

Environment, Development & Transport Committee

Item No.....

Report title:	Proposed Internal Procedures for responding to Consultations on planning applications potentially requiring infrastructure as set out in the County Council’s Planning Obligations Standards
Date of meeting:	15 September 2017
Responsible Chief Officer:	Tom McCabe – Executive Director, Community and Environmental Services
<p>Strategic impact Norfolk County Council is a consultee on planning applications determined by Local Planning Authorities and therefore has the opportunity to seek developer funding towards its own infrastructure impacted by the new development. Responding to such consultations will ensure that the County Council’s views are formally taken into account by the Local Planning Authorities and that appropriate mitigation is secured for County Council infrastructure through developer funding.</p>	

<p>Executive Summary</p> <p>This report sets out proposed internal procedures for responding to consultations on planning applications where there may be a requirement to secure funding for County Council infrastructure. The attached Internal Procedures provide a mechanism for responding to such consultations allowing:</p> <ul style="list-style-type: none"> (a) Local members directly affected by a planning application to comment; (b) Officers to respond under delegated officer powers or under urgent business as necessary; and (c) This committee where necessary to agree the formal response to such consultations. <p>Recommendation It is recommended that the attached Internal Procedures be agreed.</p>
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1. Proposal

- 1.1. This report sets out proposed internal procedures for responding to consultations on planning applications determined by Local Planning Authorities (LPAs) in Norfolk. The County Council is a consultee in the planning application process and has the opportunity through this process to seek developer funding towards its own infrastructure impacted by such development. The County Council already has in place agreed Planning Obligations Standards (see Evidence Section below), which are updated annually and provide the basis for seeking developer funding. These Standards cover education, library, fire service, green infrastructure and other

County Council infrastructure. It should be noted that highway and transport infrastructure is negotiated separately and is generally covered through different legislation. This report focuses on member-level involvement in the above process.

- 1.2. The County Council responds on average to over 100 applications and pre-application enquiries each year. These are typically for residential development, but can also include other development, which may impact on County Council infrastructure and services.
- 1.3. **Proposed Internal Procedures** – These procedures cover those planning applications, which are determined by LPAs in Norfolk and include housing proposals of 20 dwellings or more and any other commercial development of a size requiring a Transport Assessment. These thresholds have been agreed with all LPAs across Norfolk and relate to seeking developer funding through either the use of:
 - (a) planning obligations; and/or
 - (b) community infrastructure levy (CIL).
- 1.4. Even where CIL has been introduced the County Council will need to continue to respond on applications within CIL Charging areas in order to:
 - (a) pick up on any County Council requirements which will still need to be captured through S106 and/or planning condition e.g. those infrastructure items not included on the LPA's CIL Reg123 list (listing infrastructure which CIL can be spent on); on-site fire hydrants and any possible land transfer;
 - (b) provide important evidence as to whether existing County Council facilities, such as schools, can accommodate planned growth and if so whether there is any financial contributions needed (i.e. through CIL funding);
 - (c) provide a mechanism for seeking CIL funding.

These Procedures are set out in Appendix A and include:

(1) Pre-Application Stage

- 1.5. The Case Officer will prepare a response within 28 days under delegated officer powers. This period may be extended on major sites requiring further investigation (up to 6 weeks). The response will reflect the County Council's most up to date agreed Planning Obligations Standards.

(2) Application Stage

- 1.6.
 1. Consult local member/s directly affected by the proposal (NB comments will only be sought in respect of the County Council's potential infrastructure requirements in line with its agreed Planning Obligations Standards. Any other comments not directly related to these Standards will either be forwarded onto other teams in the County Council or to other organisations e.g. District Council as LPA).
 2. Respond within 21 days of receipt of the application. A detailed officer-level response will be made justifying the need for the County Council's requirements. This will be done under delegated officers powers in accordance with part 6.2 (Section B – Specific Designation) Paragraph (2) of the County Council's Constitution, providing:
 - (a) The requirements sought are consistent with the County Council's agreed

- Planning Obligations Standards (Policy);
- (b) the local member has been informed of the proposed response;
- (c) the application is unlikely to raise any controversial issues of a strategic nature.

