



## SCOTTISH EXECUTIVE

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Chief Planner

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As per envelope

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Your ref:  
Our ref:

29 June 2005

Dear Sir/Madam

### **WHITE PAPER: MODERNISING THE PLANNING SYSTEM**

Please find enclosed a copy of the Scottish Executive White Paper: *Modernising the Planning System*. Copies have been distributed to individuals and organisations with an interest in planning, and to all members of the public who responded to any of the recent consultations on planning issues.

The White Paper sets out a package of measures to realise the Scottish Executive's aim of modernising the planning system. It is our intention to introduce a planning Bill to implement the proposals that require legislative change during this current parliamentary session.

Many of the proposals contained in the White Paper have been the subject of extensive public consultations, which have informed Ministers' consideration of the issues. Nevertheless, we would welcome any comments you might wish to make on the practical implications of the proposals. Comments should be addressed to:

Planning Modernisation Team  
Planning Division  
2-H Bridge  
Scottish Executive  
Victoria Quay  
Edinburgh EH6 6QQ

Telephone enquiries: 0131 244 7060

E-mails should be sent to [PlanningModernisation@scotland.gsi.gov.uk](mailto:PlanningModernisation@scotland.gsi.gov.uk)

We would appreciate receiving any comments by 16 September. A report of the comments received by this date will be published in due course by the Executive. In addition, a digest of comments received will be made available on the Scottish Executive website. In order to confirm

your permission to publish any comments you may have, we would be grateful if any submission you make could be accompanied by the enclosed Respondent Information Form.

Yours faithfully

A handwritten signature in black ink that reads "James Mackinnon". The signature is written in a cursive style with a small dot above the 'i' in Mackinnon.

**JAMES G MACKINNON**  
**Chief Planner**

## RESPONDENT INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Publication title: **Modernising the Planning System**

1. Are you responding as: (please tick one box)

- (a) an individual  (go to 2 a/b)  
(b) **on behalf of** a group or organisation  (go to 2c)

### If responding as an INDIVIDUAL:

2(a) Do you agree to your response being made available to the public (in Scottish Executive library and /or on the Scottish Executive website)?

- Yes (go to 2b below)   
No, not at all

2(b) **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available   
Yes, make my response available, but not my name or address   
Yes, make my response and name available, but not my address

### If responding ON BEHALF OF GROUPS OR ORGANISATIONS:

2(c) Your name and address as respondees **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- Yes   
No

## SHARING RESPONSES/FUTURE ENGAGEMENT

3. We will share your response internally with other Scottish Executive 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 the Scottish Executive to contact you again in the future for consultation or research purposes?

- Yes   
No

Signed :

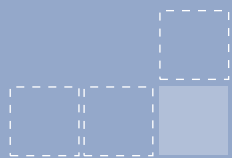
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Date :

# modernising the planning system



inclusive



efficient



fit for purpose



sustainable

# modernising the planning system

inclusive

efficient

fit for purpose

sustainable



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# 01:

## Foreword by the First Minister and Deputy First Minister

The Executive's top priority is promoting sustainable economic growth to create a modern and vibrant Scotland. A modern, up to date planning system is critical to achieving that objective. Sustainable growth requires development, and the role of planning is to ensure that this development is encouraged and managed in a sustainable way.

Planning also underpins all our high level priorities – stronger, safer communities; delivering excellent public services; and a more democratic, confident Scotland. A modern planning system is central to our investment in new schools and hospitals, providing water and sewerage facilities, waste installations to ensure the environmental impact is minimised, the regeneration of deprived areas, and providing affordable housing where it is needed. All of these critical developments depend on a modern planning system.



The way in which planning balances the various interests of development, the environment and social justice will determine how Scotland will look in the future. It is a key tool in creating the dynamic, forward-looking, confident and sustainable Scotland that we aspire to.

We have consistently said that our objectives for modernising planning are to make the system more efficient and to give local people better opportunities to participate in the decisions that affect them. This is what our modernisation of the planning system will deliver – a fairer, more balanced system.

We want our planning system to return to the vision of Patrick Geddes, the Scot who is the father of town planning who saw the need for a system that balanced the needs of ‘folk, work and place’, but with a fourth objective – fairness. Patrick Geddes saw how the way we live affects everything around us, we know that that is still the case and we need a modern planning system that helps us to plan for the way we live now.

We are therefore determined to build a planning system that balances the right of individuals to develop their property and the interests of the wider community. This White Paper outlines our detailed proposals for modernisation of the planning system, to secure greater fairness and equity, a system where everyone’s views are listened to and taken proper account of.

Our proposals will improve the efficiency of the planning system to allow the investment we need to grow the economy and create jobs and opportunities for all. They will ensure that local people are better able to participate in decisions that affect them, and that no developments will go ahead where community voices have not been fairly heard. They will also ensure that our commitments to sustainable development remain at the centre of everything we do.

Our proposals will restore confidence in the planning system, and revitalise it as a critical tool for shaping the future of our country, our towns, cities, countryside and our communities. A system that helps us to secure a better quality of life for all. These proposals will help us to plan together our common future. We hope everyone will study this package of reforms as a whole and consider their views on issues such as rights of appeal in light of these proposals.

We are delighted to commend this package of reforms to modernise the planning system.

**Jack McConnell, MSP**  
First Minister

**Nicol Stephen, MSP**  
Deputy First Minister

# 02:

## Minister for Communities' Introduction

As Minister for Communities I know that there is an urgent need to undertake a thorough modernisation of the planning system. This White Paper outlines a substantial package of measures to help us to plan for Scotland's needs, enabling local Councils to plan for local needs and the improvements that local people wish to see.

My conversations with community groups, environmental organisations, business groups and local authority representatives have left me in no doubt of the importance of taking this once in a lifetime opportunity to implement a major package of modernisation of the planning system.

This White Paper provides *new* opportunities for local people to engage in the planning process, planning for the needs of their community and determining the location of new facilities such as schools and hospitals. It ensures that the planning system is based on development that is sustainable and meets the needs of modern Scotland.



I know that the planning system, when it works well, is the means to ensure that economic growth benefits all of our communities, resulting in neighbourhoods that are regenerated and improved access to services and jobs. We certainly need a system that is fairer and more balanced between different interests than has been the case so far. I am determined to ensure that local people are involved properly in plans and decisions that will determine how their areas evolve and how their environment will change. Local people must be properly listened to in a system that considers all issues carefully without giving too much weight to any one interest. Our modernisation will rebuild confidence in a fair, transparent and more equitable planning system.

I want to secure a planning system that has the following purposes at its heart:

- ▶ enables the planning, promotion and management of development to secure good places to live;
- ▶ is fast, inclusive and transparent; building trust between communities and developers;
- ▶ takes a long-term strategic overview seeking to secure sustainable development as well as control local detail; and
- ▶ serves a national purpose, as well as helping local communities to shape their own future at a local level.

We want sustainable development and investment in Scotland to increase. We want development plans to be up to date and have taken account of the views of local people. We also want to encourage good design and create attractive buildings and communities where people want to live, work and visit.

To rebuild confidence in the system we will require planning authorities to give higher priority to enforcement. Apart from anything else, this means planning authorities must make better use of their existing powers, especially to enforce conditions attached to planning permissions.

In driving forward this agenda, I will continue to work closely with our partners in local government. This set of proposals gives powers back to planning authorities and gives them the freedom to organise the delivery of a better local service with local decisions and local accountability.

I want a plan-led system that is open and accountable. A fairer system. A sustainable system. A more inclusive system. This White Paper and the forthcoming Planning Bill will deliver these objectives.

**Malcolm Chisholm, MSP**  
Minister for Communities

# 03: Executive Summary



This White Paper sets out the way forward for Scotland's planning system. It recognises the central role of planning in the delivery of a sustainable pattern of economic growth, supported by essential new homes, infrastructure and community facilities, whilst protecting our most important natural assets. It also responds to the need for improved opportunities for meaningful public involvement in the planning system, and for that involvement to occur at the right point in the system to be able to influence outcomes.

The proposals for modernisation:

- ▶ place development plans firmly at the heart of the system, to ensure that development takes place in the context of a long-term and inclusive vision for the future;
- ▶ ensure that the planning system is fit for purpose, and able to respond to different types of development proposals in the most appropriate way;
- ▶ encourage greater efficiency in development plan preparation and the determination of planning applications;
- ▶ make it easier for people to get involved in planning, and help to shape the future of their communities; and
- ▶ recognise planning's role in delivering sustainable development.

To make the planning system **fit for purpose**, we will introduce a new hierarchy into the planning system, so that we are able to plan effectively for a range of different types of development, and respond appropriately to applications according to their size and impact. Proposals include:

- ▶ establishing the National Planning Framework as an instrument for securing the delivery of national policies and programmes;
- ▶ introducing a new process for the determination of applications for developments of national strategic importance (called national developments);
- ▶ introducing new procedures for the determination of applications for a range of key large-scale development proposals including housing and economic development (called major developments);
- ▶ introducing new procedures for the majority of planning applications (called local developments) which are of local importance to allow determination and appeals to be handled at a local level; and

- ▶ reviewing the extent to which applications for very small-scale development proposals (called minor developments) can be removed from the scope of the planning system altogether.

To make the planning system **more efficient**, we will introduce a range of new requirements in development planning to make the production of plans quicker, more predictable, more accessible and responsive to views of local people. We will also expect plans to be simpler documents that provide a clear vision of how our settlements and rural areas should evolve. They must take a long-term view, identify sufficient land to meet the key needs of economic growth and housing development and protect important natural and built heritage resources. They will be the core documents against which planning applications will be measured for determination. Proposals include:

- ▶ introducing a statutory requirement to update development plans every five years;
- ▶ moving to a single tier of local development plans everywhere apart from the four largest city regions; and
- ▶ introducing a requirement for one proposed plan, replacing the present system of consultative and finalised drafts.

Efficiency measures will also extend to the management of applications for development, where we have set out a range of proposals, including:

- ▶ introducing measures to encourage greater use of e-planning;
- ▶ improving the way in which planning agreements are used;
- ▶ introducing standard planning application forms; and
- ▶ reducing the time limit within which an appeal can be submitted, following refusal of an application, from six months to three months.

To make the planning system **more inclusive**, we will introduce a wide range of measures designed to ensure a transparent and fair planning system, that will give local people confidence that their views have been properly considered as part of the decision-making process. We will also publish a new Planning Advice Note which will identify best practice in involving

# 03:

local people in planning decisions. We propose:

- ▶ introducing new statutory requirements for pre-application consultations;
- ▶ introducing new procedures to ensure wide public participation in the formulation of development plans, including notification of key development proposals to neighbours;
- ▶ transferring responsibility for neighbour notification on planning applications to the planning authorities, to improve public confidence;
- ▶ requiring more frequent use of hearings, allowing local people to present their views on planning applications before they are determined;
- ▶ introducing new procedures to assess whether local people have been engaged effectively in the development plan process, and in the processing of applications called in for determination by Scottish Ministers;
- ▶ introducing procedures to subject applications that do not accord with the development plan to enhanced levels of scrutiny;
- ▶ introducing a new requirement for planning authorities to give reasons for their decisions, and notify individuals who have made representations when decisions are taken.

We will reform the appeals system to create a greater sense of equality by:

- ▶ introducing early determination of appeals that are not well founded – for instance where they fail to address the reasons for refusal, or are against refusal of a proposal which does not accord with the development plan; and
- ▶ introducing new procedures that ensure an appeal is a review of the decision taken in light of the information submitted, limiting the right to introduce new evidence to support the appeal.

We will also encourage the effective use of existing enforcement powers and introduce amendments to

enable better monitoring of conditions attached to planning permission, to create greater confidence and a wider sense of fairness in enforcement activity.

The planning system must also play its part in ensuring that development is **sustainable**.

Sustainable development will be promoted by:

- ▶ using Strategic Environmental Assessments to improve the way in which the environmental consequences of decision-making are addressed, and to enhance the levels of transparency in policy-making;
- ▶ recognising the need for development plans to respond to requirements to meet our wider environmental obligations at European and international level;
- ▶ incorporating changes to the Environmental Impact Assessment legislation that will make it easier for local people to participate in the decision-making process; and
- ▶ striving for high quality design in all new development.

The reforms proposed amount to a modernisation of the planning system. This modernisation will require a considerable change in the culture of planning and will place significant demands on those responsible for its implementation – particularly planning authorities. It will be essential to introduce a framework that promotes an improvement in the performance of the planning system. This framework will include:

- ▶ an enhanced system of audit for planning authorities, designed to identify and promote good practice;
- ▶ powers for Ministers to address areas where performance does not meet requirements; and
- ▶ support for planning authorities, through the Planning Development Budget and other means, to improve the capacity of the system to take on the necessary changes.

# 04: Planning in a Modern, Devolved Scotland



# 04:

## 4.1 Why Modernise?

The Scottish Executive's top priority is promoting sustainable economic growth. Quite simply, planning is at the heart of achieving that – growth requires development, and the role of planning is to ensure that this development is encouraged and managed in a sustainable way.

Planning also underpins our other high level priorities – stronger, safer communities; delivering excellent public services; and a more democratic, confident Scotland. Investment in new schools and hospitals, providing water and sewerage facilities, waste installations to ensure the environmental impact is minimised, regeneration of deprived areas, and providing affordable housing where it is needed – all of these depend on the planning system.

The way in which planning balances the various interests of development, the environment and social justice will determine how Scotland will look in the future. It is a key tool in creating the dynamic, forward-looking, confident and sustainable Scotland to which we all aspire.

We have consistently said that our objectives for modernising planning are to make the system more efficient and to give local people better opportunities to influence the decisions that affect them. This is what our modernisation of the planning system will deliver – a fairer, more balanced system.

A new Planning Bill will be the first modernisation of the planning system through primary legislation since devolution. It will be the culmination of a series of consultations and discussions with stakeholders which started in 1999. The detail of that process is set out in the annotated bibliography at the end of this White Paper (Appendix 1).

The commitment to modernisation stemmed from a common perception – reinforced by the Scottish Executive's consultations and research – that the planning system is not serving Scotland well. Many users of the system have complained that it is over-bureaucratic, slow to respond to commercial and economic needs and unpredictable in its outcomes. Community and voluntary groups, and the general public, often see the planning system as complex, intimidating, unresponsive to environmental or social concerns and lacking in transparency. Local and central government bodies are concerned that their key political objectives such as affordable housing, public infrastructure and waste management are often frustrated by the planning system.

Although some of these criticisms may have been overstated, there are still some clear indicators of failings in the system. 70% of local plans are more than 5 years old and around 20% over 15 years old. This has led to greater uncertainty for both developers and local people. Inquiries are becoming more complex and thus slower to conclude. Over time, the planning system has become characterised as reactive and bureaucratic, rather than a positive and dynamic process to coordinate and deliver spatial change.

In addition, a number of controversial planning decisions have fuelled the impression that the planning system is out of touch with the local people it is supposed to serve. Thus a perception has grown that planning has failed certain communities and subjected them to intrusive developments.

