PORTFOLIO HOLDER DECISION NOTICE

INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR PLANNING AND TRANSPORT

TOPIC - GOVERNMENT CONSULTATIONS ON THE PLANNING GAIN SUPPLEMENT

-"Valuing Planning Gain"

-"Paying PGS"

-"Changes to Planning Obligations"

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to made by an individual member of Cabinet.

In accordance with the Procedure Rules, the City Secretary and Solicitor, the Chief Executive and the Director of Finance are consulted together with Chairman and Vice Chairman of the Principal Scrutiny Committee and all Members of the relevant Scrutiny Panel (individual Ward Members are consulted separately where appropriate). In addition, all Members are notified.

Five or more of these consulted Members can require that the matter be referred to Cabinet for determination.

Contact Officers:

Case Officer: Margaret Kirby, 01962 848 170, mkirby@winchester.gov.uk

Committee Administrator:
Frances Maloney, 01962 848 155, fmaloney@winchester.gov.uk

SUMMARY

- The Council has been consulted on three Government consultation papers on the Planning Gain Supplement;

- These are part of a series of consultations being made prior to its introduction, and the Government has indicated this will not be before 2009. Comments are invited on the three papers ("Valuing Planning Gain", "Paying PGS" and "Changes to Planning Obligations") by the end of February 2007.

- Further consultations are to follow.

- The consultation is relevant to the Corporate Strategy, as it aims to give people good access to facilities and services, in a high quality environment, living in homes they can afford.

- The proposed change to a system of negotiated obligations working alongside a nationally collected Planning Gain Supplement is likely to require substantial resources to implement. It is likely that the new PGS system would replace the

existing Open Space Funding System, although it is not yet clear how such existing funds would be dealt with on the transition to the new system.

DECISION

That the Portfolio Holder for Planning and Transport approves the comments set out in Appendices A – C to this report, as the Council's comments on the Government Consultation Papers - "Valuing Planning Gain", "Paying PGS" and "Changes to Planning Obligations", and their submission to the relevant Government department.

REASON FOR THE DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

The proposed reform of the planning obligations system has already been the subject of a number of previous consultation papers.

1 Consultation history

1.1 In December 2001, the Government first consulted the City Council on its proposal to reform planning obligations, indicating a preference for introducing a tariff-based system, set locally through the Local Plan (now Local Development Framework [LDF]) process (see Report PTP 196). The consultation paper suggested retaining negotiated planning obligations only for larger sites, and set out how a tariff system might work in practice. The Council broadly supported the proposed reforms, but expressed a number of concerns about the detailed proposals. Of primary concern was the amount of work and time necessary to establish an effective tariff system and the need to justify it through the (then) Local Plan process.

1.2 In November 2003, the then Office of the Deputy Prime Minister issued a further consultation paper "Contributing to sustainable communities – a new approach to planning obligations". This developed the approach proposed in the 2001 consultation paper and took account of responses made. The 2003 consultation paper suggested a more flexible approach, proposing that each developer would be offered two options to meet infrastructure costs:

- An improved system of negotiating a Section 106 agreement;
- The payment of contributions in the form of a locally set tariff.

1.3 Improvements proposed to negotiated contributions included the use of formulae for calculating predictable contributions and the principle of pooling contributions from a number of sites. The Council generally welcomed these proposed improvements, as they had long been a feature of the Council's Open Space Funding System, and these principles were then incorporated in revised Circular 05/05 on Planning Obligations. On the proposed optional planning charge, the consultation paper set out options for how it might be applied to different types and sizes of development, and also options for dealing with the provision of affordable housing. The Council (in report WDLP 40) raised a number of concerns about the proposed detailed operation of a planning charge system, and indicated that any system should allow for on-site provision of affordable housing as the preferred option.

1.4 A further consultation followed in December 2005, issued as part of the Government's response to the Kate Barker Report (see Report CAB 1209). This proposed a scaled down planning obligations system, and the introduction of a new Planning Gain Supplement (PGS) (to replace the earlier tariff proposal), payable to

HM Revenue and Customs (HMRC) at a rate calculated on the uplift in land value when the planning consent is implemented (i.e. the difference between the current land value and its value after planning permission has been granted). The Council remained concerned that the PGS system could become overly complex, that there would be insufficient local control. The proposed process then suggested recycling PGS funds within the regions within which they were derived, and one of the Council's main comments was that the vast majority of funds should be retained locally, to ensure that funds were available to implement local infrastructure improvements needed by a specific development, and to address wider community needs at local level.

1.5 The current consultation is from the Planning Gain Supplement Team at H M Treasury, seeking views on further developments in PGS policy, which they believe address the main issues raised. It is one of a number of further consultations on the proposed reforms to the planning obligations system.