3. Where the local member is not in agreement the Officer's approach in respect to seeking developer funding in line with the agreed CC's Standards, then the case officer will prepare a **report** to a scheduled EDT Committee meeting; or where an urgent decision is required, this will be undertaken in accordance with the Procedures set out in Part 7.1 of the County Council's Constitution.

(3) Appeals

- 1.7. The Case Officer will:
 - Inform local members directly affected by the Appeal;
 - Prepare Evidence for submission to the Planning Inspectorate;
 - Attend Hearing or Inquiry as needed to defend the County Council's case.

2. Evidence

- 2.1. Planning Obligations provide a means of securing developer funding for infrastructure made necessary by new development and thereby enables appropriate mitigation to be made. The County Council has produced its own Planning Obligations Standards (April 2017) setting out the infrastructure requirements it may seek in association with new development. This includes potential provision for:
 - 2.2.

<ul style="list-style-type: none"> • Schools • Library • Fire Service 	<ul style="list-style-type: none"> • Community Services – Adult Care • Green Infrastructure and Public Rights of Way 	<ul style="list-style-type: none"> • Other Potential Infrastructure e.g. Household Waste Recycling Facilities
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 - 2.3. The above infrastructure items are secured either through the use of S106 of the Town and Country Planning Act (1990) or through planning condition (for on-site works).
 - 2.4. Highway and transport infrastructure and services directly required from new development is negotiated on a site by site basis and are generally secured under Highway legislation (S.278 of the 1980 Highways Act). However, highway work can also be secured through the use of S106 agreements. Any planning obligation **must** be compliant with the legal tests set out in the Community Infrastructure Regulations (2010) (Reg 122) and be:
 - Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.
 - 2.5. In addition any planning obligations sought by the County Council must be compliant with Reg 123 (3) of the above CIL Regulations. This Regulation limits the amount of pooling of S106 contributions by a local authority to no more than five obligations providing "for the funding or provision of that project, or provide for the funding or provision of that type of infrastructure". These restrictions came into force on 6 April

2015 and the County Council's Planning Obligations Standards reflect these pooling restrictions.

3. Financial Implications

- 3.1. **Finance:** The continued use of planning obligations can potentially yield the County Council significant funding towards expanded / improved infrastructure needed to support growth in the County. Depending on existing capacity within key infrastructure such as schools the County Council could be looking at up to £7,500 per dwelling towards improved County Council infrastructure (See Background Section below).
- 3.2. **Staff:** There are no immediate staff implications.

4. Issues, Risk and Innovation

- 4.1. The County Council is a consultee on planning applications, which are ultimately determined by LPAs. Such applications can have significant implications on the County Council in its role as: infrastructure and service provider e.g. for schools, libraries and fire service infrastructure.
- 4.2. The Council's Planning functions are subject to equality impact assessments. However, the County Council is simply a consultee in the above process and no EqlA issues have been identified at this stage.
- 4.3. The proposed internal procedures will allow for corporate response/s to be made to planning applications ensuring all the County Council's statutory responsibilities are taken into account.

5. Background

- 5.1. The District Councils as LPAs have a statutory obligation to consult the County Council on any development which may have an impact on the County's roles e.g. as Education Authority or Highway Authority. As the County Council is not the determining authority, a voluntary agreement (Planning Obligations Protocol) has been reached with all the Local Planning Authorities (LPAs) setting out the threshold figure whereby the County Council would expect to be consulted. This threshold is set at 20 dwellings or more (25 in the City and Great Yarmouth).
- 5.2. In the last five years alone the County Council has secured over £94 million in legal agreements towards education, library and fire service provision. Since the introduction of the County Council's Planning Obligations Standards in 2000, the County Council has entered into 370 legal (S106) agreements worth almost £137 million towards education, library and fire service provision. In this period a total of almost £33 million has been received from S106 agreements. This still leaves over £100 million of outstanding S106 payments on those sites, which are either:
 - (a) under construction - 50 sites (covering 12,229 dwellings);
 - (b) Permitted but not started – 168 sites (covering 15,734 dwellings).
- 5.3. The County Council prepares an annual monitoring Statement setting out what agreements have been signed, the value of these agreement and where the monies received have been spent (see link below).