Our Partnership Agreement (2003) commits the Executive to 'improve the planning system to strengthen the involvement of local communities, speed up decisions, reflect local views better and allow quicker investment decisions'.

Our aim in modernising planning is to facilitate rather than obstruct high quality appropriate development; protect our heritage and environment and provide the basis for sustainable economic growth. Many of the proposals set out here centre on supporting planning authorities in producing up-to-date, relevant development plans which:

- ▶ provide a clear vision of how our cities, towns and countryside areas should develop;
- ▶ involve all interests – local people, voluntary organisations, developers, statutory bodies – in their preparation;
- ▶ undergo Strategic Environmental Assessment, so that issues of sustainability are fully integrated into the process from the outset;
- ▶ are the core document against which applications are assessed for determination.

Many of these proposals have been the subject of extensive consultation and aim at making the existing system work better. However, we also felt that there was scope to reshape the system more fundamentally, looking in particular at whether it could deal with different types of demands in different ways, as well as establishing the right balance of central and local decision making. We concluded that we could, indeed should, take this opportunity to reshape the underlying structure and responsibilities in planning to make it fit for purpose. Our ultimate aim is to improve the outcomes of the planning process, delivering development that is high quality and sustainable.

In light of this, we would therefore welcome comments over the next 3 months on the content of this White Paper. These can be made by writing to the address at the end of this document.

## 4.2 Unlocking Planning's Potential

An efficient and effective planning system will be an invaluable asset for Scotland. Planning is fundamentally about land use and promoting quality development in cities, towns and rural areas. It can help us plan the spatial development of Scotland in the context of a globalised economy, and plan for the essential infrastructure we need. However, it can also assist in the ability of central and local government to deliver its objectives. Creating excellent public services requires investment in infrastructure and buildings. Schools, hospitals and affordable housing all require planning permission, as do waste management facilities, some renewable energy installations and infrastructure for transport. Regeneration of communities requires investment in infrastructure and local amenities. Without the realisation of developments on the ground, national or local commitments on investment would remain empty promises.

More detail of how planning can assist in delivery of public policy is set out in Appendix 2.

## 4.3 Purpose of Modernisation

The package of proposals set out in this White Paper is underpinned by our determination to create a modern planning system that is:

- ▶ fit for purpose: we want the planning system to have a clearer sense of priorities, and to address different issues in different ways. In so doing, it will be better able to deliver the sustainable growth we need;
- ▶ efficient: we want up-to-date development plans to be at the heart of an efficient system that provides certainty for users and local people. Planning must not be seen as an obstacle to development, but as a mechanism for delivering high quality outcomes;

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- ▶ inclusive: we want local people to be more involved in the decisions that shape the development of their communities. Where local people's views have not been taken into account, development should not happen;

- ▶ sustainable: we want development to contribute to economic growth that is sustainable. Planning in the twenty-first century will be an agent for delivering sustainable development and environmental justice.

## 4.3.1 Fitness for Purpose

The planning system has become too complex. It should be able to respond better to the different demands placed upon it. It is common sense that applications for significant developments, representing high levels of investment and employment, should be dealt with in a different way to applications for minor extensions to existing buildings. Consequently, we propose new procedures for dealing with applications for developments in the following categories:

*national developments; major developments; local developments; and minor developments (including proposals for household improvements).*

A planning system that is fit for purpose will ensure:

- ▶ a clearer sense of what the system is for: guiding development that is in the long term public interest;

- ▶ decision making, including appeals, taking place at the appropriate level;

- ▶ targeted measures to promote the best method of involving local people at each level;

- ▶ a better match of resources to priorities: local authorities will be able to give priority to plan-making and to processing the most significant developments, while removing a layer of bureaucracy from many householder and other minor developments; and

- ▶ assessment of the environmental impact of projects, programmes and strategies at all levels.

## 4.3.2 Improving Efficiency

The Partnership Agreement pledges to improve the efficiency of the planning system. Greater efficiency is primarily needed to ensure that development plans are relevant and up-to-date. Development plans are at the heart of Scotland's planning system and set out appropriate locations for future development, areas which should receive special protection, and other essential proposals. The Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan – unless material considerations indicate otherwise – this is called a plan-led system. Up-to-date development plans are therefore essential to make a plan-led system work: where there is a significantly out-of-date development plan, determination of planning applications is more difficult, unpredictable and potentially contentious. The advantage of a plan-led system is that all the different strategies and programmes can be assessed for their cumulative impact on an area and the views of all interested parties considered.

Efficiency is also required to give applicants for planning permission and local people certainty and predictability. We need this to ensure that potential investors know they can plan with confidence in Scotland; to allow local people to know exactly when key decisions which affect them are to be made, and how they can influence them; and to ensure that all users of the system are getting value for money.

### **Development Control or Development Management?**

The process of determining individual applications for planning permission has generally been known until now as Development Control. This White Paper proposes a new approach to planning in which the underlying objective should be to promote sustainable and high quality new development, and to manage the development process with this end in mind. The primary role of planning should not be to stop development happening – it should be to foster the right development in the right places. In keeping with this new approach and the new attitudes that will be required to deliver it successfully, we shall in future use the term 'Development Management', and encourage its adoption throughout the planning system.

#### **4.3.3 Widening Inclusion**

As well as being more efficient, a modern, fair and balanced planning system must give local people better opportunities to influence the decisions that affect them and their communities.

We need to restore confidence in the planning system, and ensure that decisions are taken in the public interest. We see the key to achieving this as focusing public involvement in planning at the front end of the process; development plans will be at the heart of decision-making and we must ensure that local people have real opportunities to make their views known as they are produced. In the future, development plans will be prepared in a way that involves local people more effectively and ensures environmental concerns are taken into account. Once in place, and having taken account of these views, development plans will be the key to determining how applications are decided.

The proposals set out in this White Paper will promote more public engagement at all levels in the planning system, recognising in particular the right to better information, more certainty that people's views will be taken into account, more transparency and fairness and more equality. The planning process must be both an instrument for creating a fair and socially just Scotland and an example of inclusive, accessible and credible public policy making.

#### **4.3.4 Promoting Sustainable Development**

In a modern and environmentally responsible Scotland the environment and sustainable development must be at the heart of the planning system.

All the proposals set out here take account of the requirements of environmental legislation, including the introduction of Strategic Environmental Assessments in the Environmental Assessment (Scotland) Bill currently before Parliament. This allows for consideration of the full range of environmental impacts of all plans and programmes during their development, allowing them to be taken into account in the final decisions that are made.

A main aim of our reforms will be to reinforce the primacy of development plans. The way in which plans will be prepared and implemented will mean environmental considerations will be given the weight they deserve. As noted above, plans will undergo Strategic Environmental Assessment; this will be the means for planning authorities to ensure that environmental considerations are integrated into all policies. There will be better opportunities for local and environmental interests to contribute to the preparation of development plans. Our reforms will also ensure that any proposal that departs from the development plan is subject to greater scrutiny and scope for challenge.

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It is also important to recognise the role of the planning system in considering the environmental effects associated with individual planning applications. Again, the planning system will accord the appropriate level of environmental scrutiny to all applications, including requiring Environmental Impact Assessments to be carried out in accordance with the relevant Regulations. We have also made it clear that a Transport Assessment is required for certain developments, with the outline of a Green Travel Plan to be considered as negotiations continue on these applications.

In addition, the National Planning Framework will become a vital tool in facilitating the delivery of the investment we need to meet many of our environmental policy targets: for example, on transport, waste management or renewable energy.

A number of our reforms also aim to ensure that communities are provided with accessible information and the opportunities to participate in decision-making. These reforms are intended to give local people greater control over the environments in which they live, and are a key element in fostering environmental justice.

Finally, the Executive has joined the UK Government, the Welsh Assembly and the Northern Ireland Office in signing up to a UK Strategic Framework for Sustainable Development, committing us to work together towards a shared purpose, principles and priorities. The Framework was launched by the First Minister in Edinburgh on 7 March 2005 and the Executive will develop a new Scottish sustainable development strategy by the autumn, setting out how this will be put into practice.

# 05: Our Proposals



# 05:

## 5.1 Making the Planning System Fit for Purpose

### 5.1.1 A New Hierarchy for Planning

Founded on simple principles, the planning system has nevertheless become complex and poorly focused. A wide variety of demands are currently placed on the system, from delivering essential infrastructure and promoting investment, to allowing householder improvements. In addition, it has become a mechanism for solving local disputes which should not have a place in the planning system. The system has not evolved to respond in a proportionate way to these different demands. The overall purpose of planning has been obscured, and a sense of priorities has been lost.

We will address this by introducing a clearer hierarchy into the planning system. We want the system to deal with different types of development in different ways. This will enable public bodies to prioritise better the way in which they use resources; facilitate national political debates about infrastructure; devolve local decision-making and appeals to a local level; and free up the system by exempting very minor developments from the planning application process. At each level of the system, there will be clear mechanisms for plan-making, decision-making, involvement of local people, and ensuring development is sustainable. These proposals are not about centralisation; they are about making the system fit for purpose – and making that purpose clear.

Under the new hierarchy for planning, proposed developments will be processed and scrutinised depending upon whether they raise issues of national, major, local or minor importance.

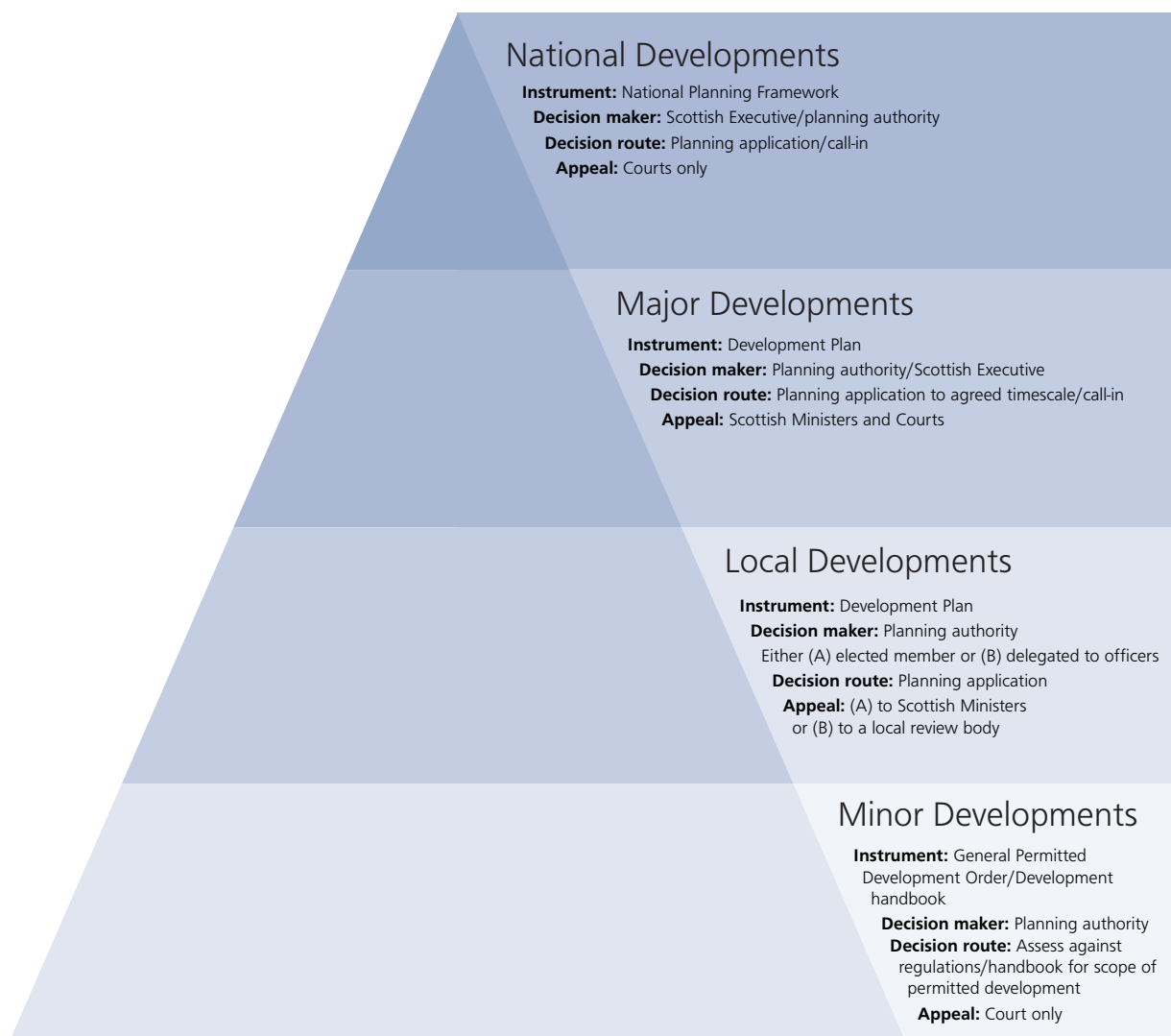
**National Developments** – those developments that are considered to be of national, strategic importance will be proposed and debated in the context of the next National Planning Framework.

Many of these developments have been identified in existing policy statements, for example, the Infrastructure Investment Plan or will emerge from future policy and project reviews, for example on transport. These might include substantial water treatment or waste management installations and strategically important transport links and facilities. The need for these developments will be decided at a national level, by Scottish Ministers and with the full involvement of Parliament.

**Major Developments** – large-scale developments which are not national in importance, but are significant in scale – will be clearly identified and prioritised by planning authorities. Examples include a shopping centre, a materials recycling facility, a business park or large-scale housing development. To help the expeditious processing of such applications, planning authorities and developers will be able to put a processing agreement in place, setting out timetables for processing the application, and application fees will be increased. The existing arrangements for appeals will apply, subject to the changes we propose below.

**Local Developments** – will, as now, be a matter for Scotland's planning authorities. These include smaller housing developments, commercial enterprises and some householder developments. Elected local members will continue to decide upon controversial applications or those with a significant impact on the area, with a right of appeal to the Scottish Ministers. All other local applications will be determined by officers but with a right of appeal, not to the Scottish Ministers as at present, but to a local review body comprised of locally elected members.

# Hierarchy for Planning



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**Minor Developments** – particularly small-scale changes to single houses – currently place a disproportionate burden on planning authorities. We will commission research to review how far we could extend the categories or number of developments which do not require planning permission. Further details of our proposals are set out below.

## 5.1.2 National Developments

Scotland's first National Planning Framework (NPF) was published in April 2004. Welcomed by environmental groups, local authorities, the business community and the planning profession, it also won recognition as an example of good practice in spatial planning throughout the United Kingdom and internationally. The strategic role of the NPF has been generally accepted and the development priorities it identifies are reflected in emerging structure plans.

As proposed by several business and environmental groups, we intend to build on this success by enhancing the role and status of the NPF to make it a more powerful instrument for securing delivery of national policies and programmes. The second NPF will be published in 2008, providing a strategy for the sustainable development of Scotland in the period to 2028.

It will set out the Executive's strategic development priorities more precisely. It will play a key role in ensuring the sustained co-ordination of policies with a spatial dimension, integrating and aligning strategic investment priorities and identifying where inter-regional choices can or need to be made. It will provide the national context for development plans, planning decisions and the ongoing programmes of the Executive, public agencies and local authorities.

