

CABINET – 15 SEPTEMBER 2015

Direct Delivery by Developers of Major Off-Site Highways Works

Report by Director for Environment & Economy

Introduction

1. In June 2013 Cabinet resolved, with respect to major infrastructure requirements associated with new developments, to approve the principle that direct delivery of such major infrastructure by the developers was acceptable; subject to adherence to specific key principles (**Annex 1**).
2. The resolution was made in recognition of the argument that “direct delivery” of major off-site highway works (and also major on-site infrastructure) could be more cost effective and bring significant benefits to the County Council arising from the transfer to the private sector of financial risks associated with delivering new infrastructure. The direct delivery of major off-site highway works could also speed up the S106/S278 negotiation process thus potentially reducing costs for both the developer and the County Council.
3. Since June 2013 proposers of substantial developments have sought to enter (and have entered) into S106/S278 agreements in line with the approved principles to deliver the infrastructure.
4. One of the key principles with respect to the direct delivery of off-site highway works is the need to complete Section 278 agreement at the same time as Section 106 agreement, so that the commitments are conditional on the grant of planning permission.
5. This report seeks a revision to that element of the principles.

Exempt Information

6. Legal issues associated with the principle of direct delivery of major infrastructure have been considered in detail; a summary of that assessment and received advice is in **Annex 3**.

Key Issues

7. The key principles (**Annex 1**) to be adhered to in S106/S278 agreements were drawn up to satisfactorily mitigate risks to the County Council when allowing direct delivery of major infrastructure. Those risks included:
 - (a) Specification of infrastructure requirements
 - (b) Managing contractual relationships
 - (c) The implications for highways (and property) contracts

- (d) The timing of delivery
 - (e) Procurement requirements
8. Following further examination of the risks and receipt of legal advice it is considered, with respect to the requirement to simultaneously complete both S106 and S278 agreements prior to the issuing of a planning permission (Transport – Key principle 2), acceptable that the completion of the S278 agreement could follow granting of the permission; but it would still need to be completed prior to any implementation of the development.
 9. By enabling the later completion of the S278 agreement it could further speed up the process from the submission of a major planning application to the granting/issuing of a corresponding planning permission. The form, content in terms of highway requirements (outline) and subsequent completion of the S278 agreement as well as requirements as to completion of the S278 Works would though need to be secured as part of the S106 commitments.
 10. The proposed key principles, as regards transport infrastructure are set out in **Annex 2**. The overall process (if deferral of S278 agreements is agreed) would comprise:
 - (a) Completion of S106 requiring completion of S278 agreement pre-implementation of the development;
 - (b) Grant of the planning permission for the development;
 - (c) Finalisation of the S278 Agreement including “in principle drawings” ;
 - (d) Publish the S278 Voluntary Transparency Notice (VTN);
 - (e) If no challenge to the VTN complete the S278;
 - (f) Implement the development.

Financial and Staff Implications

11. Developer contributions secured through S106 agreements are often insufficient to deliver the required capital infrastructure schemes in full. Permitting direct delivery of major off-site highway works offers the potential of delivering schemes on a more cost effective basis and with a reduced risk of overspend. While this cannot be quantified, the removal of potential shortfalls in funding would strengthen the council’s position to deliver wider infrastructure elsewhere to support the growth of the economy in Oxfordshire.
12. In order to properly manage the capital programme and provide transparency (to the overall consideration) how the relevant mitigation works (infrastructure) associated with a development are to be delivered, through contributions or direct delivery, is made explicit in the S106/S278 agreements.
13. The potential relaxation in the timing of the completion of the S278 would have limited potential for increased revenue costs. It is not envisaged that there will be any effect on current staffing levels.
14. In order to ensure the delivery of infrastructure the County Council will continue to require bonds to guarantee delivery.

15. The transfer of financial risk to the developer offers significant benefit to the County Council. The extent of any residual risks to the authority can be mitigated. In the light of maintaining potential benefits to infrastructure delivery and to the Council, the principle of deferring the completion of the S278 agreement to prior to implementation of a development as opposed to prior to the issuing of planning permission is recommended.

Equalities Implications

16. The procurement process for the design and construction of the relevant major highway works would still to be required to be conducted in an open, fair and competitive process.

RECOMMENDATION

17. **The Cabinet is RECOMMENDED to:**

Approve:

- The substitution of the key principles of direct delivery obligations to be integrated within S106 agreements (for Transport) as set out in **Annex 2**, in place of those approved by Cabinet on 18th June 2013.

Revoke:

- The previous determination of the content of the key principles in relation to Transport as contained in **Annex 1: KEY PRINCIPLES OF DIRECT DELIVERY OBLIGATIONS TO BE INTEGRATED WITHIN S106**, taken by Cabinet on 18th June 2013.

SUE SCANE

Director for Environment and Economy

Background papers: Cabinet report (CA12) 18 June 2013

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