- 5.4. The County Council's Planning Obligations Standards are updated on annual basis to reflect any changes in legislation or change in any of the financial or demographic multipliers contained in the document. These updated Standards are agreed by members.
- 5.5. The County Council's Planning Obligations Standards are also valuable tool in those areas now charging CIL as it provides a mechanism for engaging and bidding for CIL funds collected by the CIL Charging Authorities (i.e. the District Councils).

Background Papers

Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/contents>);
 The CIL Regulations 2010 (as amended)

(<http://www.legislation.gov.uk/uksi/2010/948/contents/made>)

Norfolk County Council Planning Obligations Standards (2017)

<https://www.norfolk.gov.uk/rubbish-recycling-and-planning/planning-applications/planning-obligations>

Norfolk County Council Planning Obligations Monitoring Statement (2016)

<https://www.norfolk.gov.uk/rubbish-recycling-and-planning/planning-applications/planning-obligations>

Officer Contact

If you have any questions about matters contained in this paper please get in touch with:

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If you need this report in large print, audio, Braille, alternative format or in a different language please contact 0344 800 8020 and ask for Stephen Faulkner or textphone 0344 800 8011 and we will do our best to help.

**Internal Procedures for responding to: Consultations on
Planning Applications potentially requiring Infrastructure as set
out in the County Council's Planning Obligations Standards**

**Norfolk County Council (NCC)
March 2017**

Proposals in areas not charging a Community Infrastructure Levy (CIL)		
The County Council will seek developer contributions in line with its agreed Planning Obligations Standards. Obligations sought will be expected to be contained in a legal agreement (S106 agreement) agreed between the Local Planning Authority (LPA); the applicant; and the County Council.		
Proposals in CIL Charging Areas		
It is important for the County Council to continue to respond on proposals within CIL Charging areas in order to:		
<ul style="list-style-type: none"> (a) pick up on any County Council requirements which will still need to be captured through S106 and/or planning condition e.g. fire hydrants and any possible land transfer; (b) provide important evidence as to whether existing County Council facilities, such as schools, can accommodate planned growth and if so whether there is any financial contributions needed (i.e. through CIL funding); (c) provide a mechanism for seeking CIL funding. 		
Planning Applications Stages	Time - scale	NCC procedure
(a) Pre-Application		
Applicant and/or agent seeking pre-application advice; or Local Planning Authority seeking advice on allocated or potentially allocated site.	No formal deadline but aim for 28 days 6 weeks on major sites	Case officer will prepare a response within 28 days under delegated officer powers. This period may be extended on major sites requiring further investigation (up to 6 weeks) The response will reflect the County Council's most up to date agreed Planning Obligations Standards.
(b) Formal Application		
The County Council will be consulted by the Local Planning	Min 21 Days	The case officer will: 4. Consult local member/s directly affected by the proposal

<p>Authority (LPA) under the agreed County-wide Planning Obligations Protocol (2014)</p>		<p>(NB comments will only be sought in respect of the County Council's potential infrastructure requirements in line with its agreed Planning Obligations Standards. Any other comments not directly related to these Standards will either be forwarded onto other teams in the County Council or to other organisations e.g. District Council as LPA).</p> <p>5. Respond within 21 days of receipt of the application. A detailed officer-level response will be made justifying the need for the County Council's requirements. This will be done under delegated officers powers in accordance with part 6.2 (Section B – Specific Designation) Paragraph (2) of the County Council's Constitution, providing:</p> <p>(a) The requirements sought are consistent with the County Council's agreed Planning Obligations Standards (Policy); and;</p> <p>(b) the local member has been informed of the proposed response;</p> <p>(c) the application is unlikely to raise any controversial issues of a strategic nature.</p> <p>6. Where the local member is not in agreement the officers approach in respect to seeking developer funding in line with the agreed CC's Standards, then the case officer will:</p> <ul style="list-style-type: none"> • Prepare a Report to a scheduled EDT Committee meeting; or or • Where an urgent decisions is required this will be undertaken in accordance with the Procedures set out in Part 7.1 of the County Council's Constitution;
<p>(c) Appeals</p>		
<p>Submission of relevant representation to the Planning Inspectorate (PINs)</p>	<p>Normally 28 days</p>	<p>The case officer will:</p> <ol style="list-style-type: none"> 1. Inform local members directly affected by the Appeal; 2. Prepare Evidence for submission to the Planning Inspectorate; 3. Attend Hearing or Inquiry as needed to defend the County Council's case.