The NPF will complement other top-level strategy documents such as the *Framework for Economic Development in Scotland* and *Smart, Successful Scotland* and reflect the Executive's priorities, actions and targets for sustainable development. It will address the key challenges of building a strong and competitive knowledge economy, strengthening and renewing infrastructure, promoting urban and rural regeneration and managing demographic change. It will focus strongly on priorities for the improvement of infrastructure to support Scotland's long-term development. For transport infrastructure, it will look beyond the current delivery programme, drawing upon the National Transport Strategy and the outcome of the Strategic Projects Review.

The NPF will support the role of our cities as drivers of the economy, addressing spatial planning issues of national importance which cut across city region boundaries. It will set out the land use planning requirements for strategic priorities such as investment in water and drainage capacity and waste management facilities, and consider the requirements of the next generation of high bandwidth communications technology. It will take account of the land use implications of national policy statements on matters such as the National Waste Plan. It will also address the Executive's commitments on environmental policy and sustainability, as well as the Executive's evolving position on marine spatial planning. The NPF will inform engagement with the European Union's competitiveness, cohesion and environmental agendas. It will provide the starting point for collaboration with other parts of the United Kingdom on strategic planning matters of common interest and for Scotland's participation in wider European spatial planning initiatives.

As a key aspect of our proposals for modernisation, we want the second NPF to place more emphasis on implementation than its predecessor. While not all national priorities can be delivered through the NPF, many do have an important spatial dimension. The NPF will identify responsibilities and outputs for locally-delivered services and facilities in key policy areas such as health, education, affordable housing and waste management. The NPF will be closely linked to the Infrastructure Investment Plan and the investment programmes of public agencies and infrastructure providers.

The next NPF will provide a stronger context for development plans and planning decisions. This will help establish and deliver a clear strategy for Scotland's spatial development in the long term. The Planning Bill will provide for Scottish Ministers to prepare statements of policy on planning matters of national importance, which will require to be identified at the local level by planning authorities in the preparation of their development plans. This provision will include the NPF, which will be used to identify developments of national strategic importance – to be known as national developments, for which specific provisions will be made in the Bill.

In addition, the legislation will provide for national developments to be called in by Scottish Ministers, where it is necessary to expedite decisions in the national interest. Major transport, water and drainage, energy and waste infrastructure projects, major areas of urban regeneration or expansion and large strategic business or industrial investments may fall within this category of development. The detailed processes are set out below. In some cases, development will be promoted through other consent regimes such as the Electricity Act 1989 or the Roads (Scotland) Act 1984 rather than planning legislation.

These developments will be reflected in the NPF to ensure widespread publicity and co-ordination of priorities, but will be dealt with under the existing consent regimes.

The NPF will be subject to extensive consultation, including the processes required for its Strategic Environmental Assessment. Given the significance of the NPF, it will be essential for the Executive to ensure that all those with an interest are given real opportunities to express their views in its preparation. Regional and thematic seminars will be organised to seek views on its scope and content and a draft will be issued for public consultation. Prior to the introduction of the Planning Bill, Ministers will bring forward proposals for ensuring that Parliament has the opportunity to contribute to the development of the Framework.

### **National Developments: Application Process**

Planning authorities will need to reflect the vision and strategy of the NPF in their development plans. While the need for national developments will have been established in the NPF, their incorporation into development plans will ensure local engagement and debate around their impact as well as detailed location and design matters. To achieve this, the Planning Bill will make provision for development plans to facilitate the national developments contained within the NPF.

Where applications for national developments fall within the scope of the Town and Country Planning (Scotland) Act 1997, we envisage a new process for their determination, which will give Scottish Ministers the opportunity to intervene where necessary to expedite decisions. This is set out in Appendix 3.

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## 5.1.3 Major Developments

A limited number of applications are submitted to planning authorities each year for developments which would not be considered to be of national strategic importance but nonetheless are of a size and scale to be considered of major importance. Examples might be a shopping centre, a materials recycling facility, a business park or a large-scale housing development. These proposals should be identified in the development plan. The Executive's monitoring of local authority planning performance has highlighted concerns that major developments in particular are subject to excessive delay. Measures are required to ensure applicants for these important developments do receive an efficient service and greater certainty in the likely timescale for achieving a decision. Processing these applications efficiently and achieving a high quality solution should be a top priority for both planning authorities and developers.

We propose to specify in secondary legislation the categories of major development that require to be approached in a new way.

The success of this proposal also depends on transparency and clarity from the development industry before presenting applications to the community and the planning authority. Full details and supporting material should be provided at the submission stage to ensure that local people and stakeholders can engage on the basis of realistic and fully worked up plans.

### *Processing agreements*

In order to deal with these applications expeditiously, they need to be prioritised by planning authorities. Issues and constraints relating to the site and the proposed use need to be identified as early as possible in the process. We propose that the applicant and planning authority will agree on a realistic timetable for the planning application to be determined, informed by the views of statutory consultees. This will be set out in terms of an agreement between the parties.

We recognise that negotiating processing agreements will place additional requirements on planning authorities' time and resources. We therefore propose to increase fees for major applications. As at present, fees will be calculated according to the type and size of development. The intention is to link the fee paid closely to the real cost of processing the application.

Applications for major development will be determined at the local level by planning authorities, although Scottish Ministers will retain the right, as now, to call in applications for their decision. Rights to statutory appeal and judicial review would still apply.

Further detail on processing agreements is set out in Appendix 4.

### *Hearings*

We consider that the scale and significance of these major developments merits a further step to ensure more transparent decision making. For major developments that are significantly contrary to the development plan and have attracted significant objections, we propose a statutory requirement for the planning authority to hold a hearing into the planning application. This would allow the applicant, consultees, objectors and supporters of the development to make their case to the planning committee before the Council or authority takes its decision. The process for these hearings, which we propose to extend to a wide range of types of development, forms part of the enhanced scrutiny procedures, and is set out in the section on Widening Inclusion.

#### **5.1.4 Local Developments**

The vast majority of the 50,000 plus planning applications decided annually are for small-scale changes to commercial or industrial buildings and work by householders to alter their properties. These developments are local in nature, and do not have an impact on the wider area. Decisions on these planning applications should, therefore, be taken at the local level.

These applications for small-scale developments currently take up a large proportion of each planning authority's time. We intend to introduce a clear, expedited process for many of these applications, to ensure a more proportionate approach, based on the type and scale of development under consideration.

Under the modernised planning system, we need development plans, drawn up with regard to statutory requirements for publicity, engagement and adoption, to provide an up-to-date and robust framework against which planning applications can

be judged. Many local developments will be consistent with the terms of the development plan, and can be processed quickly by planning officers. In this way, elected members are able to focus their attention on the more controversial or complex applications, including those which are not in accordance with the development plan and those that are the subject of strong local opinion.

We therefore propose to require that planning authorities introduce schemes of delegation that allow officers to take decisions quickly for applications that accord with adopted development plans. Planning applications for local developments which do not fall within the terms of the delegation scheme would be put to the Planning Committee for its decision.

Delegation to officers already operates successfully in most Councils and is an efficient way to deal with the many planning applications that are received each year. It does not affect the requirements for publicity and engagement on planning applications or the ability of individuals, organisations and local people to make their views known.

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## *Schemes of delegation*

Some delegation schemes allow officials only to take decisions to approve applications, usually where there are no objections or other representations. This has resulted in small-scale applications having to be referred to the committee for decision.

We therefore propose that planning authorities be required to put in place new delegation schemes for decisions on planning applications, to allow officers to determine a wider range of applications, and to be able to make the full range of possible decisions:

- ▶ approve applications without condition;
- ▶ approve subject to conditions; and
- ▶ refuse applications.

The details of each delegation scheme will be for the planning authority to determine. Although such schemes may allow officers to determine applications that are the subject of objections or other representations (such applications are currently not delegated), authorities should ensure that applications subject to significant or substantial bodies of objection should be referred to elected members for determination. Given the varying circumstances in which objections may be substantial or significant, it will be for each planning authority to establish the criteria appropriate for its own area.

All applications that fall outside the categories of major development will be treated as local development and will be eligible for delegation subject to the following exemptions:

- ▶ development significantly contrary to the development plan;
- ▶ development defined in the General Development Procedure Order as larger-scale 'Bad Neighbours' (e.g. waste disposal installations, sewage works, casinos, or crematoria);
- ▶ development that requires Environmental Impact Assessment.

Elected members of the planning committee will take decisions on these applications.

## *Appeals against decisions taken by the planning committee*

Appeals against decisions taken by the planning committee will continue to be made to Scottish Ministers and as at present, dealt with on their behalf by reporters from the Scottish Executive Inquiry Reporters' Unit.

## *Appeals against decisions taken by local authority planning officers*

For applications that fall within the terms of the scheme of delegation, however, we propose that appeals should now be determined locally. Applicants will have the right to appeal to a local review body against decisions taken by planning authority officers. The review body will be made up of locally elected members. The applicant will submit grounds of appeal, which will be supplied to the review body accompanied by the case file, a copy of the officer's decision and his or her response to the grounds for appeal. The review body will then carry out an independent review of the officer's decision, rather than considering the proposal afresh. The

review body's decision could be the subject of a statutory appeal or judicial review.

These measures, taken together, would result in a significant improvement to the planning process at the local level. A key benefit would be that the vast majority of all appeals would henceforth be decided quickly and decided locally, recognising that local authorities are best placed to take decisions on local matters.

### **5.1.5 Minor Developments**

Many current planning applications are for householder developments. While the processing of such applications is, for the most part, straightforward, the sheer number of them requires considerable time and resources in terms of administration and professional planning officers' involvement. As part of the modernisation agenda, we have looked at ways to improve efficiency in dealing with applications and to direct resources to appropriate priorities. We are therefore considering the extent to which such householder applications could be taken out of the planning application process by achieving a better match between permitted development rights, and the aspirations, and obligations of householders. Permitted development rights grant a general planning permission for certain developments across Scotland and remove the need for a planning application.

There is clearly a balance to be struck. We do not foresee all householder developments being covered by permitted development but a large number of the more minor developments should not require planning permission. Unnecessary controls on individuals with regard to improvements to their dwelling houses and garden ground need to be removed; however, we must also ensure that adequate controls remain to deal with developments which might unduly affect the environment or

amenity of the area. There will need to be appropriate limits and conditions associated with any extension of permitted development rights to ensure that environmental quality is maintained.

The Executive is therefore undertaking a general review of the permitted development rights set out in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPDO), as amended. This review will consider the appropriateness of the current permitted development rights and areas for possible updating, amendment, extension or reduction of permitted development rights. It will also look at the scope for improvements in some of the related mechanisms such as 'Article 4 Directions', which can be used to remove permitted development rights within an area specified in the direction. A central aim of this work is to simplify the legislation on permitted development rights to aid its understanding and use.

As well as householder developments, this research will be reviewing all the permitted development rights which currently apply to a range of developments in different sectors, from electronic communication and mobile phone developments, to mineral developments, industrial development and development at airports. As indicated above, this aspect of the research is about updating, simplifying and, where appropriate, extending or reducing existing permitted development rights. The improvements to planning enforcement outlined below will be a necessary counterweight to any increase in permitted development rights.

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To support any changes to the legislation, we also intend to produce a handbook for householder developments. This will illustrate how the revised permitted development rights in relation to householder development can be exercised. This is to assist householders in interpreting what is permitted development, and to assist in the enforcement of planning control where breaches occur.

A similar review of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (the UCO) is not proposed at present. The related permitted development rights on changes between use classes will be addressed in a subsequent review of the UCO. Such a review is likely to follow implementation of changes to the GPDO.

## 5.2 Efficiency

### 5.2.1 Modernising Development Plans

The central aim of our modernisation proposals is to reinforce the primacy of development plans. This is the key to delivering a fairer, more balanced system. Plans are critical instruments for providing clear visions of how our cities, towns and countryside areas should evolve. They must take a long-term view, identify sufficient land to meet the key needs of economic growth and housing development, protect important natural resources, and form the core documents against which planning applications are measured for determination.

Our reforms will ensure that, in the future, the way in which these plans will be prepared and implemented will mean: they are more relevant and up-to-date; local people will be more involved in their preparation; and that there is a structured consideration of the plan's environmental implications. In addition, we want plans that are shorter, targeted on key spatial issues and, crucially, focused on delivery and outcomes.

We believe that these objectives command widespread support. The consultation exercises for the Review of Strategic Planning (June 2002), and Making Development Plans Deliver, (April 2004), revealed that there was a clear consensus on the need for improved development plans in order to direct and manage change in an efficient and transparent way. The incorporation of Strategic Environmental Assessment into development planning also introduces a more rigorous and transparent approach.

However, our aspirations for effective development plans will only be achieved if accompanied by cultural change that recognises the key role that plans have in bringing better outcomes for the land and people of Scotland. Planners will require the support of local authority senior managers, elected members and stakeholders, including statutory consultees and members of the public. Senior managers who empower and motivate their staff and stakeholders, from plan preparation to adoption and implementation, will ensure delivery of effective plans. We must move to a quicker and more predictable process overall, managed effectively with clear targets and milestones.

While substantial changes will be made to legislation, a number of the reforms can be carried out within the law as it stands including more regular updating of plans, preparation of action programmes and more focused management of the process. As we move towards a Planning Bill, those involved in plan preparation should, as far as possible, anticipate the new procedures and tools required to implement the reformed system, and prepare the ground for implementation. A summary of our proposals to reform development planning is set out below, with the detailed arrangements for strategic development plans in Appendix 5.

*Statutory requirement to update development plans every 5 years*

Plans must provide an up-to-date and relevant framework to guide development and co-ordinate land use change. It is crucial that local authorities see this as a key duty. A plan is generally considered to be up-to-date if it is less than 5 years old. Currently the average age of local plans is approximately 10 years. This is unacceptable in a plan-led system as it undermines the efficiency and effectiveness of the planning system, and reduces the opportunities for full consultation with local people. We therefore intend to place a statutory duty for strategic development plans and local development plans to be replaced within 5 years of the date of adoption. We also propose that Scottish Ministers will, when necessary, use their powers to direct that certain development plans be updated or commenced, to accommodate key areas of growth or issues of national importance.

Regular review on a 5 yearly basis will avoid the need for alterations to part of a plan and ensure that the status of policies which are relevant beyond the lifetime of the plan is confirmed. Even within this period, situations may sometimes arise where there are applications which depart from the plan. We have formulated proposals (set out in the section below on Widening Inclusion) to ensure that these applications are subject to enhanced scrutiny.

*Strategic Development Plans/Local Development Plans*

In a major move to simplify development planning, we have already announced through the Review of Strategic Planning that local development plans will cover all of Scotland. Within the four largest city regions, in addition to local development plans, there are to be strategic development plans that will deal with key land and infrastructure issues which cross the planning authority boundaries. In these areas the local development plan will be required to comply with the strategic development plan. These new procedures put in place a more proportionate approach to development planning, focusing attention on the key areas of change and reducing duplication of effort in areas where only a single tier of development plan is necessary.

