Development Management function of local authorities has seen greatest impact following the introduction of e-Planning and the Planning etc (Scotland) Act 2006. While e-Planning has resulted in wider public access to planning applications the administrative burden has been significant, with registering and making applications available for web viewing now a considerably lengthier process. Procedural amendment shifting the responsibility for neighbour notification from the applicant to the planning authority adds further cost and resource requirement.

4.3 Most noticeable in Members minds will be the introduction of the Local Review Body, which reviews appeals against delegated refusals of planning permission. Such decisions were previously appealed to the Scottish Government funded Directorate for Planning and Environmental Appeals, which has consequently seen a reduction in workload.

4.4 The additional financial burden placed on local authorities does not end with the Development Management process. With sustainability high on the agenda, the Development Plan process requires the production of Strategic Environmental Assessments, while inclusiveness determines that there is now a requirement to owner and neighbour notify where there are site specific proposals in new development plans.

4.5 The Government recognises that resources and fees are a key issue for planning authorities and that the current structure and fee levels for planning applications does not reflect processing costs. It is suggested that income from smaller uncomplicated developments arguably subsidises the cost of processing applications for larger, complex developments, although this is no longer the case with the burden for neighbour notification now with local authorities. It is Scottish Government policy that developers should pay for the work involved in deciding planning applications, whilst other functions which are largely for the wider public good should be resourced by local authorities. Fees are set centrally by Scottish Ministers and must be approved by the Scottish Parliament.

4.6 Fee levels generally were raised by 10% in April 2010 for the first time since April 2007. This was done on the basis that planning authorities performance was improving and the Government's recognition of the importance of resourcing planning authorities effectively. Scottish Ministers have said that they may consider a further increase if planning authorities can continue to demonstrate convincing and sustained improvements in performance.

4.7 In 2009 Government commissioned research recommended raising the maximum fee cap and a 20% increase. The report also recommended that the new requirement for planning authorities to carry out neighbour notification would justify a 5% increase in fees to cover costs. Ministers, however, decided not to implement the increase because of the economic downturn. Compared with elsewhere in Great Britain, planning fees in Scotland are low. The maximum fee income received by a local authority in Scotland for a planning application is £15,950. In England and Wales the maximum fee is £250,000.

4.8 The purpose of this consultation is to identify a preferred approach and develop an alternative fee structure which will then be subject to further consultation. Any amendment to current regulations or the creation of a new set of fees regulations would be subject to Parliamentary procedures and approval. Written responses to the consultation paper were invited by Friday 15 October 2010.

5.0 RESPONSE TO CONSULTATION PAPER

5.1 The consultation paper asks for responses to 25 questions.

5.2 In Delivering Planning Reform the private sector committed to improve the quality of applications, thus reducing delays at validation and the need for repeat consultations over missing or inadequate information. Concerns have been expressed that this commitment has not yet been met. **Q1. What measures could be implemented that would improve the quality of applications and supporting information?**

Response: *Experience indicates that pre application discussion does not necessarily produce competent and complete planning applications, especially where clients set agents time targets for application submission. Inverclyde Council supports the drive for certainty and consistency by the establishment, nationwide, of validation checklists for applications by application type/nature of proposal.*

5.3 A number of planning authorities in England have established a charge for pre-application discussions. The Consultation Paper indicates that, for example, Barnsley MBC charges £500 + VAT for small developments of 10-49 dwelling houses and up to £2,000 + VAT for Planning Performance Agreements. Cotswold DC has a fixed initial standard charge of £1,000, which covers the time taken on a case by officers, from investigation stage to the actual meeting with applicant and the final written comment. For subsequent work there is an hourly charge ranging from £40 for an assistant planner to £110 for a director. The Scottish Government wish to consider if charges for pre-application discussions could be introduced as a full, or partial, discount against the full planning application once received. This could help reduce concerns that a charge for this service could discourage some potential developers from early engagement with the planning authority. **Q2. Would you be in favour of the introduction of a charge for pre-application discussions? In considering your response, should this be a one-off payment or should it be discounted against the subsequent submission of a planning application?**

