PERTH AND KINROSS COUNCIL

Enterprise and Infrastructure Committee – 13 June 2012

CONSULTATIONS BY THE SCOTTISH GOVERNMENT ON PROPOSED AMENDMENTS AND IMPROVEMENTS TO THE PLANNING SYSTEM

Report by Executive Director (Environment)

ABSTRACT
This report has been prepared to inform Members of five current consultations issued by the Scottish Government concerning proposed amendments and improvements to the planning system; to highlight relevant content of these documents; and to agree to the recommended responses to the consultations.

1. RECOMMENDATIONS

1.1 The Committee is asked to note the content of the consultations.

1.2 Agree to the recommended responses to the consultations set out in the appendices to this report.

2. BACKGROUND

2.1 This report has been prepared to bring to Members' attention the relevant parts of five separate consultations which have been issued by the Scottish Government concerning changes to the planning system and to propose appropriate responses.

2.2 The closing date for responses to all these consultations is 22 June 2012 and the consultation documents can all be viewed online at http://register.scotland.gov.uk/scotland-planning-and-building-news-alerts/2012/27/29/a3ff005f-0151-4958-b236-a02000de221b
Copies are also available in the Members lounge.

3. CONSULTATION PROPOSALS

3.1 Fees for Planning Applications

3.1.1 Fees for planning applications in Scotland are significantly lower than in England e.g. the maximum fee in England is £250,000 while in Scotland it is just under £16,000. The consultation paper proposes that the current structure and approach is largely maintained but that the fees more accurately reflect the resources required to provide an effective service. It is the aim that planning authorities should receive adequate resources from the planning fee to allow them to carry out their development management functions. The impact of the change is significant as a result of the proposed size of increase in certain fees.

3.1.2 The consultation paper makes it clear that the fee increases proposed are dependent upon sustained improvements in performance by planning authorities. However, there is no indication offered as to how this will be achieved and it is suggested that this will be difficult to measure in practice, given the qualitative as well as quantitative considerations which form part of the planning process.

3.1.3 The proposed changes in relation to the fees are generally welcomed and may be summarised as follows:

- The fee maximum is to be increased from £15,950 to £100,000.
- New categories of leisure, retail and electricity generation (including a distinction between wind farms and all other energy generation projects).
- An increase in the fee for the first house on a development, or first 100sq.m of non residential floorspace. This will be £800 instead of £319.
- Alterations within the curtilage of existing houses will be charged at a lower rate than extensions (£100 and £300 respectively whereas it is currently £160 for both).
- There will be a reduction in fees of 50% for householder developments within Conservation Areas. This will only apply where an existing house lies within a conservation area and the application is for works to the existing house that would have otherwise been "permitted development".
- The removal of the "free go" with a 50% fee proposed for subsequent applications made within 12 months of an application being granted, refused or withdrawn.
- A new 50% fee is introduced for the renewal of planning permissions which have not yet lapsed (currently the full fee is payable).
- A new fee structure for applications to modify planning conditions, making fees proportionate to the size of the development (i.e. according to whether it is Householder, Local, or Major).
- The fees for an incremental increase in floorspace are to be changed so that certain business and commercial development will see fees reduced.
- Fees will increase annually in line with the retail price index.
- The removal of 'permitted development' for agricultural buildings under 465sqm.
- Fees will be inclusive of neighbour notification advertising costs, with the present requirement to recoup costs from the applicant being removed.

3.1.4 It is intended that the fees will cover all aspects of the application including pre-application discussions; preparing 'section 75' (s.75) agreements; enforcement; and the costs associated with administering Local Review Bodies. The consultation makes it clear that no separate charge should be developed to recover these costs by planning authorities. This element is potentially significant for the Council. All s.75 agreements referring to affordable housing are dealt with by a private legal firm on behalf of the Council, with their fees recovered from the applicant. If this cannot occur, the Council as planning authority would need to pay the fees of a private firm and would be required to deal with all legal agreements in-house without the recovery of costs.

3.1.5 As regards the costs of Local Reviews, it should be suggested to the Government that an appellant could be required to pay a fee in the form of a deposit which would be refunded if the decision was overturned. This may assist in reducing the number of frivolous requests for a review.

3.2 Development Delivery

3.2.1 This consultation seeks initial views from all sectors of the development industry in relation to the current issues and opportunities for facilitating development and infrastructure provision. It represents Stage 1 of the Scottish Government's consultation process on 'Development Delivery'. The purpose of the consultation is to garner views on the efficiency of current processes in delivering development and to invite views on what could assist the delivery of development and infrastructure.

3.2.2 This consultation is welcomed by Perth and Kinross Council as it highlights the shortfalls in the current system with regards to infrastructure provision and mitigating the impact of new development. The main issue in the development industry is a lack of available upfront finance to fund necessary infrastructure. The Council welcomes the opportunity to further explore innovative finance options and promote partnership working with the development industry and other infrastructure providers to streamline the planning process while providing greater certainty to all stakeholders.

3.2.3 Planning obligations agreed through a Section 75 Legal Agreement can cause major delays in the issuing of planning consents. A greater use of Planning Conditions to secure planning obligations would speed up this process but would require a revision of Circular 4/98 Planning Conditions.