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## *Development plan scheme*

Major improvements in development plan performance require a raised profile for development planning, and effective management of the process. We shall therefore require a development plan scheme to be prepared as a means of setting the programme for producing and reviewing local development plans and strategic development plans. This will be updated annually and publicised widely, as well as submitted to Scottish Ministers for information and comment, particularly in relation to the national issues that Ministers expect to see addressed in the plans. It will provide greater certainty and predictability for local people and businesses about the timescales for plan revision.

## *Quicker drafting of plans*

We want the process of preparing plans to be clear and accessible. We therefore want the preparation of strategic development plans and local development plans to focus around two stages: early engagement around a report on the key issues, followed by the preparation of a single 'proposed plan.' It is in response to the proposed plan that formal objections or expressions of support can be made. In the section on Widening Inclusion, we set out our intentions for ensuring that local people have as much opportunity to comment as possible. It is our intention to prepare a Planning Advice Note to collate best practice on community engagement.

## *Engagement of statutory consultees*

To ensure the effective delivery of policies and proposals, we intend to designate statutory consultees for development planning and require them to engage in the process. These will include Scottish Natural Heritage, Scottish Environment Protection Agency, Local Enterprise Companies and Scottish Water. It may be appropriate to add other bodies to this list, such as the forthcoming Regional Transport Partnerships. The intention is that these bodies provide, at an early stage, information critical to the delivery of the proposals within the development plan and ensure better co-ordination of spending and policy decisions. This will provide, among other things, the opportunity for issues concerning the environment to be addressed by the responsible public bodies.

## *Form and content of plans*

To improve quality and consistency and to ensure that plans are accessible to local people, we propose greater prescription of the form and content of development plans. The form and content of the development plan should be fit for purpose. Policies should be limited to those required to deliver the plan's aims and support decision making. We intend to enhance the status of supplementary guidance, where statutory requirements for consultation and approval have been met, to provide a vehicle for more detailed planning policy. As well as producing paper versions, local authorities are encouraged to place all development plans and related documentation on their websites to ensure greater accessibility and transparency.

## *Model development plan policies*

We are piloting model policies for inclusion in development plans in order to increase consistency and reduce plan preparation times. Model policies will cover a range of core topics, where practice is similar across Scotland. Policies currently being piloted cover the built and natural environment.

*The consultation statement – listening to local people*

We know from previous research that many local people are unclear about the importance of the development plan and tend not to get involved in planning until a planning application is submitted that affects them directly. We will reinforce the importance of the development plan process, as that is where issues of principle are decided. This means that all interests must be sufficiently well informed to participate in this stage of the decision-making process. For each development plan, it is proposed that the planning authority will be required to include in the development plan scheme, a ‘consultation statement’ explaining how they will engage local people and stakeholders in the process, outlining when this will take place and what can be expected. The extent to which an authority has fulfilled its commitments in the consultation statement will be tested at the examination stage.

*New requirement for mandatory examination of all plans*

To ensure that local people’s voices are fairly heard, we propose a mandatory examination for strategic development plans and local development plans where objections have not been resolved. In the interests of independence and transparency, reporters for development plan examinations will be appointed by the Scottish Executive Inquiry Reporters Unit (SEIRU) rather than the planning authority.

Over time, the requirements for better engagement between the planning authority, local people and the development industry, the use of mediation, as well as more regular updating of plans, will help to reduce the number of objections that need to be considered by public examination.

*Adoption mechanisms – ensuring transparency and fairness*

In moving to adopt the local development plan, the planning authority has a duty to consider all

representations and will seek to negotiate with objectors making changes to the plan to accommodate comments, where possible. Where objections remain unresolved, a reporter appointed by the Scottish Ministers, will undertake a full assessment of the objections, weighing arguments from the local authority, local people, businesses, community groups and others, before reaching conclusions and recommendations. While reporters’ recommendations are largely accepted by local authorities, there have been concerns that where, a planning authority does not accept the recommendations, participation in the inquiry process was worthless which leads to a wider sense of mistrust and disillusionment with the planning system.

We accept that local authorities are guardians of the wider public interest in their area and that there are circumstances where they might, quite properly, wish to disagree with the reporter’s conclusions and recommendations. To promote greater confidence in the system and reassure those who have participated in the plan making process, we have consulted on the proposition that the scope to depart from a reporter’s recommendation should be limited. There has been considerable support for this, particularly from the general public and the voluntary sector. There is, however, a recognition that clear criteria should be established to define the circumstances in which the planning authority might depart from the reporter’s recommendation and that, to ensure fairness and transparency, the Scottish Ministers should have an oversight of that process.

Against that background, we propose that planning authorities will be able to depart from a reporter’s recommendation where that recommendation is: not supported by the Strategic Environmental Assessment; not in accordance with the National Planning Framework/National Policy or strategic development plan; or

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based on flawed reasoning, which could include a failure to take proper account of the planning authority's position. Where there is substantial local opposition to, or support for, a development plan policy or proposal, and the reporter finds in favour of this view, particularly strong justification will be required from the planning authority to merit a departure from the reporter's recommendations. Planning authorities will be required to seek the agreement of the Scottish Ministers where they wish to depart from recommendations, and Ministers will retain the right to intervene in the adoption of the plan where they are not content.

*Statutory requirement to prepare action programmes*  
To provide greater certainty that the provisions of the development plan will be followed through, we propose that an action programme is prepared alongside each plan. This document will set out actions required to implement each of the plan's policies and proposals. The action programme will state what is to be done, who is responsible and when it will be achieved. It will be monitored and updated to reflect completed work and revised timescales and published at least every 2 years. This will help to create a climate of certainty for the users of the system.

*'Approval in principle' in development plans*  
As a further measure to strengthen the effect of development plans and ensure that their content is meaningful, we are also examining the proposal that the allocation of a site in a local development plan for a particular use, or mix of uses, will indicate that the principle of development for those uses has been accepted on that site. At the same time, we will remove the current provision allowing applications for outline planning permission. For example, where a site is allocated for residential use, there should be no need to apply for outline permission for development of housing on that land. Following

adoption of the plan, the next step will be the preparation and submission of a planning application, for consideration by the planning authority, with appropriate engagement with statutory consultees and local people on the details of the development, for example, house layout, access and design. The ability to accept the principle of the use allocated in the development plan would not extend to developments that require Environmental Impact Assessment.

This proposal will help to focus attention on bringing forward development proposals identified in the development plan. It would also give greater certainty to applicants and local people on what uses are acceptable and what change is expected in the area in the near future. It follows that planning applications for developments on land not allocated for that use in an up-to-date development plan are unlikely to be approved. Significant justification would be required to support approval for development that departs from the development plan. This would provide new reassurance to local people and end unnecessary uncertainties.

#### *Conclusion*

We are confident that these proposals provide a framework that will both lead to greater confidence and speed in the shaping of planning policies and proposals, and encourage rational and consistent decision making, providing business with greater certainty while ensuring that the interests of those local people affected are fairly, fully and properly taken into account. The status and relevance of the development plan is critical to the success of the planning system as a whole, and creating a fairer, more balanced system.

## Culture Change in Planning

When we consider culture, we consider the complex set of relationships between those who operate the planning system, those who use it and those who are affected by the decisions which it takes. It is generally accepted that there is a need to improve the delivery of both development planning and development management services.

For development plans to set the vision for how areas should develop in the future, and enable the right development to achieve that vision, changes are required in a number of areas. The plan preparation process needs to be more focused and efficient; local government needs to recognise the central role development planning must play; and effective opportunities for involvement in plan preparation must be made available to the many interests – such as local people, developers, businesses, community and voluntary groups – who are affected by the decisions taken.

Development management needs to be focused on matters of wide importance, to respond effectively to new proposals to deal with applications in relation to their size and impact, to engage effectively with interested parties and to consider appropriate timescales for the efficient processing of applications.

The changes needed to make our proposed reforms work effectively must be championed by planners themselves. Whilst it is essential that planning continues to play a regulatory role, there is a need to re-energise the profession in order that planners see their work as something which is principally visionary and enabling. Planning is the what, where and how of the places in which we live and work. Reform must encourage a return to enthusiasm for the task of creating a vision for the growth, development and protection of places, to ensure that planning facilitates achievement of Scotland's wider national objectives. This change in ethos will

improve stakeholders' perception of the system, so they understand its purpose and see its positive benefits.

Many parties are responsible for ensuring the success of planning reform. The key drive for these changes must come from within the planning profession. A step change in planning performance will not, however, be achieved by planners alone. Elected members and senior management in local government must recognise that planning is central to the successful development of their areas, and this recognition should be reflected in their leadership, the resources they allocate to planning, and the targets and objectives they set for delivery.

All users of the system also have a responsibility to ensure its efficient operation. Developers, in particular, must consider their role in the public examination of plans, and their use once they are in place. Public examination must become a less adversarial and intimidating process, and this can be achieved without affecting the robustness of decisions taken.

Once plans are in place, all applicants for planning permission must work with the grain of the plans, and engage effectively with local authorities to progress the vision and strategies set out in the plan. They must also take responsibility for engaging with local people on proposals that will have a major impact on an area.

To effect change, planners will also require the support of all those with a stake in the planning process, including statutory consultees and members of the public, the Royal Town Planning Institute and the academic institutions responsible for educating the next generation of planners, and providing them with the necessary knowledge, skills and competencies. Our proposals for the Planning Development Budget will provide significant support for continuing professional development.

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## 5.2.2 Development Management Efficiency

We intend to modernise the planning application process. This will mean that it is simpler and more accessible for applicants and local people. Our reforms will improve the speed and efficiency of the process while maintaining and enhancing quality in decision-making and in the outcomes on the ground. A summary of our reforms follows, with details set out in Appendix 6.

### *E-Planning*

New technology has huge potential to make the planning service more transparent, accessible and efficient. Planning authorities across Scotland have been improving service delivery by placing planning information online, allowing people to track the progress of individual applications or to find out about development plans. Some planning authorities have developed systems that allow planning applications to be submitted online. Where these e-planning services have been provided they have proved to be very popular with users. New technology is also being used to improve the planning appeal process and the information available through the Executive's Planning Homepage. The Executive will continue to work with planning authorities to increase their use of new technology to improve service delivery, public access and involvement.

### *Planning agreements and obligations*

Planning agreements can accompany planning consents. They are drawn up by planning authorities and an applicant to set out what an applicant will deliver in relation to specific issues, either related to the nature of the development (for example, opencast mines or quarries) or to associated infrastructure costs (for example, roads, schools, community facilities and affordable housing) as set out in local development plan policies. We propose

to improve the framework governing such agreements, re-stating their permitted scope and allowing applicants to submit unilateral obligations, which can make appeals processes in particular more efficient. We will also make the process more transparent, by putting requirements on authorities to place agreements on the public register, to monitor delivery of items in the agreement and place this information in the public domain.

### *Standard application forms*

We intend to simplify the planning application process by introducing standard application forms, written in plain English and available in an appropriate range of formats to ensure accessibility. This will make the application process faster and more user-friendly. Standard application forms could also assist in the electronic delivery of the planning service, particularly the online submission of applications.

### *Reduce time period for appeals from 6 months to 3 months*

In order to reduce uncertainty for objectors and planning authorities, the Executive has decided to reduce this time period to 3 months. This 3 month period still provides the applicant for planning permission sufficient time to consider whether to proceed with an appeal. This reduction will also apply to the period within which appeals on the basis of a deemed refusal of planning permission may be made to Ministers and to appeals to be decided by a local review body.

### *Power to decline to determine applications*

We intend that planning authorities will be able to decline to determine applications where they have determined more than one similar application in the previous 2 years, and the issues surrounding the application have not changed significantly. This responds to concerns about the ability of applicants

to apply repeatedly for similar developments on the same site. There is a need to strike the right balance between allowing repeat applications in order to make useful amendments to proposals, without allowing such repetition to be used to exhaust opposition.

#### *Duration of planning permissions*

We propose that planning authorities will be able to decide an appropriate period within which development must be begun. Where no period is specifically set, the statutory period will be reduced to 3 years, instead of the current 5 years. This will reduce uncertainty and retains a reasonable period within which to commence development.

#### *Advertising of weekly lists*

In order to improve the public's awareness of planning applications, we will, in future, require planning authorities to produce and publish a weekly list of planning applications. Parties who are interested in development proposals in an area should therefore be able to access information on relevant planning applications easily.

#### *Notified applications – method of determination*

In order to enhance the efficiency of the system, we propose that when applications are notified to Scottish Ministers, they will, in common with the approach taken in processing planning appeals, be empowered to decide whether the case should be determined by written submissions, informal hearing or public inquiry using the approach best suited to the nature and complexity of the issues involved. Where Ministers decide that a case should be cleared back to the planning authority they may choose to specify conditions in order to ensure that an issue - for example, on the timing of infrastructure provision or the need to prepare a master plan - is addressed by the planning authority without requiring call in.

#### *Mezzanine floors*

We propose to bring the introduction of mezzanine floors within the planning system, to mitigate the potentially harmful impact on the amenity and environment of an area.

#### *Managing change in the historic environment*

We intend to update the provisions in planning legislation which deal with the effective protection of the historic environment. We also recognise that there may be scope for more radical improvements through combining elements of the various relevant consent mechanisms. Historic Scotland will lead an exercise to examine whether such an approach could be workable, and whether the potential benefits could justify changes to the legislation.

#### *Tree Preservation Orders*

We will take forward proposals through the Planning Bill to enhance the effectiveness of Tree Preservation Orders.

## **5.3 Widening Inclusion**

### **5.3.1. Background**

In Scotland, great importance has always been attached to public involvement in the planning system. We believe that it is important to ensure that every person regardless of their background can have their say in the decisions which affect them. We are determined that we improve still further the levels and quality of public participation in planning. As a result, the aim of improving the levels and quality of public participation in planning has been one of the two major themes of the planning modernisation process since devolution.

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This White Paper and the Planning Bill which will follow represent the culmination of a process dating back to the Consultation Paper *'Getting Involved in Planning'* (November 2001), and the subsequent White Paper *'Your Place, Your Plan'* (March 2003).

In the Scottish Executive's Partnership Agreement of 2003, we made a commitment to go further in enhancing public participation to 'strengthen the involvement of communities... (and) reflect local views better.' The proposals we are setting out in this White Paper are intended to secure a fairer, more balanced system.

### 5.3.2 The Current Planning System

There are already opportunities for people to get involved in the planning system.

At the **national level**, planning is devolved to the Scottish Administration. Planning policy is determined by Scottish Ministers and subject to scrutiny by the Scottish Parliament. People are able to write on planning matters to Scottish Ministers, make representations to their MSPs, and petition the Parliament on matters of planning policy. Scottish Ministers must approve the content of all structure plans (in future, strategic development plans) and can direct planning authorities to include certain provisions in local plans (in future, local development plans). Ministers can also 'call in' for their own determination any individual planning application. People can also participate in the drafting of national planning policies, and it is the intention that the Parliament will contribute to the development of the National Planning Framework.