Response: *Inverclyde Council does not wish to discourage development innovation, and would be concerned that charging for pre application discussion may act as a deterrent even if offset against a subsequent planning application fee. Pre application discussion is very much as part of the planning application process and should be factored into the new fee levels.*

5.4 The Scottish Government is committed to improving the quality and productivity of the public sector in Scotland by reducing waste and duplication. It considers that all public bodies can do more to deliver further efficiency. Local authorities are already testing and using some alternative delivery models, including shared services, joint commissioning and accreditation, outsourcing and peer group review to deliver a more efficient service that fully utilises the available skills and resources. **Q3. Are you supportive of the ways of working identified above? If so, is there a particular approach that you consider could make a difference to the performance of the planning system? If yes, which one and why?**

Response: *Inverclyde Council encourages officer involvement in Heads of Planning Scotland, which gathers good practice and offers the opportunity to exchange ideas and legislative interpretation. The excellent work of the Scottish Government's Building Standards Division in encouraging peer group review and local authority forums is supported, and Inverclyde Council would be enthused to participate in similar exchanges to improve its planning service.*

- 5.5 The changes to development management processes are intended to ensure that procedures for applying for planning permission are fit for purpose and responsive to different types of development proposal; that they improve efficiency; enhance community involvement and deliver quality outcomes. To ensure that these outcomes are being met the Government considers there is a need to assess the quality of service being provided by planning authorities with regular monitoring and assessment essential to achieving best value and consistent high quality of service delivery. At present planning authorities submit statistical returns on performance against statutory timeframes, although the Government recognises that the success of the planning service does not solely rest on the speed of decisions, and that there are wider qualitative aspects of the process that are important. The quality of the planning service is therefore not easy to assess. The Government sees speed of decision making is an important consideration but as important is the quality of engagement and communication with applicants, consultees and local communities. **Q4. What do you consider constitutes a high performing planning system? In considering your response, please reflect on the roles and responsibilities of the various parties in the planning system including developers, planning authorities, key agencies as well as other stakeholders. Are you aware of any existing appropriate frameworks currently being used that could be used? If not, are there any themes or indicators that could be considered as part of a framework to monitor the planning system? In considering your response we would also welcome views on the introduction of such a framework as well as who is best placed to carry out this assessment.**

Response: *A high performing planning system is one that produces a high quality environment in which to live, work and play. In years to come, the quality of our cities, towns, villages and countryside will not be judged on how long the application took to determine or on who was neighbour notified or consulted. The quality of the product should not be assessed in the immediate aftermath of completion. Landscaping takes time to mature, the effectiveness of conditions are best evaluated over time, and what can look a good layout or building may not be best suited to weather conditions or the way it is used. A yearly audit of randomly selected developments five years after completion could be used to assess users and neighbours perceptions.*

Inverclyde Council recognises that perception of the service is also judged on speed of delivery and quality of engagement. Current indicators, which are influenced by external factors, are not a true measure of planning authority performance. The measurement of time taken to register applications, issue neighbour notifications and consultations, acknowledge objections and inform objectors of decisions are more appropriate measurements of an efficient planning administrative system.

Finally, modernising planning requires all parties to work co-operatively. While there may be disagreements over quality of design and proposals, there has to be an expectation that professional applicants and agents smooth the process by submitting competent applications. In the same way that the administrative performance of planning authorities is open to public scrutiny, the quality of agent submissions against measurable validation checks (see Q1) should be published.

- 5.6 The Government considers that it is time for a change in the fee structure. It suggests 5 different models for consideration:

Option 1: Value based approach – The fee is linked to the value of the development.

Option 2: Time based charging model – The fee is linked directly to the time spent processing the application.

Option 3: Allowing planning authorities to set their own fees.

Option 4: Linking fees to hierarchy of developments – This links the fee to the

likely complexity of the application.

Option 5: Maintain but adjust the current model – This system is understood by most developers, consultants and planners, and it could be amended to reflect hierarchical and specific sectoral developments.