1.6 The letter also summarises the main announcements made at the publication of the Government's Pre Budget Report (PBR) in December 2006, which were as follows:

- The implementation of PGS will be moved forward if, after further consultation, it continues to be deemed workable and effective;

- PGS would be levied at a modest rate and apply to residential and non-residential development;

- At least 70% PGS revenues would be recycled back to Local Authority area from which the revenues derived for infrastructure priorities, with the remainder returned to the regions to help finance strategic infrastructure projects;

- A workable and effective PGS would not be introduced before 2009.

1.7 This consultation comprises 3 consultation papers:

- "Valuing Planning Gain" (published by HM Revenue and Customs and the Valuation Office Agency) in which the proposed approach to quantifying uplift in land values is set out, including proposed valuation methodologies;

- "Paying PGS" (published by HM Revenue and Customs) – a technical consultation on the proposed administrative mechanisms for establishing the PGS liability and paying PGS to HMRC;

- "Changes to Planning Obligations" (published by the Department of Communities and Local Government), which provides further details on how the existing system of planning obligations could be scaled back if PGS was introduced.

1.8 Copies of these documents may be viewed on the Government websites at www.hmrc.gov.uk and www.communities.gov.uk. The consultation period runs until 28 February 2007.

1.9 A brief summary of the content and any concerns about each paper are contained in sections 3 – 5 of this report. The suggested Winchester City Council responses are attached as Appendices to this report.

2 Winchester's background

2.1 Winchester City Council is currently negotiating S106 Agreements for a number of major developments in the District; including 2,000 dwellings together with employment and community uses at West of Waterlooville, and a major town centre redevelopment within the historic core of the city at Silver Hill. This together with a large number of other significant developments in the District in recent years has meant that the City Council has gained considerable experience in negotiating S106 Agreements.

2.2 The Council also successfully operates a system for collecting contributions towards the provision of open space. This allows all housing developments to meet the Local Plan's requirement for recreational space and, in most cases, this is achieved through a financial contribution for off-site provision. This is sought through an up-front payment or a standardised planning obligation. The System has many of the features now promoted in Circular 05/05 on Planning Obligations.

2.3 Furthermore the draft Regional Plan, the South East Plan, envisages significant development in the south of the District; including a Strategic Development Area of 6,000 dwellings and supporting uses at North/ North East of Hedge End, which is partly in the District; and an annual growth across the District of at least 522 dwellings per annum between 2006 to 2026. To support this rate of growth it is imperative that the required levels of physical and social infrastructure are delivered in a timely fashion.

2.4 The current system for producing S106 Agreements is very time consuming, and adds delay to bringing forward development. But it does have the benefit of identifying exactly what social and physical infrastructure is needed to serve the development; who is responsible for providing it; and the timing of its provision. Experience at West of Waterlooville also shows that the system is sufficiently flexible to allow all parties to be creative in how the various items of infrastructure are provided. Likewise it has been possible to 'ring fence' funds to provide for open space in areas of deficiency throughout the District.

2.5 The main concerns with the proposed changes are whether there will be sufficient money to meet the full infrastructure costs given that at the best only 70% of PGS will be retained locally; how the money will be apportioned between the different parties, including the County Council and other third parties such as the Primary Health Care Trust, who have in the past been signatories to certain relevant S106 agreements; and finally the resource implication if the Council is responsible for programming, specifying and procuring relevant items of infrastructure.

2.6 A further issue is, if there are any shortfalls in funding, which authority will be responsible for setting the priorities. This is particularly important if the PGS money is allocated to several parties, with each party being responsible for providing infrastructure within their own service areas, which would make it less likely that the public bodies would pool resources and agree priorities for the provision of infrastructure.

3 Valuing Planning Gain

3.1 This consultation paper sets out details of the valuations that will be needed for the PGS, focusing on difficulties that may arise, and seeks views on what will be required. It is proposed that the PGS should be based on the uplift in value arising

from the planning process, and the PGS charge would be calculated by applying the PGS charge to the amount of uplift. Developers will be required to make a self-assessment of their PGS liability and submit a PGS return to HMRC, including their valuations, and these will be checked by HMRC. The Government proposes to issue further valuation guidance and draft legislation, which will be subject to further consultation.

3.2 The paper gives detailed guidance on the property and interest to be valued, the valuation date, the Planning Value and Current Use Value, and the proposed approach in instances where development has started and the details of the development change. Each section highlights potential difficulties, includes worked examples and seeks views on specific issues. The final section explores the issues raised on valuation methodology in the previous consultation, and indicates that the appropriate method of valuation should be left to the valuer's judgment, depending on the type of property or development, and the availability of useful comparable evidence, and land sales at a date around the PGS valuation date. The Royal Institute of Chartered Surveyors is expected to issue a Valuation Information Paper on the valuation of development land, and this should provide guidance to valuers on the most appropriate method of valuation in different circumstances.