At the **planning authority level**, people can participate in the preparation of development plans, which set out proposals for guiding the future development of their area. Individuals or groups are

informed through newspaper adverts of the local authority's intention to prepare a plan and can see a draft version of it. Local people can participate in the plan's consultation stage, during the course of which they can submit comments or objections at public meetings or in writing.

In terms of **planning applications**, it is best practice for the applicant to carry out pre-application discussions with the authority and there is a statutory requirement to notify immediate neighbours with a basic description of the proposal and site plan. Anyone has the right to comment at this stage. Once the application is submitted to the planning authority, it is available to view at a public location and all comments are accepted within a statutory period. Officers will make a recommendation and then a decision will be made by the planning authority (in some cases preceded by a hearing, where individuals or groups, as well as applicants, will be able to make representations directly to elected Members).

In spite of these existing opportunities, many individuals and local people do not feel that their views are sufficiently taken into account, and are able to point to examples of planning decisions which they regard as unfair, or which have been taken in spite of local community objections.

In *'Your Place, Your Plan'* the Executive noted that while there are high levels of general public interest in planning and a clear view that public participation is important, the actual levels of involvement achieved were lower.

The research underlying this suggested that barriers to involvement include:

- ▶ planning procedures are seen as complex, lengthy and difficult to understand;
- ▶ people are unclear about the importance of the local plan and tend not to get involved in planning until there is a concrete proposal on the table which directly affects them – by which time it is often too late to influence the principle of the proposal;
- ▶ the fact that planning decisions will not always please everybody. Controversial applications can attract as many supporters as objectors, and there are other factors to consider such as the long-term national interest, EU or other legal obligations, the need to promote economic growth and create jobs. It is not always easy to explain that a decision to grant planning permission has taken account of objectors' views, but has – on balance – overruled them.

### 5.3.3 Our Proposals

Our proposals aim to achieve a new balance in the system, with more equality, new rights for local people to be consulted and the requirement for their views to be recognised and taken properly into account. We want developers and planning authorities to involve local people in more meaningful engagement than has been the case in the past and for future developments only to take place once local people have had their say.

Our proposals are guided by a number of clear principles:

- ▶ there should be greater balance and equality in the planning system;
- ▶ that the provision of information at the right time and in the right way is essential – everyone has a right to be involved and all opportunities should be provided to enable them to contribute their views;
- ▶ people need to know that their views will be

taken fully into account;

- ▶ decisions need to be taken openly and transparently and should be explained to the people they affect. They should be fair and be seen to be fair.

Planning decisions can involve difficult choices. The law requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. That is why it is so important for local communities to engage in development planning. But there are also opportunities to comment on individual planning applications. Representations expressing public concern or indeed support are an essential part of the decision making process. Decision makers are regularly faced with well argued representations reflecting different, in some cases conflicting, positions. These different perspectives can be equally valid. The task for whoever is making the decision is to ensure that representations are clearly identified, to consider their relevance to the case in hand, to assess the merits of all views expressed and balance these with other factors, in particular the policies and proposals in the development plan, as well as more technical issues like the suitability and safety of the proposed access, parking provision, density, layout, and design. Local opinion is therefore a material factor, although not necessarily an overriding one.

Decisions will sometimes be unpopular. The credibility of the system depends on the fairness and transparency of the process, and the quality of the decisions and their outcomes (the effect they have on the built and natural environment). Securing this credibility is the challenge that this White Paper seeks to address.

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Planning has a clear link to supporting the Executive's priorities for environmental and social justice. We do not regard it as acceptable for certain communities to feel less empowered than others. A properly functioning planning system encourages all groups and individuals to make their views known. It will also seek to ensure that, for example, 'Bad Neighbour' developments are not disproportionately located next to the most disadvantaged communities.

To support our work to modernise the planning system and strengthen its accountability we will undertake a major information campaign within the next 12 months to publicise people's existing and future rights in planning and other legislation which impacts on planning, such as Freedom of Information and Environmental Information Regulations.

## **Equality**

### *Appeals*

We will reform the functioning of the appeal system to restore balance and fairness. It is not acceptable that applicants are sometimes seen as having unlimited rights to circumvent the local decision-making process by appealing to Scottish Ministers. This is particularly true where the original decision supported the development plan position.

We intend to address this in two ways.

First, we will introduce a process to allow early determination of planning appeals where an appeal clearly does not merit more extensive consideration. This will result in early refusal of those appeals that, for example, do not properly address the reasons for refusal or which involve proposals that clearly depart from an up-to-date development plan. The process of early determination will be in line with criteria which we will publish. We estimate that a significant

proportion of appeals will be determined in this way. This will: give new protection to the interests of local people; diminish the sense that applicants have an inherently privileged position in the planning system; and foster a greater level of certainty through provision of a faster system.

In addition we will curb the tendency for development proposals which have been appealed to alter, and the justification for them to grow, without proper reference to the local community. From now on, all planning appeals will revert to being a review of the decision made by the planning authority, based on the material that was supplied to the planning authority by the applicant and the representations made to them by the community. Only in exceptional circumstances, such as a change in national or development plan policy, will consideration extend beyond the matters contained in the planning application as considered by the planning authority and explained to the community.

## **Information/Accessibility**

It is essential that members of the public are aware of the planning process, and have opportunities to influence it. We therefore propose the following measures:

### *Statutory requirement for pre-application consultations*

Applicants for planning permission may already consult with local people voluntarily in advance of making a planning application. The Executive considers that there are cases in which a statutory requirement to engage with local people at this stage is appropriate.

The proposals in question fall into three categories:

- ▶ proposals for major developments (see Section 5.1.3) where they are a significant departure from the development plan;

▶ proposals subject to the Environmental Impact Assessment (EIA) Regulations, except those screened to the effect that no EIA is required; and

▶ proposals for development defined as larger-scale 'Bad Neighbours' where they are a significant departure from the development plan.

These categories of development differ from those to which the other measures of enhanced scrutiny, for example, hearings, apply. This is to provide applicants with greater clarity on the trigger for pre-application consultation, since it may take place ahead of planning authority involvement.

In addition to the basic statutory requirements, we propose to set out in guidance the form of engagement with local people appropriate to the nature and scale of the proposal. Applicants will be required to provide a report of the pre-application consultation with their application. The planning authority will then assess whether appropriate consultation has been undertaken.

Pre-application consultation allows local people to influence proposals before an application is made. Where there are unresolved issues arising from pre-application consultations, these should be considered as part of the processing of the planning application by the planning authority. There may also be scope for mediation in the right circumstances.

#### *Neighbour notification*

This is the formal means through which local people with an interest in land or property are directly notified of a planning application relating to an adjacent site. 'Your Place, Your Plan' confirmed the Executive's decision to transfer responsibility for neighbour notification in respect of planning applications from applicants to local authorities. We believe that if local authorities are responsible for carrying out neighbour notification this will

strengthen public confidence in the planning system and encourage more effective public participation in planning decisions. In 'Your Place, Your Plan' we also announced that more information about planning proposals and planning procedures would be provided to neighbours to help people respond more effectively to planning proposals. We have also decided to extend the time for responding to neighbour notification from 14 days to 21 days to allow individuals and community groups sufficient time to prepare their responses. We accept the need to increase application fees to reflect the higher costs that this transfer of responsibility will impose on local authorities.

In 'Your Place, Your Plan' we also indicated our intention to extend neighbour notification directly to notify owners, occupiers and neighbours of new site specific proposals in local development plans. In this way, individuals who may be directly affected by development proposals will be given the opportunity to make an informed representation at an early stage. The appropriate arrangements under which neighbour notification is proposed, have been established by a neighbour notification working group comprising local authority planning staff.

We also propose to extend the arrangements for neighbour notification of enforcement decisions. An enforcement notice served by a planning authority sets out the alleged breach of planning control and the steps required to remedy it. One of the current grounds of appeal available to a person on whom an enforcement notice has been served is that planning permission should be granted for the development which is alleged to have breached planning control. As Scottish Ministers, in considering such an appeal, may decide to grant planning permission, it would be appropriate for neighbours with a notifiable interest to be aware of the appeal and to have their views taken into account.

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**Freedom of Information:** The Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 give members of the public new rights to access information held by Scottish public authorities. Refusal to provide information can only be justified under a limited set of exemptions. The Act and Regulations came into force on 1 January 2005. Both obligations provide members of the public with a framework for accessing the information and documentation that relates to development plans and planning applications – which is enforced by the Scottish Information Commissioner.

Subject to our intended review of the grounds of appeal against an enforcement notice (see section on Enforcement), we believe a change is needed here. We propose therefore that an appeal against an enforcement notice, which includes the grounds that planning permission ought to be granted for the development in question, should be subject to neighbour notification by the planning authority. This would be along the same lines as for a planning application made to the authority.

#### *Modernising Public Local Inquiries*

The Scottish Executive ran a consultation on how to make public local inquiries more accessible from 4 July 2003 to 28 November 2003. This assisted us in drawing up a set of proposals to ensure the strengths of the current system were kept, while making the process less intimidating. The details of our proposals are set out in Appendix 7.

#### *Greater use of hearings*

We intend to introduce measures to require greater and more consistent use of hearings to allow the views of objectors and other interested parties to be heard before a planning decision is taken. The Executive will define when a hearing is appropriate and how it should be conducted. We believe that it would be appropriate for there to be a statutory requirement for hearings to take place as part of the determination process for a range of planning applications, where they have attracted significant objections, including:

- ▶ applications for major and local developments which are significantly contrary to the development plan;
- ▶ applications for development that requires an Environmental Impact Assessment; and
- ▶ applications for development defined as larger-scale 'Bad Neighbours'.

#### **Creating Confidence that Views are Taken Fully into Account**

As noted above, the reaction of local people to a proposed development is a material consideration insofar as it raises legitimate public concerns or supports relevant planning matters. However, the fact that decisions on the development

plan and individual planning applications are taken by elected and accountable politicians is a reflection of the status of planning authorities, and the Scottish Executive, as the guardians of the wider public interest.

What often causes concern is the feeling that views expressed by local people are ignored or discounted in the drawing up of a development plan or in the determination of an individual application. We are determined to ensure that the views of local people are given greater and more consistent consideration in the future.

#### *New Planning Advice Note*

As a first step, we propose a new Planning Advice Note (PAN) on community engagement and strengthening the involvement of local people. This will be drafted with stakeholders, to promote best practice on community involvement and effective consultation. The aim is to secure a greater consistency of approach across Scotland and a better understanding of which techniques are best suited to different scenarios and stakeholder groups. This will be the authoritative guide to community engagement on planning in Scotland.

#### *Compliance with best practice*

We want to ensure that developments will only take place where local people have been listened to. We therefore propose that compliance with defined criteria in relation to community engagement should be a material consideration in reporters' examinations both of development plans, and, where they have been called in by Ministers, individual applications. This means that, in future, planning authorities will be required to demonstrate how they have complied with statutory requirements and best practice in the drawing up of the development plan, before the plan can be approved. As regards individual applications, local people will be able to bring alleged failures by

the developer to engage with them to the attention of Ministers, who will take such issues into account when deciding whether to call in an application.

This measure will go a long way to ensuring that local people's views are taken into account, in an appropriate and consistent fashion across Scotland. They will not guarantee that every development that faces objections will be refused: that would lead to paralysis and a loss of the investment that we need. They will help to ensure that the modernised planning system is more credible, and that the decisions it generates can be respected as fair and having taken local people's views fully into account and are in the wider public interest.

### **Transparency/Fairness**

#### *Enhanced scrutiny procedures*

In a plan-led system, it is essential that development plans are authoritative and up-to-date. Planning must be responsive, and, despite the importance of the development plan, there will still be proposals which depart from its provisions. For example, where a site is proposed for a new use not currently allocated in the plan. We believe that these should be subjected to an enhanced level of scrutiny compared to those that are in accordance.

We therefore propose the introduction of enhanced scrutiny for three types of planning application: applications for major and local developments which are significantly contrary to the development plan; those that require an Environmental Impact Assessment; and applications for developments defined in secondary legislation as larger-scale 'Bad Neighbours', for which specific provision has not been made in the development plan. These applications would:

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- ▶ be subject to pre-application consultations (where the criteria in section 5.1.3 apply);
- ▶ be subject to mandatory public hearings at which objectors or supporters would be able to present their views (see section 5.3.3);
- ▶ have any decision taken by a planning committee to grant planning permission referred to the Council as a whole; and
- ▶ subsequently be notified to Ministers, to consider whether to clear the application back to the Council or call in for determination.

## *Planning authorities to give reasons for decisions and notify individuals*

Concerns have been expressed about access to information on a planning authority's reasons for its decision on an application.

We propose that planning authorities will be required to prepare a report on each application. This will include a description of the proposal, reference to any relevant development plan policies, the issues raised by statutory consultees and in representations on the proposal, the planning authority's decision, any conditions and its reasons for the decision. The Executive proposes to specify in legislation that planning authorities must also prepare a decision notice for all applications setting out, as a minimum, the decision (to grant or refuse permission), the conditions to be attached to any permission and the reasons for the decision.

The decision notice and the report will be available to the public on the planning register. Copies of the decision notice are to be sent to those who submitted objections and representations on the application. Where appropriate these requirements will be able to be met using electronic means of communication.

## *Development proposals in which the local authority has an interest*

Procedures currently exist to review cases where a potential conflict of interest arises for local authorities. There are two procedures. Where the local authority has an interest (financial or land ownership) in the proposed development, it cannot grant consent for a development without first notifying the application to Scottish Ministers, if that development is either contrary to the development plan or subject to a substantial body of objections. Where a local authority wishes to undertake development itself, it must follow Notice of Intention to Develop procedures. Where any objection is received, it must submit its proposals to Scottish Ministers for consideration.

Cases currently notified to Scottish Ministers can include a wide range of development proposals – from commercial and retail developments on local authority land, through housing, to local authority services such as schools and care homes. In both procedures, the reference to Ministers ensures an independent assessment of the proposal and any representations. It prevents the Council from acting as judge and jury in these matters.

We are, however, aware that there is a public perception that these applications could be handled with even greater transparency and rigour. Our proposed improvements to the **development planning** process will be central to providing the required transparency. We will require a schedule of land ownership to form part of each local development plan. This will identify proposals for development that include local authority-owned land. These sites will, of course, be subject to full independent scrutiny in the preparation of an adopted development plan, and there will be safeguards under the new framework we propose to limit an authority's scope to depart from reporter's recommendations.

There are also **development management** proposals that will help improve transparency and safeguard against inappropriate development. We will withdraw the 'Notice of Intention to Develop' procedure, requiring **all** local authority interest cases to be the subject of planning applications. This will serve to increase the level of scrutiny of proposals where the local authority proposes a new development.

As a result of this, all local authority applications will be subject to the reforms we propose. These include the requirement for pre-application consultation in certain cases, and enhanced scrutiny and hearings procedures. We will expect local authorities to follow the Planning Advice Note on best practice in public consultation procedures.

