

CABINET

Charter for Planning Performance Agreements 09 November 2010

Report of the Head of Regeneration and Policy

PURPOSE OF REPORT				
This report informs Cabinet of the recent public consultation regarding Planning Performance Agreements, and seeks to adopt a Charter for such Agreements in the future, to be used in consideration of the most strategic, major planning applications.				
Key Decision	<input type="checkbox"/>	Non-Key Decision	<input checked="" type="checkbox"/>	Referral from Cabinet Member
Date Included in Forward Plan				
This report is public				

RECOMMENDATIONS OF COUNCILLOR BRYNING

- (1) That Cabinet resolve to adopt a Charter for Planning Performance Agreements.
- (2) That Cabinet determine that the ratification of the Charter should be the subject of formal approval from the Planning and Highways Regulatory Committee.
- (3) That the Head of Financial Services be given delegated authority to update the General Fund Revenue Budget as and when required (outside the normal annual budget process) to gross up additional outsourcing expenditure and associated income for one-off major applications, subject to there being a nil impact on the council's resources.
- (4) That for strategic major applications, i.e. spanning more than 1 year, individual reports are brought back to Cabinet for approval prior to the General Fund Revenue Budget being updated.

1.0 Introduction

- 1.1 Planning Performance Agreements (PPAs) are a framework introduced by Government to assist local planning authorities and developers in delivering high-quality decisions on strategic, major planning applications.
- 1.2 A PPA allows both a developer and the local planning authority to agree a Project Plan and Programme for major planning applications, from the first pre-application

discussions through to determination of any eventual planning application. It must be stressed that signing up to a PPA is not an indicator of the outcome of any planning application – it is effectively a more collaborative project management method of considering strategic planning applications.

2.0 Proposal Details

Government Guidance

- 2.1 A pilot programme involving 22 local authorities and developers was undertaken by Government in 2006. This demonstrated that PPAs could give greater certainty on timescales for planning application decision-making, costs of development, improved community involvement, improved Elected Member involvement and resulted in speedier input from statutory consultees and agencies.
- 2.2 The Planning White Paper – *Planning for a Sustainable Future* (Department of Communities and Local Government, 2007) emphasised the need for an effective planning system which is responsive to society's needs and has the ability to resolve differences and deliver appropriate development.
- 2.3 PPAs were also encouraged through the Killian Pretty Review (2008) and it is clear that Central Government are increasingly encouraging local planning authorities to use PPAs as part of a new 'development management' approach to considering major, strategic projects.
- 2.4 The recent Government consultation, *Development Management: Proactive Planning from Pre-Application to Delivery* (2009), emphasises this further by announcing that a "revised national indicator would come into force in April 2011". Therefore, even discounting the masterplanning benefits that would ensue from the use of PPAs, it is considered prudent to put in place formal procedures prior to the introduction of any new Government performance indicators.
- 2.5 Government strongly advise that if PPAs are to be used by a local planning authority, a formal process should be enshrined in a Charter setting out the authority's general approach.
- 2.6 Government have also confirmed that any planning applications that use the PPA process are effectively removed from the current national performance indicators (currently 13 and 16-week timescales for decision-making), and will instead be measured against the timescale agreed by both the local planning authority and the developer, which will be stated in the PPA Project Programme.
- 2.7 This process cannot be imposed by either party; i.e. both the local planning authority and the developer have to agree on using a PPA. The final decision on any eventual planning application will continue to be dependent upon the planning merits of the case, regardless of whether a PPA exists or not.