3.3 Development Plan Examinations

3.3.1 Concerns have been expressed about the revised examination process for development plans following experience since this was amended through the 2006 Planning Act .The Scottish Government notes that in terms of efficiency, the revised arrangements for examinations, which seek to limit the use of unnecessary oral hearings and cross examination and to front-load the submission of evidence, has generally seen a significant improvement on previous practice. In the past, local plan inquiries took on average 70 weeks. Recent plans have taken on average 24 weeks. However, a few more complex examinations have taken considerably longer than 24 weeks with one approaching pre-reform timescales of 70 weeks.

3.3.2 The "binding" nature of reporter's recommendations, particularly where additional housing sites have been recommended is, increasingly, proving a source of contention with some planning authorities. Whilst the change was introduced to support stakeholder involvement, some authorities suggest that the imposition of additional development land undermines the role of elected members and the involvement of local stakeholders who contributed to the process.

3.3.3 Development Plan examinations provide the opportunity for unresolved issues to be considered independently. There is potential for stakeholders to have increased confidence in a plan which is endorsed. There is also an opportunity to ensure that the approach set out in the plan reflects strategic and Scottish Planning Policy. However, Local Development Plans are essentially a matter for the planning authority. Where the examination process becomes particularly contentious, lengthy and expensive the reputation of the planning system can be damaged and economic growth delayed.

3.3.4 Given the importance of delivering up to date development plans the Scottish government want to take views on stakeholder experience to date to inform a decision on whether current arrangements should be altered. The consultation seeks views on how the development plan examination process is operating and on a range of possible options to improve the process.

3.4 Options for Changing the Examination Process

3.4.1 The four options set out below concern either the binding nature of the reporter's recommendation or the examination process more generally.

3.5 Option 1: Improving Current Practice

3.5.1 Promotion of good practice, improved project management or minor adjustments to administrative arrangements in the process leading up to submission may allow for a more streamlined examination. As indicated above, some delays have arisen because reporters have concluded that some proposed plans did not address housing land issues effectively. Rather than seek to remedy failings in a proposed plan such as the identification of sufficient housing land, reporters could complete the examination and return the plan to the authority recommending adoption of the plan but highlighting the need for the authority to address an issue, such as provision of additional housing land allocations. This would enable most of the policy proposed in the plan to proceed, including proposed land allocations but highlight a shortcoming. It would avoid the need for reporters to explore, consult and determine which additional development sites should be added to the plan. This would be left to the planning authority where such a need was identified.

3.5.2 This could be a considerable time saving and would be welcomed but there needs to be consideration over the means for a Planning Authority to make the required improvements as set out by a Reporter. There is no longer the ability to make an Alteration to a Development Plan in advance of the full review, the options are therefore to make changes by Supplementary Guidance or initiate an early review. The former allows a Planning Authority to bring forward changes but removes the right of the public to have their representations assessed by an independent arbitrator. The latter in unlikely to be practical for a Planning Authority and because of the various requirements of the legislation make it challenging enough to meet the 5 yearly review maximum.

3.5.3 The following compromise is suggested - to require the modifications to be dealt with by Supplementary Guidance but rather than the Council considering unresolved issues they are referred to the reporter, for independent scrutiny.

3.6 Option 2: Greater Discretion to Depart from the reporter's recommendations

3.6.1 This option would allow planning authorities greater scope to set aside reporters' recommendations if the authority could provide clear reasons to demonstrate that these were not in the interests of the areas they were elected to represent. This could mean reverting to past practice where representations were considered and supported by reporters but on occasion overturned by the planning authority. Some criticised this approach as it was seen as undermining public confidence in the system. Authorities would be expected to provide clear reasons for such departures but would retain more control over the final plan than is currently perceived to be the case. This option would require changes to primary legislation.

3.6.2 From a local authority point of view this would be welcomed, as many feel local decision making on local issues is being taken away from the locality. From a public point of view there are likely to be as many times when this is welcomed as there are occasions where they feel the independent review is a sham unless the findings are binding. Perhaps there would be the opportunity for Reporters to split their recommendations into issues of more than local significance where no variation was allowed and more local issues where adopting their recommendations could be optional subject to a robust justification.

3.7 Option 3: Restrict the scope of the examination

3.7.1 At present the examination process focuses on matters raised in representations which have not been resolved. Were the planning authority enabled to define the matters it sought to be considered through the examination process, there is potential for less time and resource to be involved than is the case at present. It is not clear how much time would be saved in this way and there may be some loss of confidence in the process by stakeholders. Scope could be restricted in other ways, for example to focus only on the plans compliance with the National Planning Framework and with the strategic development plan to ensure a shorter, more focused, process.

3.7.2 This would require changes to secondary and possibly primary legislation and could reduce confidence in the system. This option is not therefore favoured.

3.8 Option 4: Remove the independent examination from the process

3.8.1 In this option the planning authority would consider representations made to the proposed plan. They would then adopt the plan, with or without modifications. The adoption process would be accompanied by a statement by the planning authority setting out its consideration of all representations made to provide clarity on those which have resulted in a modification being

made and reasons for setting aside others. This would provide clear and transparent reasons for the planning authority's final position on the plan.

3.8.2 This option would greatly reduce the time and cost associated with plan preparation but could erode stakeholder confidence and increase the risk of a plan being challenged. Some may be concerned that this approach would not ensure that plans accord with national and strategic policy. This option is not therefore favoured.