Where a local authority proposes development that is a departure from the plan, and/or the subject of a substantial body of objection, the application will be notified to Scottish Ministers. As part of the notification procedure, we will require the authority to provide a statement setting out the reasoning behind its decision to depart from the plan, and/or the reasons for taking the decision it has, in light of the objections received. Scottish Executive officials responsible for the initial review of these cases will focus particular attention on any where the local authority will gain a capital receipt as a result of the proposed development going ahead.

#### *Planning agreements on the public register*

As detailed earlier, we will set out a requirement in legislation that the details of all planning agreements be made available on public registers.

#### *Good Neighbour Agreements*

There is scope for businesses to engage with local communities, not just in terms of planning for new development but also in managing their sites and operations in accordance with predicted and

required standards as development proceeds. To achieve that end we intend to ensure that there is legislative and/or administrative provision in place for Good Neighbour Agreements to be required and implemented in appropriate circumstances.

We recognise the value of local people being able to enter into arrangements with site operators for significant developments which would guarantee them a role in monitoring the way the development is carried out. Parties to such an agreement may include the developer of the site, the future operator and a body that is representative of the local community, for example a residents' group or community council. This is intended to encourage businesses to take the views of local representative groups into account in the way they operate a site or facility. Issues to be covered could include hours of operation, patterns and frequency of vehicle movements and the provision of more general information on environmental performance.

Where the planning authority considers that a Good Neighbour Agreement would be beneficial, for example for a development where an Environmental Impact Assessment has been carried out, it may be appropriate to place a condition on the planning consent, requiring the developer of the site to inform and consult with specified local representative bodies and/or to enter into an agreement. Alternatively, there may be scope for a form of agreement similar to a section 75 agreement.

We will work up proposals for a system allowing for Good Neighbour Agreements, in consultation with all relevant interests.

#### **Other Measures**

##### *Promoting inclusive design*

The Executive wishes to promote good design. As a part of this agenda the

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Executive recognises the need to deliver inclusive environments that can be used by everyone, regardless of age, gender or disability. We therefore propose to require, in appropriate circumstances, that applicants for planning permission show the access principles they have considered when putting forward a development proposal. In addition, the Scottish Executive is preparing, with the Scottish Building Standards Agency, a Planning Advice Note on Inclusive Design. The PAN, which we expect to publish late 2005/early 2006, will provide practical advice to local authority officers and developers on how to deliver more accessible buildings and environments.

## *Planning Aid for Scotland*

Planning Aid for Scotland provides free advice to the public on how the planning system operates, and seeks to improve local and community involvement in planning. The Executive has recognised the need to build up existing mechanisms for public involvement in the planning system and has therefore provided funding to Planning Aid for Scotland of £115,000 over financial years 2003-4 and 2004-5. Following on from the 2004 Spending Review, the Executive has made funding of up to £100,000 available for each of the next two years.

Through the Sustainable Action Fund, the Executive has also granted funding of nearly £150,000 over three years to Friends of the Earth Scotland for its Citizen's Environmental Defence Advocacy (CEDA) programme. The CEDA project aims to provide advice and advocacy support to community groups and individuals who want to get more involved in the planning process.

## *Rewarding good practice*

Another category of Award has been added to this year's Scottish Awards for Quality in Planning. The 'Community Involvement' category is to recognise

the positive role people play in planning. The aim of this is to bring forward outstanding examples of community empowerment, where groups have been active with or through the planning service. Entries may be nominated from various fields, for example: regeneration, conservation, information, environmental improvement or co-ordination of different initiatives. The examples should identify where local people have been most effective, either in partnership with local authorities, developers, other stakeholders, or on their own account in making places work better.

## **Enforcement**

For many individuals, their first contact with the planning system, unless they are themselves making a planning application, is through the enforcement system. In many cases the system may seem to be lengthy and 'unfair' in that there appears to be no penalty for unauthorised development.

In general, the current legal framework for enforcement meets the Scottish Executive's objectives that planning enforcement should remedy the undesirable effects of unauthorised development, and bring unauthorised development under control. We believe that the basic principles of the current framework do not need to be changed.

But we believe that there is scope for radically improving the delivery of planning enforcement with the introduction of some new or extended powers. This will be a major contribution towards making the planning system fairer and more balanced.

We propose that the fees for retrospective planning permission be increased on a sliding scale in order to act as a deterrent to unlawful development and to encourage people to obtain planning consent at the appropriate time. In order to provide a further incentive

for developers to regularise a breach of planning control, we propose that, where a retrospective planning application is not submitted when requested by the appropriate planning authority, this would be an offence under planning legislation.

As a precursor to further enforcement action, should a developer ignore a request for a retrospective planning application, a Planning Contravention Notice (PCN) can be used to request details regarding the development and responsible person(s). We propose that the content and wording of such notices be clarified in consultation with the Crown Office, to ensure the provision of necessary information required in the event of a prosecution. We further propose that the penalties for failure to provide this information be reviewed.

Where an unauthorised development or activity may cause irreparable damage to buildings or the environment, the planning authority may seek to serve a Stop Notice (in conjunction with an Enforcement Notice) requiring the activity to cease. However, this can be an unwieldy process that takes time. We therefore propose that a new power to serve a Temporary Stop Notice (TSN) be introduced. A TSN would provide an immediate power to order the cessation of a breach of planning control, and could be followed by the serving of an Enforcement Notice and Stop Notice. There is no right of appeal against a Stop Notice and, in line with this, we do not propose a right of appeal against a TSN.

Under the current legislation, a developer can appeal against an enforcement notice, and exercising this right is cited frequently by planning authorities as a major reason for delays in the process. We therefore propose to re-examine the provision in the Act for an appeal against an Enforcement Notice, to see if there is scope to bring it into line with other enforcement

action (Stop Notice, Breach of Condition Notice, etc) where there is no right of appeal under planning legislation, although a developer can seek a judicial review.

Rather than remove the right of appeal completely, we acknowledge that there may be cases where there are legitimate grounds for appeal if the planning authority has been negligent in the serving of the notice. We therefore believe that there may be scope to impose a strict time limit for the lodging of appeals and to redefine the criteria for appeals to situations where there has been a clear error in the serving of the Enforcement Notice.

There is general public perception that planning enforcement measures can take a long time to produce any action. We are considering a range of measures to encourage pro-active enforcement as a means of dealing with breaches of planning control quickly and efficiently. To this end, we propose that developers will be required to submit a Start Notice to the planning authority notifying them of their intention to commence development and that they have met with any suspensive or pre-conditions. The developer will further be required to notify the planning authority when certain agreed stages of the development are completed, and to notify the authority when the entire development is complete. This requirement for self monitoring, similar to that required under Pollution Prevention & Control consents issued by SEPA, would enable the planning authority to monitor compliance with conditions throughout the development process and to identify and address any breaches of planning control at an early stage.

In conjunction with our proposals to increase pro-active enforcement, we propose that all planning authorities be required to

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publish a Planning Enforcement Charter setting out, in clear terms, their policy in respect of planning enforcement.

Although in practice it is very rare for compensation to be awarded against a planning authority in respect of enforcement action, this possibility is frequently cited as a reason for planning authorities to be cautious in their approach to enforcement action. We therefore propose that the grounds on which a claim for compensation can be made are reviewed and that compensation is only considered where there has been a clear, avoidable, major error on the part of the enforcing authority. We believe that this would encourage planning authorities to consider more frequent and timely interventions where they believe there to have been a breach of planning control.

We are considering revising the level of fines that a Court may impose in respect of breaches of planning control. In order to support the proposed additions to the enforcement powers, we propose to update *PAN 54 Planning Enforcement* and provide enhanced continuous professional development training, especially in the use and drafting of conditions.

### **5.3.4 Rights of Appeal in Planning**

The frustration with the perceived inequalities in the planning system led some people to call for third parties to be given a right of appeal against planning decisions. In contrast to other parts of the United Kingdom, the Scottish Executive made a commitment in the 2003 Partnership Agreement to carry out a detailed examination of the issues involved through public consultation.

The consultation *Rights of Appeal in Planning* ran from 1 April to 31 July 2004. A stakeholder group, consisting of representatives of different interested bodies (including local authorities, Scottish Environment Link, CBI Scotland, Friends of the Earth Scotland and the Association of Scottish Community Councils) advised the Executive on the conduct of the consultation.

The Executive received more than 1620 responses to the consultation, and commissioned an independent consultancy – Craigforth – to analyse the responses. This analysis was published on 15 December 2004 and can be viewed on the Scottish Executive's website at: <http://www.scotland.gov.uk/library5/planning/roapacr-00.asp>. The consultation assisted the Scottish Executive in considering whether to introduce a third party right of appeal. Ministers have given careful attention to the arguments advanced by all sides and come to a decision in the context of the comprehensive reforms we have outlined earlier in this paper.

We are determined to act to restore confidence in the planning system, and ensure that decisions are taken in the wider public interest. We see a number of our reforms as essential to achieving that, especially ensuring effective public engagement in development plans, and then putting development plans at the heart of decision-making. In the future, these plans will involve local people more effectively, take environmental concerns on board, and, once in place, will determine how applications are decided.

We also believe we must ensure that there are opportunities for public involvement in the preparation of planning applications, where appropriate, and we have defined the categories where pre-application engagement will be required. The planning system will work much more smoothly if issues are tackled at the start.

The emphasis of our modernisation of the planning system is aimed at making better quality development plans and applications, and engaging local people and environmental interests at the outset and throughout the process. We are seeking to restore fairness and balance to the system, and reduce the need for appeals to be submitted at the end of the decision-making process. We are not satisfied that these objectives would be best achieved by introducing a third party right of appeal into the Scottish planning system.

We believe that the package of reforms set out in this White Paper will have a positive impact on the planning system by introducing greater fairness and a structured hierarchy of national, major, local and minor planning applications that will enable the system to respond better to the different demands placed upon it.

Having weighed the issues, the Cabinet is not proposing a third party right of appeal because:

- ▶ we want to strengthen the participation of local people at an earlier stage in the process, where they can influence the form and content of development plans, and then the detail of development proposals in planning applications;

- ▶ adding a new right of appeal against decisions to grant planning permission would inevitably build new delays and unpredictability into the system. This would add costs to development that may act as a deterrent to the investment that the economy, the environment and society needs. It would run counter to the certainty for all that these modernisation proposals intend to achieve;

- ▶ introducing a new right of appeal would risk undermining local authority decision making. In addition, our other reforms will enable local authorities better to play their role as guardians of the wider community interest, by the introduction of proportionality and greater fairness and equity in the development planning, development management and appeals systems.

The Cabinet recognises, however, that the option of introducing a third party right of appeal will continue to be the subject of debate as people come to a view on the effectiveness of the proposals set out in this White Paper. Ministers are committed to engaging in this debate as Parliament reaches conclusions on the provisions to be included in a Planning Bill.

# 06: Sustainable Development



The introduction of a new framework and hierarchy for planning, along with measures to improve efficiency and support better inclusion, are not an end in themselves. They are, instead, a means to securing better outcomes from the planning process. The proposals in the White Paper increase the opportunities for planning to fulfil its potential and to play its role in delivering sustainable development. For development to be sustainable it must be the right development, in the right place, of the right quality and at the right time.

We are committed to a plan led system. We want plans to be drawn up in an inclusive and transparent manner. We expect these plans to provide clarity and certainty about the way communities will change and evolve in the longer term.

Development planning provides both a framework and a process by which the interaction of economic, social and environmental considerations as they affect people and places can be identified and evaluated. In preparing strategic development plans and local development plans, issues should be considered as they relate to and connect with each other and not in isolation. At the same time the long term consequences, as well as the short term effects, of development and change can be addressed.

The introduction of Strategic Environmental Assessment (SEA) marks not just a significant improvement in the way that the environmental consequences of decision making are addressed, but also introduces enhanced levels of openness and accountability in policy making. We will therefore integrate SEA into the process for drawing up the National Planning Framework.

Although it has been normal practice for planning authorities to consider the likely environmental consequences when preparing a development plan,

the introduction of SEA has now formalised this. SEA introduces an explicit, systematic method of taking account of environmental considerations and it also places public participation at the heart of that process. Key stages include: the preparation of an environmental report; carrying out full public consultations; taking account of the environmental report and consultation responses in the decision making process; and finally, a requirement to make information available on the decisions made, helping stakeholders to understand better how these decisions were reached.

Development plans must make provision for development. Scotland's future depends on it. We need jobs, houses, services and utilities to enable the people of Scotland to fulfil their hopes and aspirations as individuals, families and communities. But that does not mean development at any cost or in any place or to any standard. There are consequences from badly located, ill considered and poorly designed development. The growth areas of today cannot become the regeneration priorities of the future.

We expect plans to make provision for developments that are required to meet our wider international and EU obligations, notably in waste management and water quality. We recognise concerns of some communities about developments that have significant environmental impacts not just individually but also cumulatively. Our emerging policies on opencast coal, waste and minerals will seek to ensure that any community is not subject to a disproportionate burden of negative environmental impacts. These national planning policies need to be reflected in development plans and in decisions on planning applications and appeals. We expect planning permission to be refused if unacceptable impacts cannot be mitigated.

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Since 1988 certain types of planning applications which are likely to have significant effects on Scotland's environment have been subject to the formal requirements of Environmental Impact Assessment (EIA) legislation. EIA provides a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental impacts. Once again, public consultation is an explicit requirement and key stage in that process.

The current Regulations are due to be further strengthened to take account of expanded provisions on public participation which have been introduced at European level. These changes, which are themselves currently the subject of a full public consultation, will introduce new procedures designed to enhance further the rights of local people and to make it easier to participate fully in the decision making process.

We have also indicated that where an EIA is involved, the developer should engage with the local community prior to submitting a planning application. If the planning authority is not satisfied with the level of engagement or believes that the developer has not done sufficient to take account of local concerns, they may refuse to register the application. We are also proposing to pilot the use of Good Neighbour Agreements. This will allow communities an active role not just in planning for new development but in ensuring that it is carried out to agreed planning and environmental standards.

We have attached a high priority to improving design quality in Scotland. Publications such as *Designing Places*, *SPP1: The Planning System*, *SPP20: Role of Architecture and Design Scotland*, together with a series of Planning Advice Notes, set out our aspirations for higher standards of development. We have also emphasised the importance of raising design awareness and improving skills within the planning profession and will continue to support a range of measures and incentives to achieve this.

Location, in particular ready access to jobs and key services, is the starting point, but development should be designed in a way that is well integrated with the existing urban form, has well planned and well connected public spaces that bring people together and which provides opportunities for physical activity and recreation. Our aim goes beyond discouraging poorly located or badly designed proposals. Instead we want to encourage development that will enhance the quality of places and provide neighbourhoods for living, working and recreation which will increase community well-being. The objective is not just to create places that look good but which function well and add to the quality of life for all.

**Interaction between planning and environmental regulation:** In 2003, the Executive commissioned Environmental Resources Management to carry out research on the interaction between planning and environmental consenting regimes, including assessing whether the regimes interact in a way that supports public involvement and environmental justice. The research report was published in October 2004. The research found that there have been substantial improvements in the operation of the interface between planning and environmental regulation since guidance was first published in 1994. But, it concluded that there are still weaknesses which lead to inappropriate standards of environmental protection, delays in resolution of consents, unnecessary burdens on participants, public uncertainty and lack of confidence in the planning system. This research report contained 28 main recommendations and a number of detailed recommendations on how they should be given effect. The Executive intends to adopt all the recommendations in the report. Consideration will also be given to improving the interaction between the planning process and other statutory procedures for flood prevention schemes.