Key Stages to Establishing a PPA

- 2.8 There are five key stages to creating a PPA. These are discussed in greater detail in the attached Draft Charter. In summary, the stages are as follows:

- 2.9 With regards to the first stage – **Screening** - the Planning Service has devised criteria for assessing whether a development proposal can be considered suitable for a PPA-approach.
- 2.10 Firstly, the proposals have to be in conformity with the Development Plan (The Development Plan consists of The Regional Spatial Strategy, The Lancaster District Core Strategy, the Saved Policies and Saved Land Allocations of the Lancaster District Local Plan, and the Lancashire Minerals and Waste Core Strategy). Where a proposal departs from the policies of the Development Plan, the proposal has to be one that the City Council believes it can support in principle for the wider benefit of the district, and has the potential to satisfy the Local Strategic Partnership’s Sustainable Community Strategy.
- 2.11 Secondly, the proposal also has to constitute ‘major’ development, as defined by Government. The thresholds for ‘major’ development are:
- Applications for 10 or more dwellings (or where the number of dwellings is not yet determined, the site area exceeds 0.5 hectare); or,
 - Applications proposing a building which has a floorspace of 1,000 square metres or greater; or,
 - Applications which comprise development on a site which has an area of 1 hectare or greater.
- 2.12 Finally, if the proposals satisfy the criteria referred to in paragraphs 3.3 and 3.4 above, then they must also satisfy at least one of the following:
- The decision would be likely to be referred to a Central or Regional Government Body (e.g. called-in); or,
 - The proposal would require an Environmental Impact Assessment, or has an impact upon an area of environmental sensitivity; or,
 - It would involve a large site (In excess of 1 hectare, or in the event of

Stage	Detail
Screening	Does the proposal meet the criteria for establishing a PPA?
Scoping	If a PPA is considered appropriate, what should it contain?
Development Meeting	An opportunity for the developer, the local planning authority, statutory consultees, Ward Councillors and community groups to agree a vision for the development, identify and seek to resolve the issues that affect the proposal, and agree a programme for planning application submission and a timescale for decision-making.
Programme Publication	This is where the PPA Programme is formally signed and is published.
Implementation	This is where the PPA Programme is adhered to within the agreed timescales.

residential development, 0.5 hectare) and would have complexities regarding land ownership/assembly or have a complex variety of existing and/or proposed uses; or,

- The proposal would be likely to involve a significant planning obligation agreement or highway agreement; or
- The proposal would be likely to have a significant impact upon existing communities, or would involve consultation a wide variety of statutory agencies.

2.13 Once the application has been screened, the next stage is **Scoping**. This is where the local planning authority and developer should first meet. The meeting is simply to identify both party's position on the objectives and aspirations for development; whether it accords with national, regional and local planning policies; and whether there is evidence that the development is required (physically, environmentally, socially and economically). It will also be the stage where the local planning authority advises the developer regarding the involvement of statutory agencies, relevant community/resident groups and Elected Members.

2.14 Following on from this initial contact, the parties will arrange a formal **Development Meeting**. This is where draft proposals are critically and openly considered by all essential stakeholders (usually one representative per statutory agency/group). The purpose of the meeting is to try to agree the vision for the development, identify all the relevant issues and tasks, and agree a Project Programme for the resolution of the issues before submission of the planning application. On exceptional occasions these meetings can be independently chaired by the Government's Advisory Team for Large-Scale Applications (ATLAS). Otherwise they will be chaired by the local planning authority.

2.15 The Project Programme shall then be **published** and be publicly available. It is anticipated that the Programme will be signed by the Head of Planning Services, a nominated officer of the Planning Service (who would be Project Manager) and the Project Manager for the developer. Any critical third parties (e.g. key statutory consultees) may also be expected to sign the document, with a commitment to producing their formal observations on the planning application on time.

2.16 Following publication, the Programme is then **implemented**. It is for the Project Managers on both sides to ensure implementation remains on time, so that a planning decision can be delivered at Planning Committee and there is sufficient time for conclusion of any legal agreements (should planning permission be forthcoming).

3.0 Details of Consultation

3.1 The Planning Service consulted extensively on the draft document. The consultation included all Elected Members, all Local Strategic Partnership Stakeholders, statutory (planning) consultees, residents' groups, and internal services. In addition consultation letters were also sent to our local planning agents and architects. The consultation was also advertised in the local press and copies of the draft document placed in both Customer Service Centres and online. A 6-week period was allowed for comment.