3.3 Officer Comment: It is important that the valuations take into account any relevant planning conditions, specially conditions that seek to ensure that a high standard of sustainable design is achieved, which impose their own costs on a development, that are not always reflected in the value of the completed development. For example achieving high environmental standards, such as 'BREEAM eco-homes excellent or very good', is not always reflected in the selling price of a new house. In other words PGS should not act as a disincentive to develop radical new solutions towards meeting the sustainable communities' agenda. At West of Waterlooville for example the developers are proposing to push the boundaries of sustainable design, and provide 40% affordable housing, which is adding significantly to the development costs, and this has influenced the S106 negotiations, (although at the present time the developers are offering £31, 650,000 by way of S106 contributions).

3.4 It is also essential that PGS is calculated against the value of the development as a whole, and not just the component land uses. This is particularly important in mixed use developments, and other developments where there is an element of cross subsidy, with a more valuable land use such as residential effectively cross subsidising lower value land uses.

4 Paying PGS

4.1 This consultation paper sets out the framework that the Government proposes to introduce to administer the PGS, comprising:

- a system administered by HMRC and the Valuation Office Agency (VOA);

- the use of self-assessment procedures, as with the administration of other taxes.

4.2 The proposed structure for administering PGS has taken into consideration the views of residential and commercial development companies of varying sizes, and those of local authorities involved in the planning process. It also takes into account lessons learned from the administration of earlier development gains taxes. The proposals in the consultation paper are part of a continuing dialogue.

4.3 The PGS process is proposed to start at the time when full planning permission is obtained, when the amount of planning gain would be determined, using the valuation methodology. The developer would then submit an on-line application to the HMRC to issue a PGS Start Notice before the development is due to start, accompanied by a PGS return in the form of a self-assessment for PGS liability. HMRC would check the valuations, and development could then commence on receipt of a valid PGS Start Notice. The PGS would be payable to HMRC before development commenced, and within 60 days of the Start Notice being issued. Penalties would be payable for late payment, and a PGS Stop Notice issued in any case of continued failure to make payment. HMRC intend to make information available publicly about the status of the PGS payment on each development, and the paper suggests alternative ways of doing this.

4.4 It is not proposed that Local Planning Authorities would be involved in the day-to-day collection of PGS, but they would be required to supply information on relevant planning permissions. HMRC would notify local planning authorities of the issue of relevant PGS Start and Stop Notices. The paper concludes that it would not be appropriate to offer a pre-commencement agreement service, as it would be costly and difficult to administer.

4.5 Where developments are constructed in phases, it is proposed that each phase would be subject to a separate PGS liability. Where the details of a scheme change and a new full planning permission is required, its implementation would constitute a new PGS charging event, requiring revised valuations and a new PGS Start Notice.

4.6 Officer Comment: In considering the phasing it will be important to define what constitutes a phase, to ensure that the amount of development in each phase is not set too low. For example the development of 2,000 dwellings at West of Waterlooville will naturally fall into 5-6 phases. However within each phase the developers will no doubt build out 20-50 dwellings at a time depending on market conditions. If the latter was considered to constitute a phase it could result in the PGS coming forward in a trickle. For example at West of Waterlooville PGS might come forward at a rate of 20 x 100 payments making the provision of the supporting infrastructure harder to plan for and provide.

4.7 There might also be a case for valuing employment land differently, so as not to act as a disincentive towards providing buildings for employment uses, much of which is currently built speculatively. The current strategy proposed for South Hampshire in the draft Regional Spatial Strategy is for economic led sustainable growth. However there is an acknowledgement that even in the relatively prosperous South East it can be difficult to bring forward the right type of employment land in the right location. It might therefore be expedient to levy the PGS on any employment uses once a development is occupied rather than on commencement. Similar considerations may apply to other lower value uses, particularly some facilities and services.

5 Changes to Planning Obligations

5.1 The 2005 consultation paper accepted Kate Barker's rationale, that planning obligations should be scaled back to cover only "direct impact mitigation" plus affordable housing. The aim was to increase certainty around the costs of contributions required, and reduce negotiation costs.

5.2 The 2005 paper consulted on some suggested principles for such a system, and the Government has received a large number of responses on them. Respondents were generally supportive of the proposal to limit the scope of obligations to the

"development site environment", but raised a number of specific concerns. The current consultation document takes account of the issues raised, and elaborates on the Government's proposals, seeking views on the aspects not covered in detail in the earlier document.