Q5. Do you think the Scottish Government should amend the current fee structure? Which is your preferred option (1, 2, 3, 4 or 5)? Which is your least preferred option (1, 2, 3, 4 or 5)? What alternative approaches do you feel the Scottish Government should consider, if any? In considering your response please give any comments on why the options you identified above are your preferred/least favoured.

Response: *The Planning administrative system is over complicated as it is. As the Government recognises, the current model is well understood by all frequent users making option 5 the preferred. A value based model could not be implemented for all developments – how is a change of use or planning permission in principle valued when there is no RICS Building Cost information? Local rates may result in complaints should neighbouring authorities charge differently. Linking applications to the hierarchy of development could result in tailored applications to avoid larger fees. Finally, option 2 is the least favoured. Time based charging could see 2 identical applications charged differently as a direct result of neighbour objection, which is unfair on the applicant. It would also be expensive to administer and there may be fee collection difficulties should an applicant drop interest part way through the process, as occasionally happens.*

- 5.7 The Government anticipates that an increase in the maximum fee is only likely to affect around 2% of all Scottish applications in any single year. The resulting impact on fee income if the maximum was increased as a whole could have significant impacts in some authority areas and less in others. Inverclyde would particularly benefit as a consequence of waterfront and east end redevelopment. There is an argument that these will be significant developments which can contribute to economic growth and there may be a case for not imposing a financial burden on these developments, particularly at a time of economic downturn. **Q6. Do you think that the maximum fee level should be raised? If so, what would you consider to be an appropriate maximum level and should this higher fee be dependent on a defined service and timescales being delivered by the planning authority?**

Response: *The maximum fee should be raised to reflect the position elsewhere in Great Britain. Noting that the differences are significant, a 10 year programme of incremental increases could be used to bring fees into line with England and Wales. With many delays in the planning process directly resulting from consultation and responses to requests for additional information and amendment requirements, it would be inappropriate to link fee increases to faster application decisions.*

- 5.8 A broad range of consultees are involved in the processing of planning applications. It has been suggested that the time dedicated to provide this service should be acknowledged. **Q7. Do you consider that other consultees should charge the relevant planning authority for their input on planning applications?**

Response: *No. Consultees gain directly as a consequence of the consultation process. It provides data and information to assist in their business planning, and as a direct consequence of the planning process they can receive benefit through plan alteration and/or planning conditions to ensure compliance with their requirements. The consultation process facilitates composite decisions satisfying a range of service providers requirements and acts as a one stop shop to the benefit of developers. If planning authorities are required to redistribute fee income to consultees, the quality of this service may diminish as non statutory consultees are excluded from the process.*

- 5.9 It has been argued that a system of discounts, rebates or other incentives could help to deliver improvements in the performance of the planning system, It is recognised that potentially having to repay fees will add additional administrative burdens and costs to

planning authorities and could introduce the need for arbitration, particularly as delays are often outwith the control of the Council. An alternative to rebates could be to introduce discounts, for example linking discounts to electronic applications. **Q8. Do you consider the use of rebates, discounts or other incentives, a useful tool in delivering a more efficient service? If so what would you consider to be an effective discount, rebate or other incentive?**

Response: *No. As the Government recognises, there are additional administrative costs and the reason for delays goes beyond the performance of the local authority. Linking discounts to electronic submissions is contrary to the spirit of inclusiveness benefiting business users to the disadvantage of one off householder applicants who may lack the necessary access to computers and specialist software essential in submitting a competent online application.*

- 5.10 The current regulations require the full fee to be paid at the time of submission of the application. Some developers favour an approach of staged or phased payments which they feel would encourage the planning authority to remain focused on processing applications. During Government discussions with stakeholders, it was suggested that pre-application discussions, the discharging of conditions and planning agreements were potential points for staged payments. **Q9. Do you think the introduction of staged payments would encourage a more efficient service and be helpful to developers? If so, are there any particular stages within the process that should trigger a payment?**

Response: *No. It will add to the administrative burden. Inverclyde Council favours one fee to cover all aspects of the proposal from pre application through to decision including Local Review, paid at the time of application registration.*