- 3.2 Responses were received from the North West Development Agency, Lancashire County Council Strategic Planning, The Campaign to Protect Rural England (Lancashire Branch), Lancaster Civic Society, It's Our City, Lancashire Wildlife Trust, The Environment Agency, The Theatres Trust, The Coal Authority, United Utilities, and one local planning agent. Two members of the public also made comment. In general the comments received were positive regarding the introduction of such a Charter. Particular concerns were raised in relation to the overall transparency of the process and whether the ambition to resolve many problems at the PPA Development Meeting was realistic.
- 3.3 Other comments regarding the selection of 'preferred developers' for larger-scale schemes are not specific matters that can be associated with either the proposed Charter, or indeed the Regeneration and Policy Service.
- 3.4 A copy of the amended, post-consultation Draft Charter is attached as an appendix to this report. A number of modifications have occurred as a result of the consultation comments received. The most significant change is confirmation that affected resident's groups and Parish Councils will be invited to participate at the Development Meeting. A further key change involves clarification of Elected Member involvement at the pre-application stages.
- 3.5 The Charter has previously been presented to Management Team.

The Charter – General Principles

- 3.6 The Charter confirms that the officers of the Regeneration and Policy Service will work on behalf of the City Council, in the public interest, to secure the best quality scheme. Officers would expect the applicant or developer to approach their project/development in a transparent and co-operative manner, and respond to any reasonable and well-founded requests for amendments or reconsideration of their scheme.
- 3.7 It also advises that the Regeneration and Policy Service expects developers to commit to meaningful and constructive community involvement. It recognises that communities often have a deeper knowledge of their immediate surroundings and how they will be able to play a part in addressing issues.
- 3.8 There needs to be safeguards in place to ensure that the decision-making function of the Planning and Highways Regulatory Committee is not compromised by previous Elected Member involvement in proposals. With this in mind, it is proposed that Members be invited to any PPA Development Meeting that affects their own Wards. To ensure that the Planning Committee process remains unfettered, any suggestions or views regarding the planning merits of the case made by Members should be discussed with the Head of Regeneration and Policy, or the Assistant Head (Development Management), or the Service's Project Manager for the PPA, who will then negotiate or direct discussions on their behalf.
- 3.9 In the event that a development proposal is amended, or altered significantly so that it no longer complies with the Development Plan or Sustainable Community Strategy, or fails to deliver previously identified benefits for the district, then the Regeneration and Policy Service reserves the right to withdraw from the PPA process.
- 3.10 In the event of a failure to determine the planning application within the timescale agreed in the PPA Programme, the applicant retains the right (as is presently the

case) to appeal to the Planning Inspectorate on the grounds of non-determination. Similarly, in the event that the planning application is refused, the applicant retains the right to appeal against the refusal as per the current, national arrangements.

The Charter – Financial Matters

- 3.11 At the present time there are no plans in place to charge for entering into a PPA. However, a PPA may occasionally involve additional expenditure incurred by the applicant (e.g. the local planning authority may request an applicant undertakes various assessments prior to submission of a planning application).

4.0 Options and Options Analysis (including risk assessment)

- 4.1 There are two options available. The first is to choose not to formally adopt a Planning Performance Agreement Charter and continue with the current arrangements for dealing with pre-application discussions for major applications. The second option is to adopt a Charter.

- 4.2 **Option 1 – Not to Formally Adopt a Charter:** This would result in the Planning Service continuing with the present, ad-hoc arrangements for pre-application discussions for major, strategic proposals. Officers would continue to informally arrange 'Development Team' meetings but this process would not be enshrined in a Charter. It would therefore not direct applicants and developers to keep plans fluid during early stages (to enable them to respond to consultation suggestions) and would not require developers to consider the wider scope of their proposals at an early stage. New arrangements for community and Elected Member involvement at Development Team meetings would not be adopted. Finally, the failure to adopt a PPA Charter means that timescales for determining major planning applications would remain at 13 and 16 weeks, rather than agreed, application-specific timescales. This would result in a continuation of the present system whereby many major planning applications are determined after their national performance indicator target.