5.3 The new system set out in the current consultation 'Changes to Planning Obligations' proposes that planning obligations would still be negotiated but only for limited infrastructure related directly to the physical environment of the development site or to provide affordable housing. This would include measures to make the development of the site acceptable and would be defined in a set of criteria which set out the scope of acceptable planning obligations. This is called the 'development site environment approach'. It specifically would not include requirements related to a site's social and community infrastructure.

5.4 The paper includes an overview of the current system, recognising recent improvements through Circular 05/05 and guidance on Planning Obligations issued in August 2006. However, it points out that the introduction of the PGS would give rise to the need to review the scope of planning obligations.

5.5 Section 4 of the paper sets out the Government's proposals and seeks views on the future scope of planning obligations, as follows:

5.6 **The "development site environment" approach:** Following consideration of the responses and further discussions with stakeholders, the Government's proposed scope for planning obligations remains that of the "development site environment approach", and they will consult further on how provisions are to be included in legislation. It is proposed that the future scope of planning obligations will be defined in legislation, using a set of criteria-based tests, based on the principles that define the relationship between the developer's contribution and the development (see Box 7 of the Paper). The reason for choosing this approach was that they considered it to be likely to be the most responsive to site-specific circumstances.

5.7 Concern had been raised about the provision of measures required after the consideration of environmental assessments required under European legislation. The Government anticipates that most works to mitigate harmful environmental effects would still fall within the scope of planning obligations. Where works would fall outside this scope, the Government considers that the decision maker would need to take account of commitments to provide infrastructure in public bodies' plans.

5.8 **Contributions of land for community facilities on large sites:** The suggested criteria to define the scope of planning obligations indicate that contributions towards community and social facilities would not in future be included. However, the Government recognises that a separate decision is needed on the treatment of the land on which the facilities are located. They argue that excluding land for these facilities from the scope of planning obligations would create a simpler, faster process, but it might be outweighed by the need for parallel negotiations for land lease or purchase. Their inclusion within the scope of planning obligations would ensure that facilities were integrated within developments, but this would result in lengthier negotiations.

5.9 **Affordable housing:** Circular 05/05 notes that the seeking of affordable housing contributions was not related to the usual "impact mitigation" role of planning obligations, but was instead related to their role in "prescribing the nature of development", particularly its mix of housing tenures. The 2005 consultation set out its intention to accept Kate Barker's recommendation and retain affordable housing

contributions within the future scope of planning obligations. This was considered essential to ensure future access to land for affordable housing, and to deliver mixed communities in high value areas where land would otherwise be difficult to secure. In the responses there was concern that the retention of affordable housing within the planning obligations system could undermine the objectives of speedy negotiations and predictability for developers. The 2005 consultation paper proposed seeking greater consistency of approach between local authorities.

5.10 The current consultation paper identifies the two main areas that would have the greatest impact on improving the system. These are the statutory and policy basis for securing affordable housing contributions, and giving greater certainty over the value of the contribution that developers are expected to make.

5.11 **Legal and policy basis for affordable housing contributions:** The paper indicates a need to review whether improvements could be made to the current legal basis for planning obligations, to make clearer their intended use for affordable housing contributions. There would also need to be a clear policy statement on the provision of affordable housing through planning obligations, and in particular Local Development Frameworks would need to make clear the link between housing need, planning policies and the developer contribution being made – a link that the Government considers has not always been clear in the past. There is to be a further consultation on this issue, at the time draft regulations and Circulars for implementing the new regulations are issued.

5.12 **A common starting point for the value of developer contributions for affordable housing:** A further criticism of the current arrangements is that, although the application of the LDF policy to a new development may specify the mix of housing to be delivered, and the developer is expected to deliver the affordable units alongside the market units, the value of the contribution that the developer is expected to make is often not clear. The lack of clarity can result in protracted discussions and therefore the Government is proposing the introduction of a common starting point in negotiations for the value of developer contributions to affordable housing. This is to be implemented through Local Development Frameworks. The Government considers that a reasonable starting point for negotiations would be a developer contribution in the form of, or equivalent to the value of, the land needed to support the required number of affordable units on the development site. Stakeholders' views are sought on this, and the Government will also be undertaking a short research study to ascertain the values of contributions currently being made, and the implications of a common starting point for a range of schemes.