3.9 **Miscellaneous Amendments to the Planning System**

3.9.1 This consultation is part of the renewed planning reform programme announced on 28 March 2012 and it is to seek views on draft legislation for a number of refinements and amendments to the procedures on development management, schemes of delegation, local reviews and appeals. The Scottish Government want the changes to ensure that the requirements of the system are clear, proportionate and fit for purpose. The proposals may be summarised as follows:

3.10 Statutory Pre-Application Consultation Requirements and Applications to Modify Planning Conditions

3.10.1 It is proposed to make Pre-Application Consultation (PAC) by prospective applicants with the local community more proportionate in relation to applications to amend existing planning permissions for major developments. Both planning authorities and developers have had concerns that the requirement to wait 12 weeks and hold public events is often disproportionate to the proposed amendment. The Government have therefore proposed to remove PAC requirements for such applications.

3.11 **Neighbour Notification and Advertising of Planning Applications**

3.11.1 It is proposed to streamline the planning process and make it more proportionate by reducing the instances when a planning application needs to be advertised and by removing the bureaucracy around cost recovery of advertising charges.

3.11.2 Notices also require to be published for a range of other planning issues. These include for environmental impact assessment (EIA); for stages in the development plan process; and for more specialist consents including listed buildings, conservation areas and hazardous substances. The Scottish Government are interested in views on the current publicity arrangements and whether they are considered effective and proportionate.

3.12 Delegation of Planning Authority Interest Cases

3.12.1 Regulations prevent the delegation of applications in which the planning authority has an interest (as applicant or as owner of or having a financial interest in the land to be developed); or which have been made by elected members. Many applications for relatively minor developments, which would

previously have been delegated to an officer for decision, have therefore had to be referred to committee for a decision. This delays decisions and diverts planning authority resources.

3.12.2 Most Councils have their own thresholds or criteria which result in applications which attract significant levels of objection, or depart from development plans, being decided by committee. The Scottish Government propose to remove the current requirement to prevent the delegation of applications where the Council have an interest. This is a welcome step in terms of the committee's workload.

3.13 Amendments to Local Review Procedures - *Agreement to extend the period for determination of applications for local development*

3.13.1 Under the current legislation, an applicant needs to seek a local review on the grounds of non-determination within three months of the end of the statutory two month period or the ability to do so is lost. Applicants may therefore feel pressed to seek such a review rather than lose that right by waiting a short additional period for the officer's decision. Introducing the power to agree time extensions in such cases would ensure applicants had the flexibility to agree longer decision periods and preserve their right to seek a local review on the grounds of non-determination. In addition, planning authorities often have criteria within their Scheme of Delegation which rely on what may arise during the processing of an application, e.g. numbers or types of objections. It is not always clear at the outset whether an application for local development is one for which an extension to the period for determination can be agreed.

3.13.2 It is consequently proposed that the legislation be amended so that local reviews on the grounds of non-determination can be sought after the prescribed two month period, or after any extended period as may at any time be agreed upon in writing between the applicant and the planning officer. This provision is, on balance to be welcomed.

3.14 Amendments to Local Review Procedures - *Automatic deemed refusal on certain local review cases*

3.14.1 The Planning Act specifies that where an applicant has sought a local review on the grounds of non-determination and the Local Review Body (LRB) does not determine the case within a prescribed period (currently two months), then the planning permission is automatically deemed to be refused and the LRB has no power to make a decision beyond this period, even if the applicant is willing to wait. Other than making another application for the proposal, the applicant's only recourse is to appeal to the Scottish Ministers against this ('double') deemed refusal.

3.14.2 The statutory requirements on local reviews means in practice it is challenging to issue a decision within two months, particularly if any further processes are required. Currently, such cases are therefore likely to be subject to the automatic deemed refusal. To address this issue it is proposed to extend the period for determination of local reviews sought on the grounds of non-

determination of the application to three months. Again this change is welcome.

3.15 Amendments to the Appeals Regulations

3.15.1 The Appeals Regulations do not currently make provision for Scottish Government Reporters to ask for the submission of relatively minor pieces of information which might be needed to help process the case, but would not constitute new evidence requiring the full range of circulation and gathering comments from the interested parties. Consequently, such requests for minor pieces of information can lead to unnecessary use of resources and delay.

3.15.2 It is proposed to amend the Appeals Regulations to allow the reporter to judge whether a fair and transparent process requires such requests for minor pieces of information to be subject to the full procedural requirements of the Regulations. Such a change would assist the planning process.

3.16 Approval of Matters Specified in Conditions (AMSC)

3.16.1 Since August 2009, those conditions attached to 'planning permission in principle' which require the further approval of the planning authority require a formal application. Such applications for AMSC must be neighbour notified and advertised where necessary. They are also subject to statutory requirements regarding the issuing of decision notices.

3.16.2 Concerns have been raised that this can be excessive and disproportionate, particularly in relation to technical issues such as archaeological surveys. Prior to August 2009, only conditions relating to specified "reserved matters" (e.g. landscaping; access arrangements; and the design and location of buildings) were subject to such a formal process. Any other matters covered by conditions but not specified as a "reserved matter" could previously be dealt with by an exchange of letters, albeit with any appropriate consultation having first taken place. There are many instances of technical approvals required by condition which do not justify a formal application process and the relaxation of the relevant Regulations would be welcome.

3.17 General Permitted Development Order

3.17.1 The Scottish Government believes that a well functioning planning system is essential to achieving its central purpose of increasing sustainable economic growth. Considering minor, uncontroversial types of development is not an effective or efficient way of regulating development. Requiring planning applications where the planning system can add little or no value imposes unnecessary costs and delays to development. On the other hand if 'permitted development rights' (PDR) are set too widely then there is a risk of inappropriate development taking place.

