
PROGRESS REPORT ON SECURING AND SPEND OF DEVELOPMENT CONTRIBUTIONS

Report by Service Director Regulatory Services

EXECUTIVE COMMITTEE

16 February 2016

1 PURPOSE AND SUMMARY

- 1.1 This report is to update Members on the collection and spend of Development Contributions since the Executive meeting on 21 October 2014.**
- 1.2 The format in which Development Contribution data is presented illustrates:
 - Current contribution balances
 - Contributions received
 - Contributions returned
 - Spend applied
 - Contributions anticipated

2 RECOMMENDATIONS

- 2.1 I recommend that the Executive:**
 - (a) Notes the current contribution balances, those received, returned, spent and anticipated;**
 - (b) Notes that existing protocols and guidance governing the collection and spend of contributions are being reviewed and applied, where appropriate, subject to approval by Planning & Building Standards Committee;**
 - (c) Agrees that the Development Contributions Progress Report– detailing contribution balances, received, returned, spent and anticipated – continues to be reported annually to the Executive Committee.**

3 BACKGROUND

- 3.1 At the 11 March 2008 Executive Committee meeting it was agreed that annual progress reports on the securing of Development Contributions should be provided to Executive containing details of how the contributions were being used.
- 3.2 The Development Negotiator maintains a central database holding key details from all Legal Agreements concluded and which regulate the collection and spend of Development Contributions. The central database is fully accessible to all internal Scottish Borders Council (SBC) stakeholders in the Development Contribution process. Appropriate protocols have been devised and applied to ensure that all stakeholders supply, and are provided with, key information both timeously and in the appropriate format to facilitate comprehensive and effective collection, spend, monitoring and reporting functions. These processes are the subject of periodic testing and review the outcomes of which provide the basis of development to maintain policy integrity as well as enhance customer service.

4 CONTRIBUTIONS

- 4.1 The Annual Report on contribution receipt has been derived from the central database. The relevant data has been compiled to show:
- Current contribution balances
 - Contributions received
 - Contributions returned
 - Spend applied
 - Contributions anticipated
- 4.2 Table 1 in Appendix A details the relevant information for the Financial Year 2013/14 split into Recipient Departments. This shows that:
- £2.29m was available to spend as at 01/04/13
 - £0.85m was received in Financial Year 2013/14
 - £0.56m was spent on relevant services, infrastructures and facilities in Financial Year 2013/14
 - £2.50m was available to spend at 31/03/14
- 4.3 Table 2 in Appendix A details the relevant information for the Financial Year 2014/15 split into Recipient Departments. This shows that:
- £2.50m was available to spend as at 01/04/14
 - £1.54m was received in Financial Year 2014/15
 - £0.19m was spent on relevant services, infrastructures and facilities in Financial Year 2014/15
 - £3.83m was available to spend at 31/03/15

- 4.4 It should be noted that £0.95m of the contributions received in 2014/15 are attributable to an agreement brokered by SBC's Ecology Officer with the applicant for a wind farm development at Penmanshiel to provide compensatory tree planting. This is being delivered through an innovative scheme managed by the Council and implemented by SAC Consulting.
- 4.5 Table 3 in Appendix A shows the approximate value of Development Contributions currently incorporated into S75 Legal Agreements. The receipt of these contributions will be predominantly influenced by the rate of development activity, as settlement of the contribution is ordinarily scheduled in line with development progression. However, there is also the potential for variation by virtue of any successful application to modify the terms and conditions of associated S75 Legal Agreements. Reports for such variations are presented to the Planning & Building Standards Committee for determination.