5.13 However, the Government would want to allow for the negotiation of alternative outcomes, where they can be justified, but the main objective should be the promotion of predictability. The presumption would continue that, whatever common starting point of contribution is established, affordable housing should continue to be delivered by the developer, and on-site wherever possible. Therefore, in many cases, the developer's contribution should be the land on which the affordable units would be built. For flats or "pepper-potted" units the contribution may need to be calculated on an equivalent basis, possibly using a formula. Exceptionally, where provision is made off-site, the contribution should normally be equivalent in value to that of a common starting point for an on-site contribution. The Government has indicated that these circumstances will be the subject of a future consultation on the application of the policy.

5.14 The paper indicates that the use of a common starting point for the value of developer contributions would require consideration of how agreement could be reached on the value of the land in question. Local authorities would be expected to build on existing methods of assessing land values and there should be synergies with the valuation methods for calculating PGS liability.

5.15 **Use of planning obligations / highways agreements for managing the transport impacts of new development:** This section of the consultation paper refers back to the 2005 consultation paper, which proposed limiting obligations to matters necessary to secure accessibility of a site. The current consultation paper, however, highlights the need to develop this further in order to meet the Government's wish to manage transport demand and to encourage the public sector to deal with infrastructure more strategically. It therefore seeks views on which aspects of transport provision might best be included within planning obligations in future and which might be better dealt with using PGS and other revenues.

5.16 The consultation paper then sets out details of the issues concerned with demand management measures and developer contributions towards the cost of highway improvements. It also considers options for developer contributions towards other modes of transport.

5.17 These are detailed matters primarily for consideration by the Highway Authority, and do not directly affect this Authority's responsibilities.

5.18 Officer Comment: Unlike S106 agreements which only apply to a relatively small number of developments, PGS will be charged on all new development. Whether this will result in more or less funding for infrastructure at a local level, will depend on the rate set, and whether this compensates for the 30% top-sliced to pay for regionally important infrastructure. In the context of West of Waterlooville the loss of 30% funding would have resulted in a shortfall of funding of at least £9.5 million, and more if the rate for PGS is set at a lower rate than that currently being offered by the developers.

5.19 Furthermore the new system does not encourage the developers to provide the necessary infrastructure themselves. It will be up to the public sector to procure the necessary infrastructure funded through PGS, and this could lead to infrastructure provision being out of step with development.

5.20 Much of Winchester District is covered by environmental designations of national importance. Any significant development must be accompanied by an Environmental Impact Assessment which identifies all the potential significant environmental impacts consequent to the proposed development, and the measures needed to adequately mitigate their impact. In the case of developments which impact on sites of international importance under the Habitats Directive, the proposals might also need to be accompanied by an Appropriate Assessment. Section 106 agreements have traditionally been the means of ensuring that the impacts are properly mitigated, either through the developers undertaking the necessary works, or through the developers providing an agreed sum of money to enable the local authority to undertake the works. The proposed system limits the type of S106 contribution sought for off-site mitigation. These requirements are enshrined in legislation, much of which emanated from Europe. It is therefore questionable whether the local planning authority could legally approve an application unless all the proposed mitigation had been secured, which could create problems where significant off-site mitigation might be required.

5.21 A criteria-based approach is suggested by Government as the best way of defining the scope of planning obligations. This would appear to be the most appropriate approach but there would be concerns about the exclusion of all community and social facilities. In this District, this would result in the need to modify or abandon the Council's Open Space Funding System, which relies on the off-site provision of most facilities through an equivalent financial contribution, and on-site provision "in-kind" is normally required for recreational as well as amenity space in developments as small as 15 dwellings. It is difficult to see how this could be achieved under the new proposals, and still achieve provision where it is required. If criteria are used, they need to allow for on-site provision of such facilities where appropriate. It is not clear how the Council should respond when determining a planning application where the funding and phasing of an essential piece of infrastructure, such as a school, is not resolved.

5.22 It is also suggested that land for community facilities on large sites could be included in the scope of planning obligations, and this would be supported. However, there is uncertainty over whether PGS would be adequate to fund the facilities themselves.

5.23 A number of issues relate to the provision of affordable housing. The proposals to establish a clear legal and policy basis for affordable housing, and to establish a common starting point for the value of affordable housing contributions, would be supported. It is important to improve certainty and predictability, and the proposals have great potential for improving supply and reducing grant requirements. The presumption in favour of on-site provision is strongly supported.

5.24 Views are also sought on whether there would be any unintended consequences of the above approach. While trying to extract too much in the way of contributions from a development may stifle delivery, because of the great variation in values across the country, there is a risk that a *one size fits all* approach that tries to ensure deliverability in all areas may result in high costs and grant requirements in high value areas. This would impact on affordable housing supply in that area (both types and numbers). There is merit, therefore, in considering whether the common starting point should be set by Regional Housing & Planning Boards rather than centrally. Alternatively, it would be necessary to rely on LDF thresholds and percentages to take account of local circumstances.