3.17.2 The Scottish Government seeks to introduce amendments to existing legislation to take some issues outwith the planning system (e.g. pavement cafes, access ramps and minor extensions to shops and offices), whilst

bringing others under planning control (e.g. new hill tracks). Whilst the impact on the number of applications received is likely to be limited due to the range of restrictions which are proposed to be applied to the PDR, the changes are nevertheless generally welcome. A summary of the key proposed changes is set out below.

Access Ramps	**Class 7G** – New PDR for the formation of an access ramp to any non-domestic building.
Caravan Sites	**Class 17** – Existing rights amended to permit formation of a hard standing.
Electric Vehicle Charging Points	**Classes 7E & 7F –** New PDR for installation of both freestanding and wall mounted charging points.
Hill Tracks	**Classes 18, 22 and 27** – It is proposed to limit PDR for new hill tracks (by removing permitted development for new forestry and agriculture tracks).
Industrial and Warehouse Development	**Class 25** – Existing PDR for creation of hard surfaces amended. Clarification that use for Research & Development is included within the definition of 'industrial building'.
Institutions (Hospitals, Universities, Colleges, Schools, Nurseries, Care Homes)	**Class 7C** – New PDR for the extension and alteration of buildings used as Hospitals, Universities, Colleges, Schools, Nurseries, and Care Homes.
Local Authority Development	**Class 33** – Existing financial limit for works classed as PD increased to £250,000. Construction of flats as PD made possible.
Offices	**Class 7D** – New PDR for minor extensions of office buildings.
Open Air Markets	**Class 15** – Amendment to existing PDR for temporary uses to include use as an open air market (for up to 28 days in any calendar year)
Pavement Cafes	**Class 7H** – New PDR for the provision of a pavement café (with limitations).
Shops and Financial/Professional Services	**Class 7A** – New PDR for the extension or alteration of a shop or a financial services establishment. **Class 7B** – New PDR for the provision of a trolley store within the curtilage of a shop.

4. CONSULTATION

4.1 The Head of Legal Services, the Head of Democratic Services and the Acting Head of Finance have been consulted in the preparation of this report.

5. RESOURCE IMPLICATIONS

5.1 There are no resource implications arising directly from the recommendations in this report.

6. COUNCIL CORPORATE PLAN OBJECTIVES 2009-2012

6.1 The Council's Corporate Plan 2009-2012 lays out five Objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. They are as follows:

(iii) A Prosperous, Sustainable and Inclusive Economy
(iv) Educated, Responsible and Informed Citizens
(v) Confident, Active and Inclusive Communities

7. EQUALITIES IMPACT ASSESSMENT (EqIA)

7.1 An equality impact assessment needs to be carried out for functions, policies, procedures or strategies in relation to race, gender and disability and other relevant protected characteristics. This supports the Council's legal requirement to comply with the duty to assess and consult on relevant new and existing policies.

7.2 The function, policy, procedure or strategy presented in this report was considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:

i) Assessed as **not relevant** for the purposes of EqIA

8. STRATEGIC ENVIRONMENTAL ASSESSMENT

8.1 Strategic Environmental Assessment (SEA) is a legal requirement under the Environmental Assessment (Scotland) Act 2005 that applies to all qualifying plans, programmes and strategies, including policies (PPS).

8.2 The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 by the Scottish Government as the responsible authority.

9. CONCLUSION

9.1 This report has considered five current consultations issued by the Scottish Government concerning proposed amendments and improvements to the planning system and has highlighted the relevant content of these documents. It is recommended that the committee agree to the proposed responses to the questions posed within each of the consultations.

J VALENTINE
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NOTE

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

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Directorate Support Team
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 Council Text Phone Number 01738 442573

APPENDIX 1 Fees for Planning Applications

CONSULTATION QUESTIONS

Question 1: Are there any costs or benefits not identified in the draft BRIA?

No

Question 2: Do you have any information or can you suggest sources of relevant information on the costs and/or benefits detailed in the BRIA at Section C?

No

Question 3: We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial EQIA is attached to this consultation at Section D, for your comment and feedback.

No Comments

Question 4: Do you consider that linking fees to stages within processing agreements is a good or bad idea? What should the second trigger payment be?

Bad Idea. Processing agreements only cover major planning applications and can be potentially problematic to adhere to due to matters outwith the control of both the applicant and planning authority. It could be potentially difficult to chase up a later payment and the consideration of the application may be delayed. Developers are also often unwilling to sign up to the processing agreement for various reasons but also due to the information required to be submitted by them at both the outset and later in the process.

Question 5: Do you agree or disagree with the proposal that where applications are required because permitted development rights for dwellings in conservation are restricted, then a reduced fee should be payable?

Agree ☒ Disagree ☐

Question 6: Do you agree or disagree with the proposal that there should be a separate fee for renewals of planning permission?

Agree ☒ Disagree ☐

Question 7: Do you agree or disagree that the new fee is set at an appropriate level?

Agree ☒ Disagree ☐

Question 8: Do you agree or disagree with the proposal that the fee should increase on an annual basis?

Agree ☒ Disagree ☐

Question 9: Is using site area the best method of calculating fees for windfarms of more than 2 turbines? If not, could you suggest an alternative?

Yes ☐ No ☒

In your response please provide any evidence that supports your view.

