

## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title:**                    **Planning Obligation Processes and Procedures**

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### **Purpose:**

To inform Members of revised processes and procedures relating to planning applications where a legal agreement is required, normally a Planning Obligation under Section 75 of the Planning Act.

### **Recommendation:**

**That the Committee:**

- **Note the paper for information and use as best practice.**

### **Executive Summary**

This Paper to Members advises that, where planning applications require a Section 75 Planning Obligation or other legal agreement, then the proposed revised processes and procedures will result in these applications being identified at an earlier stage in the planning process, allowing negotiation of content to be brought forward rather than left until after the planning application has been considered at Committee.

## Background

1. Planning Obligations, formally known as Planning Agreements or Section 75 Agreements, are utilised in the planning process where they can overcome obstacles to the grant of planning permission but where this cannot be achieved by the use of planning conditions. The basis for Planning Obligations is contained within the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2016. Planning Obligations may be unilaterally proposed by a person in respect of land that they own or control or more commonly where the planning authority considered that a Planning Obligation should be sought in relation to land use matters.
2. Such agreements are most commonly used where there are identified deficiencies in infrastructure which require to be mitigated as a result of a proposed development.
3. Historically negotiation of the detailed content of Planning Obligations has occurred once a decision to approve an application has been taken by the Board. This has resulted in delay between a resolution to approve an application and the subsequent issue of a decision notice. In some cases such delay has been due to the need for negotiation over the content of an obligation; in other cases, it has been due to complexities arising in the legal documents and title deeds pertaining to a site; and in a number of cases it has been due to an apparent reluctance on the part of the applicant to progress the agreement following a resolution to grant permission. There are a number of applications that the Committee has resolved to approve, but which have not been determined yet as the Planning Obligation has not been concluded.
4. This report is not concerned with the principles of the policy on Planning Obligations. Rather the report is concerned with the arrangements for the identification and negotiation of Planning Obligation requirements in general. In reviewing our procedures, a number of areas in relation to existing processes and procedures are highlighted where improvements could be made.

### ***Proposed revised procedures.***

5. The revised process for planning applications involving planning applications involving Planning Obligations is set out at Appendix I. The key difference between the revised process and existing processes is that discussion and negotiation over the content of a Planning Obligation will be encouraged during the consideration of a planning application rather than once a resolution to approve an application has been made. It is also intended to provide dialogue between an applicant and the National Park Authority prior to the determination of an application in order that any preliminary work required for a legal agreement can be progressed at an early stage.
6. The first opportunity for identification of potential Planning Obligation requirements is through policies in the Cairngorms National Park Local Plan, October 2010 and in the Cairngorms National Park Proposed Local Development Plan, 2013. These plans provide some guidance on potential areas where Planning Obligations may be required and allow potential applicants to review the documents and identify potential requirements at the early stage of preparation of development proposals.

In addition, a number of development proposals are subject to pre-application discussion. Whilst the pre-application inquiry might not always provide detailed information, officers will now be encouraged to attempt in responding to such inquiries to identify, where possible, potential Planning Obligation requirements.

7. Once planning applications are submitted, planning officers will liaise with other authorities and consultees as appropriate in order to identify any Planning Obligation requirements. Where a Planning Obligation requirement is identified this will be notified to the applicant as soon as possible in the application process and the applicant will be invited to commence any negotiation on the content of any such obligation, but with a caveat that this does not guarantee that the planning application will subsequently be approved. Whilst this process carries a degree of risk for the applicant, it does provide opportunity for negotiation on the content of the agreement to be twin-tracked with consideration of the planning application.
8. Linked to this revised process is the intention to invite applicants to enter earlier dialogue with our legal advisors during the drafting of an obligation. The drafting of an obligation requires the Cairngorms National Park Authority to undertake a number of preliminary steps including amongst other things review of the title deeds associated with the site. In most cases it should be possible for some of this initial preparatory work to be undertaken in advance of any resolution to approve an application and this, linked with measures identified above in terms of early negotiation on the content of an obligation should reduce subsequent delay between any resolution to grant planning permission and the issue of the decision notice for those applications that are subsequently approved. In some cases it might be possible to have a draft agreement prepared and in finalised format ready to conclude upon confirmation of a resolution to grant planning permission.
9. This revised process should go some way towards addressing concerns expressed by the development industry regarding delays associated with the conclusion of Planning Obligations. You should generally allow for earlier issue of decision notices in relation to those applications that are to be approved subject to conclusion of a Planning Obligation. This is beneficial not just for the applicant but also for third parties such as neighbours who may have a genuine interest in the outcome of a development proposal. Substantial delay in this process leads to uncertainty on the part of interested third parties in terms of the eventual outcome of an application and is generally undesirable from a planning perspective as the impending resolution to grant planning permission must be taken into account in reaching decisions on other proposals.
10. A review of those Planning Obligations that have yet to be concluded to allow issue of the associated planning permission is now underway. Where little or no progress is being made and applicants appear to be no longer actively pursuing conclusion of the Planning Obligation a letter will be issued requesting withdrawal of the planning application. This review will initially focus on those obligations that have been outstanding for a period in excess of six months and where positive dialogue regarding the matter is not ongoing. Given the procedures identified above which seek to precipitate early negotiation and preparation of obligations, it is intended in the future to allow a period of four months from the date of resolution to approve

