

## **Revision of Circular 12/1996: Planning Agreements**

### **A CONTRIBUTION FROM FORWARD SCOTLAND**

#### **Introduction**

Forward Scotland welcomes the opportunity to respond and provide feedback to the Revision of Circular 12/1996: Planning Agreements Consultation. We are happy to have this response placed in the public domain, and invite questions or further discussion of any issues raised in this document.

For more than 10 years Forward Scotland has collaborated with local communities across Scotland to help build knowledge and capacity, creating elegant solutions to sustainable community development. We help communities to bridge the gaps and improve relationships between them and local government, other public agencies and business. Our experience has shown that those communities who play an active and equal role in their own development are more sustainable than those who do not.

During 2008, as part of a series of investigation into areas of sustainable community asset development potential we explored the area of S75 agreements. We contacted all local authorities in Scotland with a series of structured questions regarding the number, nature, value and conclusion of agreements as well as a question regarding public inspection of information. It is this survey that informs our response as well as other published works including the Dundas and Wilson & Bidwells paper, commission by the Scottish government, and published in 2008.

#### **Overall Comments on the Consultation Draft**

Forward Scotland is disappointed in the overall tone of the circular. S75 agreements are in a large part about ensuring that development impact is offset by benefit clauses to support additional infrastructure or other activities that are of benefit to the community, yet we believe that there is little evidence in the circular that community is indeed a high priority.

The issue of Planning Agreements including S75 is an area that requires greater transparency and education of the public. There are several mechanisms that secure 'benefit' from development, S69 of the Local Government (Scotland) Act 1973 and S48 of the Roads (Scotland) Act 1948, yet it is our experience that the Planning process itself is not widely understood. This lack of understanding and capacity is highlighted in work we undertook in 2006 on [Skills for Sustainable Communities](#) and on a review in 2007 on issues in relation to [Environmental Justice](#).

We have kept our responses to our areas of competence and experience.

## **Response to Consultation Questions**

### **Question 2 – will the revised circular help streamline the process of negotiating and concluding planning agreements**

Forward Scotland welcomes the Scottish Government's suggestion in paragraph 38 that "planning authorities should consider designating a responsible officer" (to monitor the delivery of planning agreements). We note that in the Dundas and Wilson & Bidwells report only 6 responding authorities had any dedicated resource to monitor the delivery of planning agreements.

In our survey of local authorities during 2008 we discovered a worrying inability to report on the conclusion or completion of S75 conditions. The majority of local authorities were unsure about funds held by them as a consequence of S75. 5 local authorities openly stated that they did not know whether agreement conditions had been met. We believe that this is a major failing in local authorities' management systems. We are however, disappointed that the consultation question merely acknowledges a resource need rather than stipulating a requirement regarding the conclusion of planning agreements.

### **Question 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?**

Whilst it has been difficult to assess the nature of the additional benefit secured through planning agreement due to the lack of consistency in their use and in the information held by local authorities we were party to some detailed information.

Some local authorities have used S75 agreements to secure funding contributions from Windfarm developers. This appears to be somewhat at odds with the guidance particularly on issues such as reasonableness in relation to scale of the proposed development. It seems contradictory to the guidance of SPP6 Renewable Energy.

In 2006 Forward Scotland published a paper on [Communities and Renewable Energy](#) where the merits of development were discussed and a range of benefits reviewed.

It seems that it has become customary for some local authorities to secure contributions into council administered community trusts and funds through S75. We would contend that this is an inappropriate way of securing community benefit from renewable energy companies. It appears to be largely disproportionate to the nature of the individual development and operates more akin to a form of local taxation. Clearly there is a visual impact from a windfarm, but the public's opinion on the view of this is inconclusive. Most agreements appear to be a rudimentary calculation on the imbedded generation capacity of the development.

Forward Scotland is happy to see businesses such as energy companies entering into community benefit relationships, but sees no need for mechanisms such as S75 to enforce this. Indeed it believes that the most productive form of relationship is where both parties (community and developer) enter into the agreement willingly.

It is not clear that other substantial and visually impacting development such as out of town shopping centres (where the economic impact is substantial in terms of turnover), waste management operations, quarries etc., have experienced similar conditions.

Given the inconsistent application of S75 across Scotland (as highlighted by our research and the Scottish Government research) the circular does not clarify the circumstances where an agreement should be the appropriate mechanism. The scope for interpretation is too wide and is particularly vague about contributions to Community Trust Funds.

### **Question 6 – Does the revised circular offer adequate guidance on access to planning agreements by the public**

Forward Scotland asserts that the guidance provided in the circular on access to planning agreements by the public is wholly inadequate.

Forward Scotland contacted the Freedom of Information Officers for all local authorities in Scotland during 2008 to seek information on the nature and scale of S75 planning agreements entered into. Despite exhaustive efforts 4 local authorities failed to respond with any information. The average response rate otherwise was 27 working days. 17 local authorities took more than 21 working days to respond with information. Indeed 3 local authorities took over 50 working days to provide any information. This suggests that there are highly inadequate information storage and recovery systems within most local authorities that hinder access to planning related information that is in the public interest. This supports an observation we would make on the Scottish Government commissioned research where 6 local authorities failed to provide any information to researchers, which we believe seriously undermines an otherwise good piece of research.

The responses of local authorities varied sharply between those who had a planning agreement register and were able to provide the information, those who could not provide the information due to inadequate recording methods, those who claimed exemption from this type of information and those who did not reply to our request. Only 3 local authorities responding indicated that they had a publically inspectable register of S75 agreements.

Frequently local authorities offered responses that suggested that they were exempt due to the availability of information in the Register of Sasines or could not retrieve the information without significant cost or more obscurely due to publication of information in Council Minutes. Forward Scotland does not believe that these are valid reasons or alternatives. It should be a statutory obligation to provide a clear and open information system regarding planning and development decisions, including information where additional and specific benefit is secured by the local authority.

Forward Scotland believes that there should be consistency across local authorities in Scotland in recording information on planning agreements and that it should be freely and easily available to the public at all times. It is not adequate to suggest that members of the public can access information on planning agreements through the land register as this would involve considerable time, effort and expense and the process of retrieving information does not encourage browsing.

Clearly the Scottish Government researchers believed that local authorities were the best source for this information as they chose to explore matters of planning agreement through that route rather than an inspection of the registers.

It should be an obligation/requirement for all planning authorities to maintain and make available in readily accessible form information regarding planning agreements. It is clearly in the public interest. This is information which they hold in order to register with the Register of Sasines or the Land Register of Scotland.

A handwritten signature in black ink that reads "J. Frazer Scott". The signature is written in a cursive style with a large initial "J" and "S".

Frazer Scott  
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