Using site area to calculate the planning fee for windfarms creates a potential discrepancy. It is not clear whether the definition of windfarm is more than one, or more than two wind turbines as the question suggests more than two but the Table Scale of Fees suggests one. However, in any event, a windfarm development will be required to pay a rate of £500 per 0.1ha up to a maximum of £50,000. However, on individual turbines the size is the determining factor. Currently there are very few planning applications for wind turbines under 15m in height and therefore the vast majority of individual turbines will be paying the £1,500 or indeed £5,000 if over 50m in height. However it would seem that if you group a 2nd or 3rd turbine it becomes a windfarm and the fee would drop to only £500 if kept within a site area of 0.1ha. There is therefore the scenario of one 55m wind turbine costing a fee of £5,000 but if you apply for two or three of that height within a site of 0.1ha it would cost only £500. For windfarms, a cost per turbine (including height variances) should be used to calculate the fee but perhaps with sliding scale similar to that proposed for large housing developments.

Question 10: We seek views on our intention to amend The Electricity (Applications for Consent) Regulations, and specifically on the following:

a) Should the fee for applications >50MW be set in line with those <50MW?

Yes ☒ No ☐

b) Should the application fee be capped at £100,000?

Yes ☒ No ☐

If not what should the fee level be capped at?

N/A

c) Should applications for thermal generation stations incur a larger fee?

Yes ☐ No ☒

Question 11: Please list any types of developments not included within the proposed categories that you consider should be.

None

Question 12: We would welcome any other views or comments you may have on the contents and provisions on the new regulations.

- Question 6, proposing a reduced fee for renewals of planning consent. Whilst it is accepted that there is often less work involved for the Planning Authority there can be less opportunity for the neighbouring community to comment and it does nothing for the economy if people sit on planning consents without developing. It is considered that offering a reduced fee will encourage renewals rather than stimulate growth.
- Question 7 the removal of the “free go” with a 50% fee for

subsequent applications made within 12 months of an application being granted, refused or withdrawn. The reduced fee will be a disincentive for applicants to withdraw, officers to put out a quick refusal on lack of information or small design changes required. At present when Local Authorities can offer the “free go” applicants are more willing to withdraw and resubmit later With a fee to pay even a reduced fee of 50% it is considered that performance will be reduced.

- Consideration should be given to an increased planning fee for retrospective planning applications as a means of dissuading people from undertaking unauthorised works. By the time a retrospective planning application is submitted there tends to have been significant enforcement work and concerns from the local community. The public and Elected Members do not understand why it can be acceptable to submit a retrospective planning application and then have it approved. Perhaps with an increased fee the number of retrospective planning applications would reduce.
- A similar problem to that raised regarding wind turbines is foreseen under the housing fees for “in principle” development. If an applicant applies for one house in principle the fee will be £800 but if they apply based on the site area, providing the site is less than 0.1 ha the fee will be £500. This anomaly needs to be resolved by starting the first 0.1 ha at £800
- Currently a charge is made by this Planning Authority for the preparation of Legal Agreements. It is considered that to have this included in the planning fee will have major resource implications for the Council’s Legal Service.
- Can an appellant be required to pay a fee in the form of a deposit which would be refunded if the decision was overturned? This may assist in reducing the number of frivolous requests for a review.

APPENDIX 2 Development Delivery

CONSULTATION QUESTIONS

Consultation question 1a: Do you think the current planning system supports or hinders the delivery of development and infrastructure?

- ☐ **Strongly supports**
- ☐ **Mostly supports**
- ☐ **Does not influence**
- ☐ **Mostly hinders**
- ☐ **Strongly hinders**
- ☐ **Don't know**

Please explain why you have chosen your above answer.

In terms of the options provided it **'mostly hinders'** the delivery of development and infrastructure. The current Negotiated Model provides no certainty to the development industry or landowners as to the level of financial contributions which may be required in line with Circular 1/2010 Planning Agreements. The Circular clearly sets out that where a development causes an issue or exacerbates an existing issue it may be legitimate to seek a contribution from the developer. But this does not provide certainty to the developer as to the level of this contribution which may make the proposal unviable. Perth & Kinross Council has tried to address these issues with regard to primary schools which are the major constraint in the area. The establishment of a standard contribution in pressured school catchment areas provides both certainty and speeds up the decision making process. Unfortunately it is the requirement to have a section 75 agreement which, following the decision can hold up the issuing of the consent.

Consultation question 1b: What additional measures could be taken to support development and infrastructure delivery?

Circular 1/2010 identifies Policy Tests which should be met when determining whether a planning agreement can be used to require a contribution towards mitigating the impact of the development. The real issue is the lack of available finance which is available to the development industry to fund this requirement.

Consultation question 2: How well do you think the process of seeking developer contributions through Section 75 planning obligations is functioning?

☐ Process functions well

☐ Process requires some MINOR changes

☐ Process requires some MAJOR changes

☐ Section 75 Planning Obligations is not an appropriate process for securing developer contributions

Please explain why you have chosen your above answer and identify what can be done to alleviate any issues raised?