5.25 It is important to have the ability to negotiate local solutions (para 54), and right that the onus is on the developer to demonstrate negative impacts on viability. There is, however, the prospect of a tension between local and sub-regional objectives. Locally agreed flexibility may impact on certainty and the delivery of more strategic objectives. There does, therefore, need to be clear guidance on when flexibility is appropriate.

5.26 Views are also sought on a recommended common starting point for the negotiation of affordable housing provision. It is considered that a **free, clean and serviced land** approach can work well (it is important that these terms are all defined very clearly to ensure certainty). It strikes a balance between maximising the "take" from the landowner/ developer, which may impact on viability or the proportion of affordable housing secured, and a weaker approach that would generate higher grant requirements, poor tenure mix or poorer management. It also meets the Government's objective of simplicity and is in tune with their desire to see PGS levied at a modest rate.

5.27 It is worth noting that there is considerable evidence that indicates that RSLs are being pressured into paying significantly higher than normal build costs with a knock on impact on grant requirements. In part this is due to developers trying to increase profit above normal levels, however part is also due to developers trying to recover some of their outlay on land they have acquired at a cost only to subsequently have to concede that the land should be passed on free to a RSL. Creating a common starting point will go a long way to addressing the second point. Further thought needs to be given to addressing the first point. Example (e) in Box 8 of the consultation paper may offer an alternative. However, there is a danger of knock on implications for viability or supply, particularly in low value areas. A common method of determining build costs would remove the upward pressure, would result in significant savings to the public purse in terms of grant requirements, and speed up delivery.

(a) In high value areas such an approach should not have a negative impact on development viability as the landowner bears the cost rather than the developer. In lower value areas, although the same should be true, in theory there may be some sharing of the burden by the developer (with a knock on impact on profit/viability), or the owner may decide not to sell if the housing value is not, or not significantly, greater, than the existing use value, or if there is a more beneficial alternative use value (see comments on Q. 6).

(b) As affordable housing delivery is inextricably linked to the development of market housing, the main challenge is to set a common starting point which does not impact on the overall housing supply. Experience indicates that the free, clean, serviced land approach is unlikely to impact on delivery, particularly in high value areas. Uplifts are still sufficient to tempt land owners to sell, and developer viability is not affected.

5.28 Consideration also needs to be given to how the common starting point approach could be applied to cases where there is no land transfer involved, e.g. a Housing Corporation Accredited developer builds and continues to own the affordable properties.

6 Conclusions

6.1 There are a number of detailed concerns about each of the consultation papers, and the recommended comments are set out in Appendices A, B and C. The Portfolio Holder for Planning and Transport is requested to endorse these comments, for submission to HM Revenue and Customs and the Department of Communities and Local Government as soon as possible.

FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE

None.

DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED

N/A

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

N/A

Approved by: (signature) **Date of Decision**

Councillor Keith Wood – Portfolio Holder for Planning and Transport

Appendix A

Comments of Winchester City Council to H M Revenue and Customs

on "Valuing Planning Gain"

It is important that the valuations take into account any relevant planning conditions, especially conditions that seek to ensure that a high standard of sustainable design is achieved, which impose their own costs on a development, that are not always reflected in the value of the completed development. For example achieving high environmental standards, such as 'BREEAM eco-homes excellent or very good', is not always reflected in the selling price of a new house. In other words PGS should not act as a disincentive to develop radical new solutions towards meeting the sustainable communities agenda.

It is also essential that PGS is calculated against the value of the development as a whole, and not just the component land uses. This is particularly important in mixed use developments, and other developments where there is an element of cross subsidy, with a more valuable land use such as residential effectively cross subsidising lower value land uses.

Appendix B

Comments of Winchester City Council to H M Revenue and Customs

on "Paying PGS"

In considering phasing of developments, it will be important to define what constitutes a phase, to ensure that the amount of development in each phase is not set too low. For example, a development of 2,000 dwellings will naturally fall into 5-6 phases. However, within each phase, the developers will no doubt build out 20-50 dwellings at a time depending on market conditions. If the latter was considered to constitute a phase, it could result in the PGS coming forward in a trickle. For example, PGS might come forward at a rate of 20 x 100 payments, making the provision of the supporting infrastructure harder to plan for and provide.

There might also be a case for valuing employment land differently, so as not to act as a disincentive towards providing buildings for employment uses, much of which is currently built speculatively. The current strategy proposed for South Hampshire in the draft Regional Spatial Strategy is for economic led sustainable growth. However there is an acknowledgement that, even in the relatively prosperous South East, it can be difficult to bring forward the right type of employment land in the right location. It might therefore be expedient to levy the PGS on any employment uses once a development is occupied rather than on commencement. Similar considerations may apply to other lower value uses, particularly some community facilities and services.