5 KEY EVENTS AND ACTIONS INFLUENCING CONTRIBUTION POLICY

- 5.1 There have been a number of key events and actions which have impacted upon policy since the last Executive Report, the impacts of which have directly implicated upon resource input and policy development. These can broadly be grouped into three areas comprising:
- Significant Applications
 - Performance enhancement
 - Process development
- 5.2 There are two applications of significance which have ramifications beyond residential development and Development Contribution policy:
- Milestone. Newtown St Boswells – A robust case for reduced contributions in respect of a 40 house development proposal was accepted at Planning & Building Standards (P & BS) Committee, which was in line with a previous decision to reduce contributions on the application for the major NSB expansion. Notwithstanding approval to reduce contribution levels, full Affordable Housing requirements have been preserved. This outcome will enable the applicant's aspirations to provide a viable residential development opportunity as well as expand his existing business. Additional commercial businesses, also incorporated in these proposals, will cumulatively assist with economic development and settlement regeneration.
 - Rosetta, Peebles – Work is on-going to assess the development economics of a residential proposal designed to enable significant re-investment in a key component of the local economy. The findings of detailed analysis and scrutiny will be presented to P & BS in due course to enable an informed determination.
- 5.3 An application to Modify S75 and resultant appeals consumed officer resources in 2014/15. The applicant had sought to have approximately 1/3 of the value of a significant extant S75 removed via this process, a request which was refused and vigorously defended at appeal by SBC. Although ultimately an element of contribution requirement was removed from the S75 by the Reporter, the vast majority were preserved. Aside from

retaining significant contributions towards key infrastructure, the principal benefit of this outcome has been to galvanise policy in critical areas. In this instance the applicant had sought to indemnify themselves from risk associated with site remediation costs and a dynamic housing market by retrospectively reducing agreed contribution payments. Had SBC been unsuccessful in this regard, then the implications would have extended far beyond this S75 generating ramifications not just for other Legal Agreements and associated policy in SBC but also at a wider national level.

5.4 The Planning Authority has been under significant pressure from central government to improve performance in terms of processing Planning Applications. A requirement to conclude Legal Agreements has been identified as a potential impediment to meeting these performance targets. Proactive processes have been devised and implemented to improve performance in this regard:

- Pre-determination S75 drafting – The Planning Registration Team are now assessing Applications upon receipt to provisionally identify Development Contribution requirements. Applicants are urged to agree how contributions will be settled prior to determination thus enabling the progression of Legal Agreement drafting in tandem with the application's determination. This reduces the time taken to release Consent for approved applications thereby enhancing the likelihood of meeting stated target as well as providing the customer with an improved more efficient service.
- Planning Processing Agreements (PPAs) – Applicants are now being encouraged to enter into PPAs with SBC whenever a Legal Agreement is required. This provides a clear yet potentially flexible road-map from inception to conclusion of Legal Agreements which again enhances customer service whilst simultaneously assisting with meeting target performance.

5.5 Appendix B shows the number of Planning Applications requiring Legal Agreements which SBC concludes annually and the average length of time taken to release Consent compared against the Scottish average from 2011 to 2015. As can be seen, the length of time taken has diminished significantly over this time-frame more than halving from 100 weeks to less than 50. SBC performance is now in line with the Scottish average though it is envisaged that further process reviews will assist with greater efficiencies and improved performance over the coming years.

5.6 Existing processes have also been fundamentally re-appraised and developed to assist with the maximisation of spend obligations. The risk of having to return contributions has been recently emerging and significant efforts are being made to mitigate against this potential outcome. The principal process amendments being effected are:

- Broader more generic Legal Agreement drafting to maximise flexibility in terms of spend options.
- Increased spend deadlines for identified infrastructures for which projects have not yet been developed.
- Zero spend deadlines for contributions towards infrastructure projects for which SBC have already incurred costs to ensure that these are applied immediately upon receipt.
- Improved policy co-ordination between Service Providers and

Planning officers to identify and agree the provision of appropriate infrastructure options.

- 5.7 Officers are currently looking at how the administration of this policy can be undertaken in smarter more efficient ways. The utilisation of internal partner skill-sets can help deliver multiple benefits which will cumulatively provide a better customer service as well as promoting the development of existing staff.
- 5.8 Publicising the benefits of Development Contribution policy, which contributes tangible additions to existing infrastructure, have previously been discussed by members. Whilst opportunities to highlight the benefits accruing to the Education Service have been limited over the past year, all Service Providers receiving contributions have been alerted to this aspiration and it is hoped that this can be done more effectively in coming years.
- 5.9 At the last Executive Committee which discussed this Report, it was agreed that contribution balances received, returned, spent and anticipated would be reported annually to each Area Forum to allow more localised discussion. Due to the way current data is processed and stored, this has not to date been readily achievable without the fundamental re-engineering of associated systems. Notwithstanding, and as resources permit, this matter will be progressed with Members up-dated accordingly in due course.