In terms of the options provided, only **'MINOR changes'** are required. In general the use of Section 75 Planning Obligations is too slow and cumbersome. When applied to a single issue it can be effective but when applied to large scale developments covering multiple issues it becomes unwieldy. Experience in recent years has suggested that more and more Planning Obligations being attached to a far greater range of planning applications than in the past in many cases slowing down the issuing of consent. Both Planning Authorities and the development industry would welcome the opportunity to reduce the number of Section 75 Agreements if they could be convinced that the use of planning conditions was legally robust and more emphasis should be placed by the Government on assisting authorities to utilise planning conditions more widely by reviewing the guidance on the use of planning conditions in Circular 4/98.

Consultation question 3: What additional measures or support could the Scottish Government undertake or provide to facilitate the provision of development and infrastructure within the current legislative framework?

Perth and Kinross Council recognises that upfront Contributions toward infrastructure provision are not possible from the majority of larger developments. One possible option the Council is looking to address this identified shortfall in relation to Transport and Education infrastructure is through Prudential Borrowing. Due to the restrictions applied to Prudential Borrowing it is only possible to fund assets which are owned by the Council. Other infrastructure provision for Trunk Roads or drainage infrastructure cannot be covered by this mechanism leaving a shortfall in the upfront funding available and making a number of development sites unviable. Prudential Borrowing should be allowed on assets which are not owned by Local Authorities where an agreed Policy Test can be met to allow more flexibility in supporting development.

Perth and Kinross Council is taking steps towards supporting future

infrastructure provision through partnership working with the development industry but other infrastructure providers such as Transport Scotland, Scottish Water and Electricity Suppliers need to look at providing a more flexible scheme of funding. Options which could be considered are for infrastructure providers to pay for the requirement upfront and for Local Authorities to put a scheme in place to recoup this cost from future developments.

To invest in infrastructure all parties need certainty but in the current economy it is acknowledged that this will not be forthcoming. At present Local Authorities taking on the risk of providing future infrastructure and it is considered that the Government needs to underwrite this risk.

Consultation question 4: What innovative approaches are you aware of in facilitating development and infrastructure delivery and what are your views on their effectiveness?

Tax Incremental Financing (TIF): This Model could provide effective in a small number of developments which would bring increased business rates. It would not be effective for residential schemes or infrastructure projects such as transport improvements. It would not be suitable to borrow against future Council Tax revenue in residential developments as this is required to service the new development.

Charge on Land: This Model could be effective in certain developments where a number of parties can pool their resources. Local Authorities budgets are being reduced and Prudential Borrowing is limited to assets controlled by Local Authorities. The lack of upfront funding still exists to provide the Infrastructure in the short term. To progress development through this Model partnership working is required by all parties to share the risk, this includes the development industry but other infrastructure providers such as Transport Scotland, Scottish Water and Electricity Suppliers need to look at providing a more flexible scheme of funding and the Scottish Government requires looking at underwriting the risk to Local Authorities.

Consultation question 5: Would you be supportive of the introduction of a Development Charge system in Scotland to assist in the delivery of development and infrastructure?

☐ Yes

☐ No

Please explain why you have chosen your above answer.

'Yes' Perth and Kinross Council would strongly support the introduction of a Development Charge system in Scotland. It would provide certainty to the Development Industry as to the level of financial contribution which will be required at an early stage. It would also allow the pooling of contributions to different infrastructure projects to meet future needs. The present Negotiated Model does not often provide enough concentrated funding to support larger infrastructure projects.

Consultation question 6: Do you have any information or can you suggest sources of relevant information on the costs and/or benefits to support the preparation of a BRIA?

No Comment.

Consultation question 7: We would appreciate your assessment of the potential equalities impact these issues may have on different sectors of the population.

No Comment.

APPENDIX 3
CONSULTATION ON DEVELOPMENT PLAN EXAMINATIONS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Perth & Kinross Council

Title **Mr** ☒ **Ms** ☐ **Mrs** ☐ **Miss** ☐ **Dr** ☐ ***Please tick as appropriate***

Surname

Marshall

Forename

Peter

2. Postal Address

Pullar House
35 Kinnoull St
Perth

Postcode PH1 5GD | **Phone** 01738 629282 | **Email** pimarshall@pkc.gov.uk

3. Permissions - I am responding as…

Individual ☐ / **Group/Organisation** ☒

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ **Yes** ☐ **No**

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

(c) The name and address of your organisation ***will be*** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your ***response*** to be made available?

Please tick as appropriate ☒ **Yes** ☐ **No**

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate ☒ **Yes** ☐ **No**

CONSULTATION ON DEVELOPMENT PLAN EXAMINATIONS

CONSULTATION QUESTIONS

Question 1: How well do you think the examination process is functioning and should any changes be made to the process at this stage?

There has been a general improvement but it is perhaps too early to make changes.

Question 2: If you think changes are needed which option do you support, and why?

Option 1: Improving Current Practice

Promotion of good practice, improved project management or minor adjustments to administrative arrangements in the process leading up to submission may allow for a more streamlined examination. As indicated above, some delays have arisen because reporters have concluded that some proposed plans did not address housing land issues effectively. Rather than seek to remedy failings in a proposed plan such as the identification of sufficient housing land, reporters could complete the examination and return the plan to the authority recommending adoption of the plan but highlighting the need for the authority to address an issue, such as provision of additional housing land allocations. This would enable most of the policy proposed in the plan to proceed, including proposed land allocations but highlight a shortcoming. It would avoid the need for reporters to explore, consult and determine which additional development sites should be added to the plan. This would be left to the planning authority where such a need was identified.