# 07: Financial Impacts



# 07:

As with any reform package, this set of proposals will generate costs and savings. An effective, efficient planning system which is more proportionate in its focus should have a highly beneficial impact on the wider economy. Developments contributing to the national infrastructure will be planned proactively, taking a long-term view, and thereby increasing certainty for all stakeholders. Applications for major developments, helping to deliver sustainable economic growth, will be expedited by planning authorities. Fee scales will be set to take into account the costs to the local authorities of handling major applications. Fewer small-scale developments such as home improvements will be subject to development management scrutiny, allowing a saving on resources currently expended on the processing of these applications, and creating time for professional planning officers to focus on more substantial applications. The precise impact of these changes on the national economy will always be difficult to quantify. The Executive will, however, monitor the impact of planning reform, including its economic consequences.

There will be impacts on resources for central and local government. In particular, we anticipate changes to the way in which planning authorities operate, and we will be discussing the financial impacts of the new system with local authorities.

## Local Authorities

The reforms that we consider likely to generate most efficiency gains, releasing resources for planning authorities to use to deliver other improvements, will be:

- ▶ the extension of permitted development rights, and consequent removal of a number of applications for minor development from the planning system;
- ▶ raising the level of fees payable to local authorities for major applications to reflect the cost of processing them more closely;
- ▶ removal of the need for two tiers of development plan across most of Scotland, reducing the number of strategic development plans from 17 to 4;
- ▶ speeding up plan preparation by replacing the current two stages of draft and finalised plans with one proposed plan; and requiring the preparation of shorter and more focused local development plans that are fit-for-purpose;
- ▶ using model development plan policies and preparing supplementary guidance for certain topics to speed up further plan preparation;
- ▶ agreeing the principle for development on land allocated in a local development plan, simplifying the development management process, and creating time for local authorities to focus on the design quality of development proposals; and
- ▶ replacing the appeal to the Scottish Ministers with a decision review process so that planning authorities can rely on existing reports rather than preparing fresh precognitions.

There will also be some new costs generated for planning authorities:

- ▶ in fulfilling the statutory requirement to update development plans to a shorter and more regular timescale, and requiring more regular development plan examinations;
- ▶ in undertaking neighbour notification for planning applications, and for new site specific proposals in local development plans;
- ▶ in operating the new system of appeal tribunals where decisions have been taken at an officer level; and
- ▶ in more pro-active use of enforcement powers.

### **Scottish Executive**

There will also be implications for central Government resources, both for the Scottish Executive Development Department (SEDD) and for the Scottish Executive Inquiry Reporters Unit (SEIRU).

The reforms that will generate most efficiency gains and additional savings for the Scottish Executive will be:

- ▶ the introduction of appeal tribunals to hear appeals on a range of local developments, rather than SEIRU;
- ▶ the removal of a tier of development plans (structure plans) in all but the four city regions (SEDD currently has a role in processing their approval by Ministers);
- ▶ the early determination of a range of appeals (savings for SEIRU in hearing fewer appeals, but costs for SEDD in doing the assessment work);

The reforms that will generate most new costs will be:

- ▶ an increase in the number of cases notified to, and possibly subsequently called-in by, Ministers as a result of changes to the process, in particular for national developments, major developments and those applications attracting enhanced scrutiny;
- ▶ the assessment work with regard to the early determination of the merits of appeals: an increase in costs for SEDD (but, as noted above, reduced costs for SEIRU in hearing fewer appeals);
- ▶ more frequent updating of local development plans, requiring reporters to conduct examinations;
- ▶ the mandatory requirement for the examination of strategic development plans in the four city regions, to be jointly funded by the Authority and SEDD;
- ▶ an enhanced audit function for SEDD to monitor planning authority performance;
- ▶ generation and monitoring of model policies by SEDD;
- ▶ a role for reporters in assessing the quality of stakeholder engagement by planning authorities, in both development planning and development management; and
- ▶ enhanced role and status of the National Planning Framework.

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In the longer term, the introduction of new 'e-planning' procedures will help planning authorities, applicants, consultees and other interested parties move from time-consuming paper based systems to more efficient electronic working. Online access to planning information and services reduces the cost of people engaging with the planning system. In the longer term, prudent use of information and communications technology will reduce costs for planning authorities by improving business processes and speeding up the processing of planning applications.

# 08: Supporting Planning Authorities



# 08.

## A Framework for Improving Delivery in the Planning System

Making the changes we propose work will require the commitment of a large number of organisations – central and local government, public agencies and bodies, developers, business organisations, voluntary bodies, community councils and other interests. At the heart of the system, however, are the planning authorities, on whom the principal responsibilities lie for the preparation and adoption of development plans, the processing of applications and the enforcement of planning controls.

The purpose of the reforms is to effect the modernisation of the planning system. Modernisation will, rightly, raise the expectations of those using the system that they will see real and tangible improvements in the outcomes that it generates. It will not be enough merely to change the legal and administrative provisions – there must also be a change in the way in which planning authorities and others perform, so that these expectations can be met. Our goal is to ensure that the system operates without unnecessary delay, and that the quality of decisions improves. This will require planning authorities to take on the responsibility for implementing the new framework with vigour.

To help them achieve this, there needs to be a new framework of reporting, monitoring, evaluation and support. This will ensure that the expectations on the planning system are explicit, performance against those expectations is publicly assessed, and steps to improve performance can be put in place where they are needed.

Prerequisites for this are clear, ambitious but achievable performance targets, based on measures that genuinely reflect a planning authority's performance. The targets which planning authorities are currently

expected to meet, are set out in *Scottish Planning Policy 1: The Planning System (SPP1)*. All of these targets will, however, need to be reviewed to take account of the changes to the development management system. The Executive will work with planning authorities and other interested parties on a revised set of targets, to apply at the point that the new hierarchy of applications is implemented.

It is the responsibility of Ministers and the Scottish Executive to oversee the effective functioning of the planning system. It is our intention to review the targets applying to appeals dealt with by SEIRU in tandem with the introduction of planning reforms, so that the time limits for each category of appeal casework are reduced progressively. Over the past few years, the Executive has collected data on the performance of planning authorities against those targets and published an Annual Report detailing those results. In addition to the collection and publication of performance data, SEDD has conducted a series of audits of planning departments. These audits aim to:

- ▶ review the statistics on planning authority performance and understand more precisely the underlying reasons for performance;
- ▶ identify and evaluate contrasting approaches to plan preparation; and
- ▶ identify best practice in development control and development planning.

The Executive believes that both of these functions – providing information on performance, and auditing – should be continued and enhanced as part of the monitoring and evaluation framework. This is to ensure that performance can be analysed on a common national basis, that good practice can be identified and promoted across Scotland and that areas of poor performance can be targeted.

Ministers believe that the planning system merits a structured and specialist programme of audit, building on the experience and expertise established by SEDD's existing audit programme. It is our intention to place the current planning audit function on a statutory footing, providing a clear process for making and following up recommendations to planning authorities. This step will ensure a transparent and structured approach to the evaluation of the performance of planning authorities, and should help identify how to spread good practice as widely as possible. Local authorities are already placed under a duty to provide Best Value in exercise of their functions, including planning, through the Local Government in Scotland Act 2003. It will be necessary to ensure that the SEDD's programme is compatible with work undertaken by the Accounts Commission on Best Value audits and more generally on reporting local government performance.

Concern has been expressed that there are no safeguards against patterns of decision-making that are not compatible with a development plan-led approach. The Bill will therefore seek to allow, either through proposed audit powers or through a separate power, Ministers to commission an investigation into cases where there is a persistent pattern of decisions that do not comply with development plan policies, or with officer recommendations based on such policies. This will also provide an additional protection against arbitrary decision-making that ignores both professional judgement and the views of local people.

Other powers will be required to support and complement the information provisions and audit functions. Ministers already have powers to request information from planning authorities in respect of their development control functions. Given that a new focus will fall on the preparation of

development plans, we intend to extend this power to cover the exercise of all planning functions. The Planning Bill will also continue existing Ministerial powers of direction and intervention in respect of development plans, and again, in the interests of consistency, will extend these to apply to all planning functions. These are, however, powers of last resort. We would expect that where there has been a serious and persistent difficulty in raising the performance against national standards, we would first attempt to work in partnership with the relevant authority to address the cause of the problem.

### **Supporting Performance – Partnerships for Change**

Partnership is the real key to achieving a step change in the performance of the planning system – between all those involved in planning process, and in particular between the Executive and planning authorities. Our modernisation agenda is substantial and its introduction will place considerable strains on the planning system. Research commissioned by the Executive has already identified a number of factors which make the operation of the current system difficult – such as difficulties in recruitment and retention, skills shortages and a lack of priority given to planning in some local authorities. We intend to work with authorities to tackle these issues, and anticipate that authorities themselves will respond to the need to give due weight to their planning function.

One area where work has already started is in addressing the skills shortage. The 2004 Spending Review allocated £2.25 million spread over financial years 2005/06 to 2007/08 to support performance improvement initiatives in planning. This Planning Development Budget (PDB) is designed primarily to help planning authorities address training needs and skills gaps that are hindering them in the effective delivery of their planning functions. It will also target measures

# 08.

to support and encourage better engagement between planners and local people; and in improving planners' awareness and understanding of the needs of businesses. The programme of measures funded by the PDB is being developed in partnership with a wide range of interests, including local authorities, the Local Government Improvement Service, planning schools, the Royal Town Planning Institute for Scotland, public agencies and the users of the service – developers, environmental groups and community representatives. The PDB will play an important part in delivering a more effective, responsive planning system.

Types of learning to be supported by the PDB will be flexible and tailored to meet specific needs and circumstances. Options include classroom courses, workshops, seminars, conferences and distance-learning packages. We are considering topics for training and these are likely to include design, development economics, effective enforcement, management and environmental assessment.

To support and encourage better engagement between planners and local people we intend to examine the scope for introducing a mediation pilot project. The aim of this project will be to ascertain whether formal mediation can be applied effectively to the planning system and to evaluate its potential impacts and costs. We also propose to commission research to identify the extent to which local authority planning departments understand and respond to the needs of businesses. This study will lead to recommendations as to how this relationship could be improved further.

We will need to develop robust criteria by which to evaluate the impact of the PDB. We are considering evaluation and monitoring options to assess the impact of the PDB and demonstrate what has been achieved.

Another partnership initiative is a joint bid, involving the Executive and all local authorities, for funding from the Efficient Government Fund. This bid is for funds to support the design and roll-out of a common, integrated e-planning system for planning authorities and some public bodies across Scotland. The aim is to provide a speedier, more accessible and more efficient option for both planning applications and development planning. It could extend to include: a central service that allows planning application forms to be completed online; fee calculation and payment; electronic submission of associated documents; integration of forms and fee payment with planning authority back-office systems; development of online casework tracking systems and online access to planning applications, appeals and development plans; and an online consultation system in partnership with national agencies. This bid has now passed the first stage, allowing the partners to access funds to help develop a comprehensive business case and we will continue to work closely with planning authorities to progress this.

There is no doubt that the challenge planning authorities and the Executive face in implementing these reforms is very demanding. Public expectation will, rightly, be high. The new system should provide a more efficient, inclusive and transparent service which leads to better outcomes – a higher quality of development where it is needed, and the appropriate protection of our heritage and environment. Achieving these outcomes will require a skilled, committed and well-supported planning service across Scotland. An enhanced performance monitoring and evaluation framework will provide the basis for improvement, and a shared approach to overcoming the obstacles will secure its realisation.

# 09: Next Steps



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## 9.1 The Planning Bill

This White Paper presents the opportunity to deliver our commitment set out in the 2003 Partnership Agreement to *'improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better, and allow quicker investment decisions'*. We are now working towards implementing some of these proposals through changes to the legislative framework via a Planning Bill.

Since 1999, we have conducted a series of consultations and White Papers to identify the best way of taking forward the modernisation of the planning system. These papers set out a number of commitments to modernisation, and some of the key measures are already in place. Significant changes so far include:

- ▶ publication of the National Planning Framework in April 2004;
- ▶ progress with the ongoing programme to update Scottish Planning Policies;
- ▶ progress with the ongoing programme to update Planning Advice Notes;
- ▶ three meetings held of the National Consultative Group; and
- ▶ legislative provisions to allow authorities to process applications electronically.

In 2003 we announced our intention to introduce a Planning Bill during this current session of Parliament. Now that the planning modernisation agenda is fully mapped out, we will introduce the Bill when a suitable legislative opportunity arises, to take forward the proposals set out in this White Paper that require changes to primary legislation.

The Planning Bill will play a central role in our planning modernisation agenda, and the changes we are proposing to make to primary legislation will have a significant impact on the future of the planning system in Scotland. They will afford a new status and role for the National Planning Framework. They will radically modernise the development plan process, replacing the current two tier system with one where most of Scotland will be covered by a single level of development plans, with an additional level of strategic development plans for the four major city regions. The changes will also affect many aspects of the system of development control, now development management, giving greater clarity and openness in the handling of applications for development. They will also improve public involvement in planning, creating a more transparent and accountable system that is more balanced and fair. As outlined in this White Paper, we will also make changes to enforcement, planning agreements and the inquiry and appeals processes. A list of the measures for inclusion in the Planning Bill is set out in Appendix 8.

The overall challenge for the Planning Bill is to set out a planning system that works for Scotland, introducing the changes necessary to provide a quicker, more transparent and more effective service. This process should also create a system better suited to operating in the context of a Scottish Parliament and a single tier of local government.

## 9.2 Non-legislative Reform

As with all modernisation initiated by primary legislation, many of the more fundamental measures set out in this White Paper will, if approved by Parliament, take time to come into force. However, given the need to effect changes as soon as possible, there are a number of reforms we will be implementing in the near future. These do not require primary legislation, and will begin to modernise the planning system and make a difference in the lifetime of this current Parliament. The measures involved are the following:

- ▶ implementing the enhanced scrutiny procedures for proposals that are significantly contrary to the development plan;
- ▶ a campaign to explain the rights of local people in the planning process;
- ▶ early action to press planning authorities to update their development plans, with possible sanctions if they do not;
- ▶ beginning the process of development and consultation on the next National Planning Framework, and on Executive policy for renewable energy;
- ▶ a more proactive approach from the Executive to influencing the form and content of development plans; and
- ▶ initiating measures to improve local authority performance on development management.

## Comments on this document

If you wish to submit any comments on this White Paper, please send them to:

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### Further copies

Further copies may be obtained by telephoning 0131 244 7543 and are also available on the Scottish Executive planning website at [www.scotland.gov.uk/planning/](http://www.scotland.gov.uk/planning/)

# 10: Appendices



## Appendix One: Bibliography

Documents marked with an asterisk (\*) are not specifically mentioned in the text of the White Paper, but may be of general interest.