- 5.11 Some planning authorities have argued that there should be a single fee to absorb all other costs and charges including recovering the costs related to publishing planning applications in local newspapers. This would avoid having to pursue the applicant for further costs before being able to issue a decision. The introduction of a requirement for planning authorities to advertise development proposals where there are no premises on adjoining land and then re-charge the developer for this activity has caused difficulties across Scotland. A single fee to absorb all other costs and charges, including recovering the costs related to publishing planning applications in local newspapers would solve this cost recovery issue. **Q10. Do you consider there should be a single fee?**

Response: *Yes. The key to an efficient service is simplicity. Clear guidelines on what makes a planning application valid and a single, one off payment submitted at registration would streamline the current system and lessen the administrative burden greatly.*

- 5.12 The breakdown of the annual returns from local authorities for 2008/09 reveals differentials in terms of the numbers and proportions of different types of applications that authorities in different parts of Scotland receive. **Q11. Should the charging scheme take into account the regional variations in types of applications and the varying nature of local authorities? If so, what factors should be considered?**

Response: *No. Applicants should pay the same fee regardless of geographical location and fees should be set nationally to reflect the cost of processing. It is then open for authorities to allocate resources recognising the pattern and type of applications received.*

- 5.13 The fee for the making of a material change in use of a building or land is generally charged at a flat rate. **Q12. Do you consider it appropriate to amend the fees for changes of use? If so, how should this be calculated?**

Response: *Yes. The fee should be amended to reflect the scale of development and set according to floor area (change of use of buildings) or site area (change of use of*

land).

- 5.14 The quantity of information submitted with an Environmental Statement can be extremely substantial. Specialist skills and expertise may be required in order to address some of the more complex areas, requiring staff to receive specialist training or seek input from outwith the planning service or local authority. This can incur additional financial burden. **Q13. Do you consider that submission of an EIA should warrant an additional fee? If so what might an appropriate charge be?**

Response: *No. EIA submissions relate to larger scale proposals, which in their own right generate larger planning fees. Inverclyde Council supports the principle of a single application fee reflecting the scale and complexity of application.*

- 5.15 Fees for applications for planning permission in principle are calculated at half the fee for a full planning permission, although the work taken in processing can be both time consuming and difficult. **Q14. Do you agree that applications for planning permission in principle should continue to be charged at half the standard fee?**

Response: *No. While applicants already save financially from the process, with planning applications in principle not requiring the preparation of detailed design drawings, from the local authority perspective such applications are often complicated and can require significant amounts of specialist assessment and detailed consideration of appropriate conditions.*

- 5.16 The fees for Hazardous Substances consent sit within the Town and Country Planning (Hazardous Substances) Regulations 1993. The fee levels of £200, £250 and £400 have not increased in the last 17 years. **Q15. Do you agree that the fees for Hazardous Substances Consent should be increased in line with inflation?**

Response: Yes.

- 5.17 The discharging of conditions is a crucial step needed to ensure developers can get on site and start works. Currently there is no separate fee associated with discharging conditions. In England there are fees associated with the discharge of conditions based on £85 per request, rather than by condition, allowing developers to group conditions together to be discharged. This is refundable if the planning authority has not responded within 12 weeks. **Q16. Do you think there should be a fee payable for discharge of conditions? If so, should this be refundable where a decision has not been made within a set period of time?**

Response: *No. Charging to discharge conditions may lead to the imposition of more conditions aimed at generating income. An efficient service will seek to minimise the number of conditions and the requirement to monitor and check by resolving and clarifying points during the assessment and consideration stage. As informed in the response to question 10, the system will benefit from a single payment at the time of registration.*

- 5.18 Planning agreements can involve lengthy negotiations and significantly add to timescales. Whilst local authority legal departments can recover their costs associated with drafting planning agreements this does not recover costs from other parts of the council. To encourage local authorities to conclude planning agreements should a separate payment could be made on their conclusion. **Q17. Do you think there should be a fee payable on the conclusion of a planning agreement? If so how should this be calculated?**