This could be a considerable time saving and would be welcomed but there needs to be consideration over the means for a Planning Authority to make the required improvements as set out by a Reporter. There is no longer the ability to make an Alteration to a Development Plan in advance of the full review, the options are therefore to make changes by Supplementary Guidance or initiate an early review. The former allows a Planning Authority to bring forward changes but removes the right of the public to have their representations assessed by an independent arbitrator. The latter in unlikely to be practical for a Planning Authority and because of the various requirements of the legislation make it challenging enough to meet the 5 yearly review maximum.

The following compromise is suggested - to require the modifications to be dealt with by Supplementary Guidance but rather than the Council considering unresolved issues they are referred to the reporter, for independent scrutiny.

Option 2: Greater Discretion to Depart from the reporter's recommendations

This option would allow planning authorities greater scope to set aside reporters' recommendations if the authority could provide clear reasons to demonstrate that these were not in the interests of the areas they were elected to represent. This could mean reverting to past practice where representations were considered and supported by reporters but on occasion overturned by the planning authority. Some criticised this approach as it was seen as undermining public confidence in the system. Authorities would be expected to provide clear reasons for such departures but would retain more control over the final plan than is currently perceived to be the case. This option would require changes to primary legislation.

From a local authority point of view this would be welcomed, as many feel local decision making on local issues is being taken away from the locality. From a public point of view there are likely to be as many times when this is welcomed as there are occasions where they feel the independent review is a sham unless the findings are binding. Perhaps there would be the opportunity for Reporters to split their recommendations into issues of more than local significance where no variation was allowed and more local issues where adopting their recommendations could be optional subject to a robust justification.

Option 3: Restrict the scope of the examination

At present the examination process focuses on matters raised in representations which have not been resolved. Were the planning authority enabled to define the matters it sought to be considered through the examination process there is potential for less time and resource to be involved than is the case at present. It is not clear how much time would be saved in this way and there may be some loss of confidence in the process by stakeholders. Scope could be restricted in other ways, for example to focus only on the plans compliance with the National Planning Framework and with the strategic development plan to ensure a shorter, more focused, process.

This would require changes to secondary and possibly primary legislation and could reduce confidence in the system. This option is not therefore favoured.

Option 4: Remove the independent examination from the process

In this option the planning authority would consider representations made to the proposed plan. They would then adopt the plan, with or without modifications. The adoption process would be accompanied by a statement by the planning authority setting out its consideration of all representations made to provide clarity on those which have resulted in a modification being made and reasons for setting aside others. This would provide clear and transparent reasons for the planning authority's final position on the plan.

This option would greatly reduce the time and cost associated with plan preparation but could erode stakeholder confidence and increase the risk of a plan being challenged. Some may be concerned that this approach would not ensure that plans accord with national and strategic policy. This option is not therefore favoured.

Question 3: Are there other ways in which we might reduce the period taken to complete the plan-making process without removing stakeholder confidence?

No

Question 4: Do you think any of the options would have an impact on particular sections of Scottish society?

No

APPENDIX 4 Miscellaneous Amendments To The Planning System

CONSULTATION QUESTIONS

Question 1: Are there any costs or benefits not identified in the draft BRIA?

No.

Question 2: Do you have any information or can you suggest sources of relevant information on the costs and/or benefits detailed in the BRIA at Annex VI?

No.

Question 3: We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial EQIA is attached to this consultation at Annex VII for your comment and feedback.

No comments.

Question 4: Do you agree or disagree with the proposed removal of PAC requirements in relation to Section 42 Applications? Please explain why.

Agree ☒ Disagree ☐

The planning application process will still provide adequate opportunities for publicity and comment.

Question 5: Do you think the proposed changes to advertising requirements are appropriate or inappropriate?

Appropriate ☒ Inappropriate ☐

Please give reasons for your answer.

The proposed changes will simplify and streamline the process of advertising planning applications and will, in relation to householder developments, be more appropriate and proportionate.

Question 6: Are there further changes to requirements or the use of advertising in planning which should be considered?

Yes ☒ No ☐

Please give reasons and evidence to support your answer.

It should not be mandatory for applications to be advertised in a local newspaper if a planning authority is publicising all applications on the 'tellmescotland' website. More people are now likely to check the internet than look for notices in the local paper, or the Edinburgh Gazette in the case of listed building applications etc. Notwithstanding the changes proposed for the Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009, there is an opportunity to make savings which will benefit both the applicant and the planning authority.

Question 7: Do you agree or disagree with the proposed removal of the restrictions on the delegation of planning authority interest cases?

Agree ☒ Disagree ☐

If you disagree, please give your reasons.

Question 8: This section proposes a change to allow an extended period for the determination of an application to be agreed upon between the applicant and appointed person where local review procedures would apply. Do you agree or disagree with this change?

Agree ☒ Disagree ☐

Please explain your view.

It is appropriate to reintroduce the opportunity to extend the statutory determination period given that it is often not initially clear if an application will be dealt with under delegated powers. It is also not always possible for an application to be fully assessed or for determining issues to be satisfactorily resolved within 2 months. If the process is wholly or partly outwith the control of the applicant, it is only fair that the right to seek a review should be capable of being extended by mutual agreement.

Question 9: Do you agree or disagree with this change to the time period on determining local reviews sought on the grounds of non-determination?

Agree ☒ Disagree ☐

Please explain your view.

Past performance suggests that it is often difficult to issue a decision within two months if further processes such as site visits and hearings are required. A significant number of review cases concerning deemed refusal by the appointed person are therefore likely to be subject to the automatic 'double' deemed refusal. This is not in anyone's interest given the additional work and possibly greater delay involved.