- 4.3 **Option 2 – To Formally Adopt a Charter:** An adopted Charter would introduce a consistent procedure for the consideration and negotiation of major, strategic planning applications. Aside from formalising the pre-application process, it would provide greater opportunity for statutory consultees and community groups to be involved earlier in the development process. It would give greater certainty to all parties regarding the timescale of submission and determination of planning applications.

5.0 Officer Preferred Option (and comments)

- 5.1 The preferred option is Option 2.
- 5.2 It is considered that formal ratification of the Charter should be via the Planning and Highways Regulatory Committee. This is because the Charter is not a planning policy document, but simply a protocol for consideration of planning proposals that will ultimately be determined by the Planning and Highways Regulatory Committee.

6.0 Conclusion

- 6.1 It has been commented that PPAs will not, by themselves, solve the inherent challenges facing the national planning system. Indeed they will not be appropriate for all major development proposals. But if they are adopted for schemes which are complex and most challenging, then they are already acknowledged to have the potential to achieve greater collaboration and transparency between all parties involved in the development process. Formalisation of the process through the Charter is therefore considered necessary.

RELATIONSHIP TO POLICY FRAMEWORK

The creation of a PPA procedure accords with the principle of the Lancaster District Core Strategy which seeks to outline a spatial vision of a sustainable district whose quality of life and standards of development will lead the North West. By offering a more consultative and community-focused approach, major developments will have a greater opportunity to respond to this vision.

The identification and involvement of all relevant, affected third parties is also advocated in the rhetoric of the Sustainable Community Strategy.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

There are no direct impacts relating to the above arising from this report.

FINANCIAL IMPLICATIONS

There will be no charge for entering into a Planning Performance Agreement (PPA).

Applicants/Developers may be required to undertake additional studies or assessments at the request of the local planning authority, but the costs of these would be borne by the applicant/developer.

In the event of the receipt of a number of major applications at the same time, or if a strategic major application would have a disproportionate impact upon staffing resources, there may be a requirement to pay to out-source the determination of the planning application, or recruit staff on a temporary basis to accommodate such workload. It should be noted that this is the case for either option, however under the preferred option 2, the council would be better able to cover additional costs associated with outsourcing or recruiting temporary posts as such costs would be met by the applicant/developer under the PPA.

If option 2 is agreed, then it is recommended that for one-off major applications, delegated authority be given to the Head of Financial Services to update the General Fund Revenue Budget as and when required (if falls outside of the normal annual budget process), subject to there being a nil impact on council resources. For strategic major applications however, i.e. spanning more than one financial year, e.g. 'Nuclear Industry Build' or 'National Grid Upgrade' type schemes, there will still be a requirement to report back to Cabinet for approval to update the GF Revenue Budget prior to commitment being entered into for additional outsourcing/temporary staff costs.

SECTION 151 OFFICER'S COMMENTS

No further comments to make.

LEGAL IMPLICATIONS

The introduction of Planning Performance Agreements on a national scale has raised concerns relating to the involvement of Elected Members during the pre-application discussions, and a worry that this may amount to pre-determination.

If Ward Members are invited, some of them will not have had prior training regarding planning and pre-determination/fettering discretion etc. There needs to be advice readily available from Officers to Members before Members engage in PPA discussions on a particular scheme.

However, Central Government remain of the view that Elected Member involvement throughout the process is a core theme of Development Management.

It is noted that to ensure that the process is clear, and thus avoid any allegation of pre-determination, the process described in Paragraph 5.3 is proposed.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

1. Draft Revised (post-consultation) Charter for Planning Performance Agreements

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