an application for the conclusion of an obligation unless there are particularly complex matters arising.

### **Next steps**

11. The revised processes and procedures identified above seek to provide the development industry with increased certainty regarding the requirement for Planning Obligations. They seek to ensure the potential requirements for obligations are identified and raised with applicants at an early stage in the planning application process and allow applicants opportunity to progress negotiation and preparation of obligations at the same time as their application is being considered.
12. Committee Members are asked to formally approve these revised processes and procedures so that work can commence in accordance also with our planning service improvement agenda.
13. These revised processes and procedures will be reviewed again in six months time to check how well they are working.

**Simon Harrison**  
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## Section 75 Planning Obligation Process – Pre-decision

### **Pre-application Stage:**

- Cairngorms National Park Authority (CNPA) will, where possible from details provided at a pre-application stage, identify Planning Obligation requirements in consultation with relevant authorities and notify prospective applicants as part of the pre-application.

### **Planning Application Stage:**

- The CNPA will identify Planning Obligation requirements in consultation with relevant authorities and external consultees;
- Relevant authorities and external consultees will identify specific Planning Obligation requirements, including information on the extent of the Planning Obligation, the specific project that a Planning Obligation would relate to, the timescale within which the Planning Obligation would be spent and the responsible officer who would monitor the implementation of the Planning Obligation;
- The CNPA will advise the applicant of potential Planning Obligation requirements as soon as possible in the application process, but will advise that this is without prejudice to the outcome of the associated planning application;
- The CNPA will invite the applicant to enter into early negotiation with regard to likely Planning Obligation requirements during processing of the associated planning application, and will invite contact with the CNPA's solicitors regarding early drafting of the Planning Obligation. Early sight of title deeds and any other necessary legal papers will be requested at this stage. Any specific requirements of the Planning Obligation, and any specific triggers for delivery, will also be identified where appropriate.
- The CNPA will identify general heads of terms associated with any Planning Obligation in the Committee report. A period of four months will normally be allowed for conclusion of a Planning Obligation although a longer period will be allowed for particularly complex cases. A failure to conclude an obligation within this time frame, or to demonstrate sufficient progress within that period, is likely to result in the associated planning application being referred back to the next available Planning Committee where the application could be continued, amended or refused.
- The CNPA will instruct their solicitors to progress Planning Obligation to conclusion following resolution to grant permission. Such instruction should include details of specific requirements of the Planning Obligation and any associated triggers for delivery of requirements;
- The CNPA will request necessary legal papers from the applicant in order to allow the Planning Obligation to be drafted where this has not already occurred during consideration of the planning application;
- The CNPA solicitors will advise the CNPA planning service of registration of the Planning Obligation within the Register of Sasines;
- The CNPA will issue the planning permission decision notice following receipt of confirmation of registration of Obligation from the CNPA solicitors.

## Section 75 Planning Obligation Process – Post-decision

### ***Post-planning application decision monitoring will include:***

- The CNPA will maintain a Planning Obligation database. This database shall include specific details of Planning Obligations that include requirements for financial contribution;
- The CNPA solicitors will monitor planning application sites subject to Planning Obligations requiring financial contributions and shall request payment from developers when the appropriate payment trigger has been reached;
- The CNPA will receipt payments and allocate monies to a single Planning Obligation Suspense account. Payment will be recorded in the Planning Obligation database and on the planning application file;
- The CNPA Planning Service will monitor the receipt and spend of financial contributions secured through Planning Obligations which shall then be reported to the Planning Committee on an annual basis;
- The CNPA's solicitors will notify any breach of a Planning Obligation to the CNPA planning service who will determine what appropriate legal action may be required and provide instructions accordingly;
- The CNPA's solicitors will pursue appropriate legal action to recover outstanding contributions where instructed by CNPA Planning Service to do so.