6 IMPLICATIONS

6.1 Financial

- (a) Development Contributions are sought where a proposed development is otherwise acceptable but for its direct impact upon existing services, infrastructures and facilities. Development Contributions provide a mechanism for applicants/developers to fund or contribute to the provision, improvement and/or maintenance of necessary supporting infrastructure, services and facilities.
- (b) Any contribution not utilised for the purpose collected, or within the time period defined by the agreement, will need to be repaid to the contributor with additional interest.
- (c) Development contributions can be varied or waived if it is transparently demonstrated that an otherwise commercially viable development would be rendered unviable. Reduced contributions may, when endorsed by P & BS Committee, be accepted if it would assist with promoting development activity. Contributions to be received are also susceptible to the Application to Modify S75 process.

6.2 Risk and Mitigations

- (a) In circumstances where, following negotiations between applicants/developers and the Council Officers, it is identified that it may be appropriate to waive or significantly vary contributions to enable project viability, the case is normally presented to the P & BS

Committee. Delegated authority may be used to approve minor variations to Legal Agreements. The options before Committee will normally be either to refuse the Application on the grounds of policy non-compliance, or approve with varied or waived contributions. When reaching determinations, Committee will consider the potential benefits which may accrue, were development enabled by reducing contributions, against the loss of revenue that would result. Ordinarily, when deviation from contribution policy is approved, funding towards necessary service, facility and infrastructure expansion will require to be found from other Council sources.

- (b) Legislative provision exists whereby the terms and conditions in existing Legal Agreements can be the subject of applications to modify them. As with the case for initial negotiation, the standard of proof and predominant requirement for ratification by P & BS Committee is the same as described in 6.2 (a).
- (c) Should the Council fail to comply with the terms of Legal Agreements, it could be required to refund the contribution with additional interest. Ongoing maintenance of the central database has ensured that spend deadlines for all contributions received are displayed to recipient departments in a clear and unambiguous manner. Data transfer to recipients upon the conclusion of individual agreements, supported by periodic summary reports illustrating spend deadlines and reiterating spend responsibilities, have further mitigated against this risk. It is only comparatively recently that some contributions have required to be returned. This has predominantly been in instances where originally anticipated infrastructure expansions have subsequently been identified as superfluous due to reduced development activity e.g. Drumlanrig Primary School. Further policy and process development, as detailed in 5.5, have been identified and are being implemented. It should be noted that the benefits of these refinements will not accrue in the immediate-term and until extant Legal Agreements have come through the system.

6.3 **Equalities**

It is anticipated that there will be no adverse impact due to race, disability, gender, age, sexual orientation or religion/belief arising from the proposals contained in this report.

6.4 **Acting Sustainably**

There are no identified economic, social or environmental effects likely to result as a consequence of implementing the recommendations in this report.

6.5 **Carbon Management**

There are no identified impacts on the Council's carbon emissions likely to result as a consequence of implementing the recommendations in this report.

6.6 **Rural Proofing**

Rural proofing has not identified any adverse impacts in relation to this report.

6.7 Changes to Scheme of Administration or Scheme of Delegation

There are no identified changes which are required to either the Scheme of Administration or the Scheme of Delegation as a result of implementing the recommendations in this report.

7 CONSULTATION

7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR, and the Clerk to the Council are being consulted and their comments will be incorporated into the final report.

Approved by

Service Director Regulatory Services Signature

Author(s)

Name	Designation and Contact Number
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Background Papers: Nil

Previous Minute Reference: Executive – 12 November 2013 and 21 October 2014.

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

Contact us at Jacqueline Whitelaw, Environment and Infrastructure, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 825431, Fax 01835 825071, email eittranslationrequest@scotborders.gov.uk.