Of primary concern in introducing PGS is whether 70% PGS will be sufficient to meet local infrastructure costs, and the complexities and resources that would be involved in apportioning funds between different parties. There needs to be further explanation of how PGS funds would be returned, including justification for the 70%/30% split, and an explanation of what would be included within regional infrastructure.

Appendix C

Comments of Winchester City Council to the Department of Communities and Local Government

on "Changes to Planning Obligations"

Consultation questions

1. Do you agree that a criteria-based approach to defining the scope of planning obligations is the best way forward? If not, what approach would you recommend?

The justification for limiting the scope of future planning obligations is to simplify and speed up the process. However experience in Winchester suggests that the greatest delays are often encountered in securing agreement over off-site highways improvements and affordable housing. No evidence has been produced that conclusively demonstrates that the current delays in negotiating a S106 agreement are a direct consequence of the number of items it seeks to cover. Or that including social and community infrastructure within the scope of planning obligations, as set out in Box 7, would add significant delays to concluding an agreement.

The City Council is of the opinion that a criteria based approach can only work if social and community infrastructure are included within the scope of planning obligations. This is particularly important within the context of creating sustainable communities. Large scale developments will be expected to contain a significant proportion of affordable housing (up to 40% in the Winchester District), together with a mixture of house sizes and types, to appeal to all sectors of the community. To ensure that such a diverse community in terms of incomes, age and family size, is cohesive and fully integrated, it is essential that the full range of community infrastructure and support is in place. This will include provision for sport and recreation; health facilities; education; and community development.

Planning to deliver this infrastructure would be particularly difficult where the private sector or other bodies will be the main provider, i.e. certain sports and leisure facilities; pre-school education; and health facilities. Presumably these parties would have to conclude a separate deal with the developers, and it is not clear how the council would ensure that such essential services are properly phased and provided.

By widening the scope of the matters to be included in the new development-site environment approach to planning obligations, it will give the developers the option of providing the necessary social and physical infrastructure themselves. Experience with major developments has consistently shown that developers can provide the relevant infrastructure at a significantly lower cost, to the same or higher standards. This is because of the economies of scale in large developments; sharing design and construction costs; and a simplified procurement process. Where it can be shown to represent greater value for money it seems perverse that a developers should be required to pay PGS to provide essential infrastructure when they are better placed to provide it themselves.

By excluding social and physical infrastructure from within the scope of planning obligations, this moves the responsibility from ensuring that a development meets all its needs from the developers to the local authorities. Currently the obligation on behalf of the developer to ensure that all the necessary social and physical infrastructure needs are met can result in a flexible and sometimes innovative approach to their provision. For example, in one major development in Winchester, a local GP practice (rather than the PCT) will be responsible for building and managing the health facilities, which will serve both the development and wider community. To resolve issues regarding the funding of this facility, the current proposal is for the developers to build the centre, and the doctors will initially purchase the building (at cost, which is below the previous estimates) on a shared equity basis, with the practice acquiring the remainder of the equity when patient lists increase and other health facilities take up space in the centre. It is difficult to envisage how such a radical solution to a difficult problem could be reached if the obligation is for the local planning authority to ensure that health provision is met through PGS.

In conclusion there would appear in practice to be few tangible benefits from overly restricting the scope of planning obligations, and the complexities of ensuring that the necessary social and community infrastructure is provided in a timely and cost effective manner could create delays and uncertainties that more than offset any benefits of a simplified system. Furthermore, it is by no means clear how the Council should respond in determining a planning application where the funding and phasing of an essential piece of infrastructure has not been secured. In addition, social infrastructure may take a lower priority if PGS funds are limited and may not be provided at all.

2. Do you agree that the scaling back of planning obligations will not undermine the operation of EIAs for the reasons set out above?

Much of the Winchester District is covered by environmental designations of national importance. Any significant development must be accompanied by an Environmental Impact Assessment which identifies all the potential significant environmental impacts consequent to the proposed development, and the measures needed to adequately mitigate their impact. In the case of developments which impact on sites of international importance under the Habitats Directive, the proposals might also need to be accompanied by an Appropriate Assessment.

Section 106 agreements have traditionally been the means of ensuring that the impacts of the development are fully assessed and properly mitigated, either through the developers undertaking the necessary works, or through the developers providing an agreed sum of money to enable the local authority to undertake the works. In a proposed Major Development Area in Winchester, there is a potentially adverse impact on Brent Geese, a protected species. The measures to mitigate the potential impact agreed in principle by Natural England involve land outside the development site. The proposed system seeks to limit the type of planning obligation sought for off site mitigation. The requirement to avoid harming protected species and their habitat is enshrined in legislation. It is therefore questionable whether the local planning authority could legally approve an application without having a means to ensure that all the proposed mitigation had been secured. This could create problems where significant off-site mitigations might be required, which is very often the case with large developments.