Response: *No. To repeat the response to question 10, the system will benefit from a single payment at the time of registration.*

- 5.19 The Barker Review in England recommended that a local planning authority should be able to offer a premium service to applicants. This could provide scope for developers to opt to pay a set fee in return for the provision of a dedicated or liaison officer. Concerns

have, however, been expressed that this could lead to a two tier system and whether it could bring the planning system's impartiality into disrepute. **Q18. Do you consider that the fee regime should include the ability to offer a tailored service for certain developments?**

Response: *No. The planning system must be seen to be fair. Any system which enables an applicant to pay for dedicated officer is open, however unjustifiably, to suspicion.*

- 5.20 Application fees for windfarms are based on the size of the site. The fee maximum is currently set at a site size of 5 hectares, which in some cases is not sufficient to recover costs under the present fee maximum. If the fee cap were to be increased, or removed then it can be argued that basing the fee on the area of the site would make the fee disproportionate. In England the calculation for the fee for a windfarm development is calculated by taking into account the land over which the blades of each turbine rotate plus the area of the footprint of any ancillary structures and engineering works. The land between turbines is not included if no development is proposed on it. **Q19. Do you consider that fees for windfarms should be altered to reflect the nature of this industry? If so, do you agree with developing a scheme similar to that in operation in England, or are there alternative options?**

Response: *Inverclyde Council supports the principle of an easy to calculate payment based on site size, which will speed the registration process.*

- 5.21 Minerals and landfill consents raise specific issues in relation to the need for ongoing monitoring of conditions and this has been recognised in previous consultations. **Q20. Should the Scottish Government take forward previous proposals to introduce a set fee payable by the operator for each visit subject to a maximum number of visits per annum or do you consider that monitoring costs should be borne by the planning authorities?**

Response: *Mineral applications are a special case with a considerable ongoing monitoring burden. In supporting the principle of a single fee payment, it is requested that the fee level for minerals applications is set at an appropriate level.*

- 5.22 Aquaculture has similar issues to that of windfarms, in that operators can occupy large areas but actually only part of these areas are subject to development **Q21. Do you consider that a single level fee based only on the equipment above the surface, including feed barges and any associated equipment, is appropriate? If so, how should this be calculated? Q22. Do consider that a fee charged for the testing of areas for potential shellfish farms is appropriate?**

Response: *No comment.*

- 5.23 There are currently extensive permitted development rights attached to agriculture developments where prior notification is required. There is a fee payable for prior notifications. Concerns have been expressed that there is no planning application fee for buildings under 465m² which do not benefit from PDR leading to a high proportion of buildings being erected just under this threshold and incurring no fee. Buildings over 465m² are subject to an incremental fee increase based on area. It is therefore proposed that a fee is introduced to cover the area up to 465m² where the buildings do not benefit from PDR. The Government propose that the fee should be half the full fee. **Q23. Where an application for an agricultural development under 465 m2 is not subject to permitted development should a fee be required to be paid based on the development size? If so should this be a full fee or part fee?**

Response: *Yes. The full fee should be payable. Agricultural development should be charged an appropriate fee reflecting the level of complexity, consultation and publicity required in the processing.*

5.24 **Q24. Should fees be reduced for agricultural developments above a certain size?**

Response: *No. See the response to question 23.*

5.25 **Q25. We welcome any other views and comments that you may have on Resourcing a High Quality Planning System that have not already been covered within this consultation.**

Response: *In summary, Inverclyde Council is of the view that a high quality planning system is best measured by the environment it produces. The legal and administrative system should enable, rather than burden the process. In reviewing the funding of the process through planning application fee income, it is requested that the fee system is streamlined by the introduction of a single, catch all, payment.*

6.0 IMPLICATIONS

6.1 Finance:

Financial Implications – One off Costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

6.2 Personnel: None.

6.3 Legal: None.

7.0 LIST OF BACKGROUND PAPERS

7.1 Scottish Government Consultation Paper – “Resourcing a high quality planning system.” – copy available in the Members Lounge.