Question 10. Do you agree or disagree with this change to the Appeals Regulations on procedure regarding minor additional information?

Agree ☒ Disagree ☐

It is reasonable that genuinely minor pieces of information which assist in clarifying the case can be submitted without being subject to the full procedural requirements of the Regulations. However, despite an aim of the new planning system being to speed up the appeal system by restricting the introduction of new evidence, this hasn't always happened in practice. It would help if this restriction was more strictly applied at the same time as the approach to minor information is made more flexible.

Question 11: Do you think the current requirements on applications for approval of matters specified in conditions on planning permission in principle are generally excessive?

Yes ☒ No ☐

Please explain your views, citing examples as appropriate.

Apart from the archaeological example cited in the consultation document, there are many other instances of technical approvals required by condition which do not justify a formal application process. Further examples include mitigation schemes to deal with existing ground contamination and construction method statements for development within or adjacent to sites with special nature conservation status.

Question 12: Are there are any issues in this consultation not covered by a specific question or any other aspects of the current planning legislation on which you would like to comment? If so, please elaborate.

Yes. Communities have expressed surprise how the planning legislation requires pre-application consultation (PAC) for major developments 'in principle', but not for the subsequent, associated AMSC application. This is particularly so when the 'in principle' application merely comprises a red line around the site, with little therefore to consult on, whilst the community are often more interested in the detailed layout and design of the proposed development and the opportunity to influence this.

APPENDIX 5 - **Consultation on The Town and Country Planning (Scotland) General Permitted Development Amendment Order**

CONSULTATION QUESTIONS

Q1. Are there any costs or benefits not identified in the draft BRIA?

No

Q2. Do you have any information or can you suggest sources of relevant information on the costs and/or benefits detailed in the BRIA?

No

Q3. We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial EQIA is attached to this consultation at Annex 3 for your comment and feedback.

No Comments

Part 1. Amendments to existing classes of permitted development.

Q4. Should we retain class 26? If class 26 should be retained are there any changes to the controls that would strike a better balance?

Yes ☐ No ☒

This is very rarely used and it is suggested that it is outdated and no longer relevant.

Q5. With regard to the proposed amendments to existing classes;

(a) Is the granting of permission, and the restrictions and conditions, clear?

Yes ☒ No ☐

(b) Is the granting of permission, and the restrictions and conditions, reasonable?

Yes ☒ No ☐

(c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes ☒ No ☐

(d) Please identify and explain any changes to the controls that you think would strike a better balance?

Has any consideration been given to the agricultural classes and polytunnels?

Part 2. Proposed new classes of permitted development.

Q6. With regard to the proposed new classes 7E and 7F;

(a) Is the granting of permission, and the restrictions and conditions, clear?

Yes ☒ No ☐

(b) Is the granting of permission, and the restrictions and conditions, reasonable?

Yes ☒ No ☐

(c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes ☒ No ☐

(d) Please identify and explain any changes to the controls that you think would strike a better balance?

No Comments

Q7. With regard to the proposed new classes 7A and 7B;

(a) Is the granting of permission, and the restrictions and conditions, clear?

Yes ☒ No ☐

(b) Is the granting of permission, and the restrictions and conditions, reasonable?

Yes ☒ No ☐

(c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes ☒ No ☐

(d) Please identify and explain any changes to the controls that you think would strike a better balance?

No Comments

Q8. With regard to the proposed new class 7C;

(a) Is the granting of permission, and the restrictions and conditions, clear?

Yes ☐ No ☒

(b) Is the granting of permission, and the restrictions and conditions, reasonable?

Yes ☒ No ☐

(c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes ☒ No ☐

(d) Please identify and explain any changes to the controls that you think would strike a better balance?

5th bullet point “involve loss of land” not clear what this means. In terms of loss of car parking it should be made clear that this is required parking rather than just existing car parking.

Q9. With regard to the proposed new class 7D;

(a) Is the granting of permission, and the restrictions and conditions, clear?

Yes ☒ No ☐

(b) Is the granting of permission, and the restrictions and conditions, reasonable?

Yes ☒ No ☐

(c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes ☒ No ☐

(d) Please identify and explain any changes to the controls that you think would strike a better balance?

No Comments

Q10. With regard to the proposed new class 7H;

(a) Is the granting of permission, and the restrictions and conditions, clear?

Yes ☒ No ☐

(b) Is the granting of permission, and the restrictions and conditions, reasonable?

Yes ☒ No ☐

(c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes ☒ No ☐

(d) Please identify and explain any changes to the controls that you think would strike a better balance?

There is difficulty in the clearly defining a “café” as often consents have been granted for ‘Class 3 use’. The difference between café and restaurant needs to be clarified. It is assumed that as the description reads “on land consisting of a public footway and adjoining a café” this will exclude the possibility of an area to the rear of the premises (unless there is a footway to the rear). In reality if on a public footway but not within 3 metres of a road it is unlikely that many will be permitted development.

Q11. With regard to the proposed new class 7G;

(a) Is the granting of permission, and the restrictions and conditions, clear?

Yes ☒ No ☐

(b) Is the granting of permission, and the restrictions and conditions, reasonable?

Yes ☒ No ☐

(c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes ☒ No ☐

(d) Please identify and explain any changes to the controls that you think would strike a better balance?

No Comments