3. Do you think that land for public or community facilities on large sites should be included in the scope of planning obligations in future, or excluded? How should "large" sites be defined?

It is essential that land for social and community facilities on large sites, and where appropriate in mixed use developments are included in the scope of planning obligations. There would be the potential for serious delays in the provision of necessary infrastructure if the local authorities had to negotiate separately to purchase the land. This is apart from the resource implications in both staff time and the costs of acquiring the land.

The timing of the negotiations would be an issue, if they had to be concluded to ensure that the land was available before a decision could be made. This in turn could create problems in funding the purchase of the land sometimes well in advance of the relevant phase of the development commencing.

In some developments, community and social facilities are provided within new local or district centres as part of a mixture of commercial and community uses. Negotiating to purchase floorspace in a mixed use development could add to the complexity and delays in providing certain social infrastructure.

'Large site' would not normally need defining, if the development requires a certain level of community facilities then by implication it is a large site.

4. Do you agree with the proposals to establish a clear statutory and policy basis for affordable housing contributions?

Yes. The Local Development Framework would need to make clear the link between housing need, planning policies and the developer contribution. It is noted that there will be further consultation on this issue.

5. Do you agree with the proposals to establish a common quantum for such contributions?

Yes, it is important to improve certainty and predictability. This has great potential for improving supply and reducing grant requirements. The presumption in favour of on-site provision is strongly supported.

6. Can you envisage any unintended consequences of the above approach?

While trying to extract too much in the way of contributions from a development may stifle delivery, because of the great variation in values across the country there is a risk that a *one size fits all* approach that tries to ensure deliverability in all areas may result in high costs and grant requirements in high value areas. This would impact on affordable housing supply in that area (both types and numbers). There is merit, therefore, in considering whether the common starting point should be set by Regional Housing & Planning Boards rather than centrally. Alternatively, it would be necessary to rely on LDF thresholds and percentages to take account of local circumstances.

It is important to have the ability to negotiate local solutions (para 54), and right that the onus is on the developer to demonstrate negative impacts on viability. There is, however, the prospect of a tension between local and sub/regional objectives. Locally agreed flexibility may impact on certainty and the delivery of more strategic objectives. There does, therefore, need to be clear guidance on when flexibility is appropriate

7. What common quantum would you recommend? What would be the impact of this option on a) development viability and b) affordable housing delivery?

A **free, clean and serviced land** approach works can work well (it is important that these terms are all defined very clearly to ensure certainty). It strikes a balance between maximising the "take" from the landowner/ developer, which may impact on viability or the proportion of affordable housing secured, and a weaker approach that would generate higher grant requirements, poor tenure mix or poorer management. It also meets the Government's objective of simplicity and is in tune with their desire to see PGS levied at a modest rate.

It is worth noting that there is considerable evidence that indicates that RSLs are being pressured into paying significantly higher than normal build costs with a knock on impact on grant requirements. In part this is due to developers trying to increase profit above normal levels, however part is also due to developers trying to recover some of their outlay on land they have acquired at a cost only to subsequently have to concede that the land should be passed on free to a RSL. Creating a common starting point will go along way to addressing the second point. Further thought needs to be given to addressing the first point. Example (e) in Box 8 may offer an alternative, however there is a danger of knock on implications for viability or supply, particularly in low value areas. A common method of determining build costs would remove the upward pressure, would result in significant savings to the public purse in terms of grant requirements, and speed up delivery.

(a) In high value areas such an approach should not have a negative impact on development viability as the landowner bears the cost rather than the developer. In lower value areas, although the same should be true in theory there may be some sharing of the burden by the developer (with a knock on impact on profit/viability), or the owner may decide not to sell if the housing value is not, or not significantly greater, than the existing use value, or if there is a more beneficial alternative use value (see comments on Q. 6).

(b) As affordable housing delivery is inextricably linked to the development of market housing, the main challenge is to set a common starting point whereby overall housing supply is not impacted on. Experience indicates that the free, clean, serviced land approach is unlikely to impact on delivery, particularly in high value areas. Uplifts are still sufficient to tempt land owners to sell, and developer viability is not affected.

Consideration also needs to be given to how the common starting point approach could be applied to cases where there is no land transfer involved, e.g. a Housing Corporation Accredited developer builds and continues to own the affordable properties.