### PRIMARY LEGISLATION

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For hard copies contact 0131 244 7543

Electricity Act 1989

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For hard copies contact 0131 244 7543

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Transport (Scotland) Bill \*

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Circular 12/1996: The Town and Country Planning (Scotland) Act 1972 – Planning Agreements

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## Appendix Two: Planning and Public Policy

An effective planning system is fundamental to the delivery of most public policy strategies, objectives and commitments, and to the achievement of quality solutions. This is every bit as true at a local level, as at a national one. Some examples of policies particularly affected are:

**Economic Growth** – A planning system that provides certainty and predictability in its outcomes, and is efficient in the way it draws up development plans and processes applications, can make a major contribution towards economic growth.

**Sustainable Development** – The planning system can help deliver sustainable development by considering both long-term consequences and short-term effects and promoting the most sustainable option. The planning system can promote the prudent use of natural resources, and encourage energy efficiency through the good quality layout and design of development. It can also promote development on previously developed sites to help protect key environmental resources.

**Community Planning** – While community planning aims to provide the over-arching framework at the local authority level for improving the delivery of public services, the planning system will have a key role in delivering those elements of the community plan which impact on land use and development. Where community planning identifies a need for improved health or education facilities, incorporation of specific projects into development plans will ensure proper consideration of their impact, for example, on the local environment or transport systems. As community planning develops, better integration of plans and associated processes will provide scope for greater co-ordination of community engagement on key public service and land use matters.

**Social Justice and Inclusion** – Planning should both promote social justice and provide an example of a truly inclusive decision-making process. Planning is a tool that can help deliver outcomes that promote regeneration of deprived areas, create mixed communities, stimulate economic growth and opportunity, and aid the creation and maintenance of pleasant, healthy, safe and crime-free environments. It should always give the public the opportunity to influence the future development of their communities, and ensure that their voice is heard and considered.

**Transport** – Planning and transport are inextricably linked. It is essential for the economy of Scotland that the labour force has easy access to places of employment and that raw materials, components and finished products can be transported efficiently. This can only be delivered through the combination of a good transport system that supports economic growth and a strong planning system that ensures development decisions take full account of their impact on the transport system.

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Good planning can also encourage a more integrated, sustainable and inclusive transport system, by directing development to the locations most accessible by public transport. This will also help reduce the need for people to travel in the course of their daily routine. Finally, we have also made it clear that a Transport Assessment is required for certain developments, with the outline of a Green Travel Plan to be considered as negotiations continue on these applications.

**Energy** – The Electricity Act (1989) among other matters governs decisions about the location and design of major electricity installations. This Act applies to the whole of Great Britain as energy policy is not devolved. Under the provisions of Section 36 of the Act, however, Scottish Ministers are required to take decisions about the location and design of electricity generating stations, while Section 37 governs consent for overhead lines. In the immediate future, many such decisions will be required in relation to renewable energy, particularly in respect of wind farm proposals and associated electricity grid upgrades. Smaller windfarms of capacity under 50MW are dealt with by the planning authority under the planning system.

Through the provisions of Section 36, Scottish Ministers would also be required to decide on any proposals to build new nuclear energy installations. The stated policy of the Executive is, however, that Ministers will not support new nuclear power stations while related waste management issues remain unresolved. There are no proposals in this White Paper which seek to alter that position. Nor would any of our proposals change any procedures in relation to nuclear power stations. These would remain under the procedure for Electricity Act consents, whereby an objection by the planning authority within whose area the development would take place (the relevant planning authority) would automatically trigger an Inquiry. There is no provision in this process for appeal by any party.

The National Planning Framework, in its role as a vehicle for identifying key national developments will be informed by Scotland's future needs for renewable and non-nuclear energy generation. The National Planning Framework will not, however, confer consent for any single new installation: development proposals will, as now, be taken forward through a process involving consultation, application, and any necessary hearings and inquiries.

The Scottish Executive is committed to reviewing planning policy on renewable energy developments. The review will consider how best the Executive's renewable energy targets can continue to be delivered. The review will also consider the need for a spatial framework for wind energy and will be informed by the work of the Environmental Advisory Forum for Renewable Energy. The National Planning Framework will reflect any revised planning policy on renewable energy.

**Rural Policy** – Scotland’s rural areas are a unique resource. Scottish Ministers’ ambitions for rural Scotland were set out in ‘*Rural Scotland – A New Approach*’. Our goal is to have a prosperous rural economy, with a stable or increasing population that is more balanced in terms of age structure and where rural communities have access to good quality services. The National Planning Framework highlighted the importance of environmental stewardship and economic diversification, while a substantial package of planning policy and advice was issued in January 2005 to progress our aspirations for rural Scotland.

**European Legislation** – European Union policy, particularly policy relating to the environment, has both direct and indirect effects on the planning system. EC legislation is an additional way of ensuring that sustainability remains at the heart of public policy making, but also that information on the environmental aspects of plans and strategies is widely available.

Greater awareness of the role the planning system can play in delivering public policy commitments does not mean excessive centralisation. It means each level of Government drawing up policies in an integrated and rational way, and being aware of the potential of planning to facilitate delivery.

### Appendix Three: Detail Of Application Process For National Developments

#### **National Developments: Application Process**

Where applications for national developments come forward, we envisage a new process for their determination.

Once the planning authority is satisfied that it is in receipt of all necessary papers (as prescribed by regulations) associated with the planning application, including accompanying plans, and any relevant supporting statements, it shall submit a notice and copy of the application form, within 5 days of receipt, to Scottish Ministers. The applicant would require to be notified by the planning authority that this has taken place. The authority will then be required to carry out the normal statutory consultations on the application, as prescribed in secondary legislation.

# 10:

Once the statutory period for consultation responses has expired, the planning authority will be required to formally notify the application to Scottish Ministers by passing a copy of the case file to them. This will ensure that Scottish Ministers are in possession of all the relevant information before taking any subsequent steps. Scottish Ministers will be able to consider the details of the case when consultations are being carried out and will have powers to call-in the application at any time. In practice, however, we would expect Scottish Ministers only to take the decision to call-in an application after the statutory consultations have been completed and the application is formally notified to Ministers. Planning authorities will be advised to continue their consideration of the application, as the application may subsequently be cleared back to them.

On receipt of the planning application and accompanying papers, Scottish Ministers will have the following options:

- call the application in, within 28 days (with right to extend the period as required) and determine the method of consideration: a planning inquiry, a hearing or simply on the basis of the fully documented application as submitted.
- clear the application back to the planning authority, within 28 days (with right to extend the period as required). At this stage, Ministers may identify planning conditions considered to be necessary to ensure the overall acceptability of the development proposal.

Ministers' decisions on applications would be final, subject to statutory appeal or judicial review.

## Appendix Four: Processing Agreements

In order to deal with major applications expeditiously, they need to be prioritised by planning authorities. Issues and constraints relating to the site and the proposed use need to be identified as early as possible in the process. We propose that the applicant and planning authority will agree on a realistic timetable for the planning application to be determined, informed by the views of statutory consultees. This will be set out in terms of an agreement between the parties.

We envisage the following procedures to ensure that agreements are made and that efforts are made on all sides to achieve the necessary timescales:

➤ **where the parties are unable to reach a processing agreement** within the 28 day period, the normal processing period for determining the application would apply i.e. 2 months (4 months for cases requiring an Environmental Impact Assessment) with the right to appeal to the Scottish Ministers against non-determination where that period expires without a decision being made. Where the appeal is successful, the applicant will have the right to a refund of half the planning application fee.

➤ **where a processing agreement is in place but the terms are not met**, the applicant can appeal to the Scottish Ministers against non-determination. The planning authority would then be required, along with its appeal submission, to make a statement on why the timetable was not met. In some cases, it is recognised that this may result from failure by another body i.e. a statutory consultee failing to respond. Where the planning authority is found to have acted unreasonably, it shall return the full fee to the applicant.

► **where there is a processing agreement that is met**, the applicant would retain the right to appeal to Scottish Ministers against refusal of the planning application or conditions on the consent. Refund of fees would not, however, apply in this case.

## Appendix Five: Modernising Development Planning

### Strategic Development Plans

The move to strategic development plans marks a significant change in the style and purpose of plans at this level. Detailed arrangements for these plans are set out below.

#### *Purpose*

We expect the new strategic development plans to set out a clear vision and spatial strategy for development. They should identify the key locations and priorities for protection, development and regeneration, 5, 10 and 20 years ahead, being more precise about short-term priorities. Numerous and lengthy policies will not be necessary. It will be for the local development plans to articulate the detailed policies and proposals to implement that vision. In areas with a single tier of development plan, the local development plan will be required to set out a vision and spatial strategy for the area.

#### *Strategic Development Planning Authorities*

We require specified authorities to work jointly to prepare strategic development plans for the city regions (see map below setting out authorities that will work together). We intend these authorities working together in this manner to be known as strategic development planning authorities (SDPAs), although ultimate accountability and responsibility will lie with the individual councils themselves. Each council will be represented equally on the SDPA and will jointly and equally fund the SDPA's dedicated planning staff. The existing model, used in Structure Plan preparation in Ayrshire and in Glasgow and the Clyde Valley, for staff to be employed by one of the constituent councils and seconded to the dedicated team, has been effective and should be replicated for the SDPAs.

Ideally, the process for preparing strategic development plans will take place in parallel with the local development plans being produced by councils in all areas. National interests will be considered at the beginning of every plan review. After early targeted consultation, the SDPA should seek to resolve objections where possible before arranging an examination and seeking approval for the strategic development plans. The proposed stages of plan preparation for strategic development plans and local development plans are outlined in the diagram below.

# 10:

## *Strategic Development Plan examination and approval*

The examination of the strategic development plan will allow the reporter to assess independently the key issues around which there is debate. The reporter will also examine the planning authority's report on the consultation statement to assess the extent to which it has been met or exceeded. The reporter will have discretion over the style of examination, for each submission. Guidance will emphasise that all submissions will have equal status. It is expected that written submissions will be used for most representations, and inquiries should only be required where there are complex technical issues. As well as saving time, this reduces the need for individuals to have to engage with the oral examination process, which many regard as intimidating and drawn out, dominated by lawyers and planning consultants, often to the disadvantage of local people.

reporters will be required to report their recommendations to the Scottish Ministers. In this case, the planning authority and the Scottish Ministers will share the cost of the examination. There will be a period in which the strategic development planning authority, individual authorities or any other parties may submit comments to the Executive on the reporter's recommendations. The Scottish Ministers will then proceed to approve the examined plan, with any amendments they consider justified.

## **Development Planning in the National Parks**

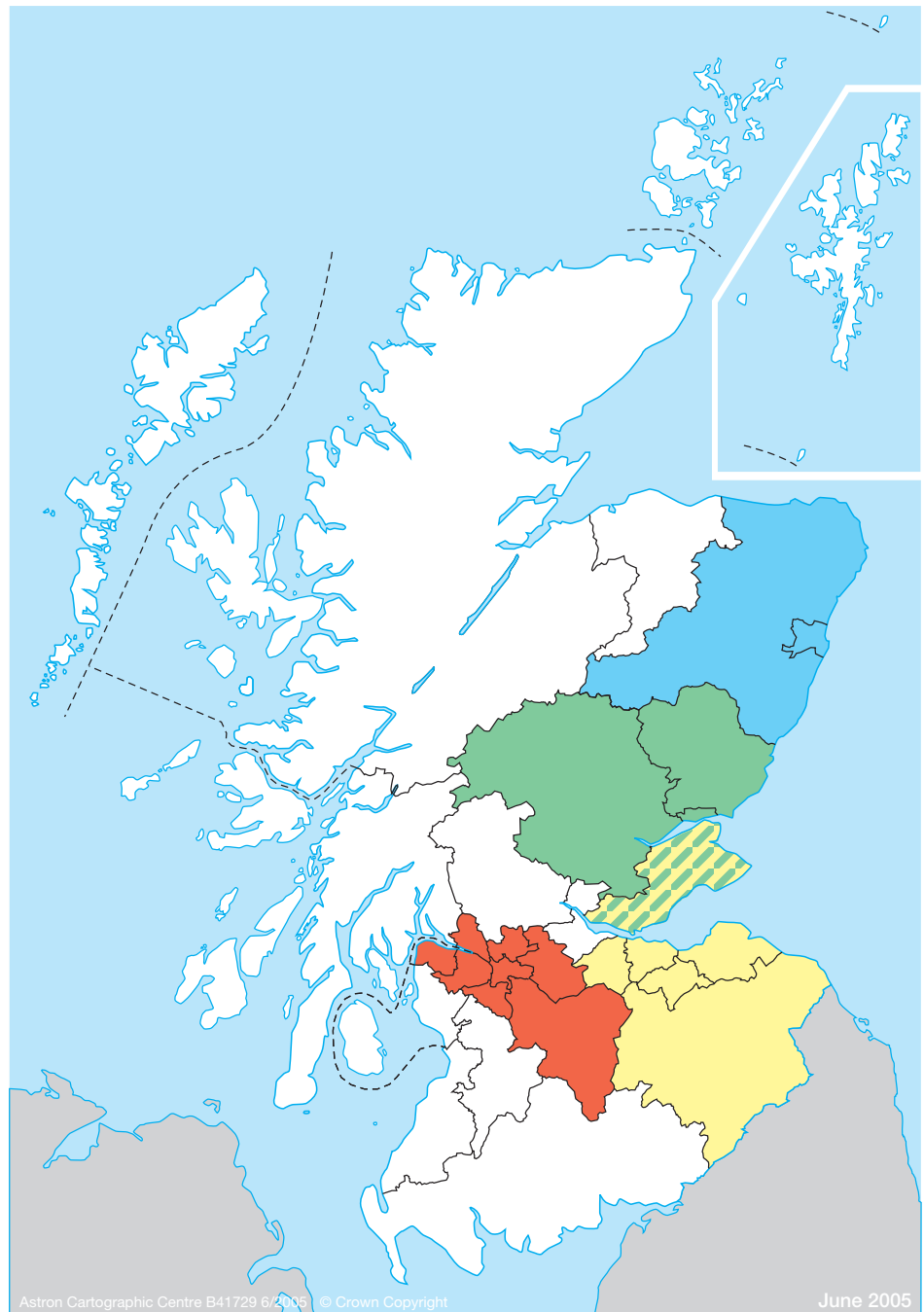
The new provisions relating to local development plans will also apply to National Parks. In these areas, local development plans will constitute the key land use planning document. They will, however, link closely to the National Park Plans which will cover the overall management and coordination of functions in the National Park. This will not require any legislative change.

## Strategic Development Plan Constituent Authorities

This map indicates the authorities that are required to work together on Strategic Development Planning, not the actual boundaries of the strategic development plans.

### CONSTITUENT AUTHORITIES

-  Strategic Development Plan for Aberdeen:  
Aberdeen City and Aberdeenshire Councils
-  Strategic Development Plan for Dundee:  
Angus, Dundee City, Fife and Perth & Kinross Councils
-  Strategic Development Plan for Edinburgh:  
City of Edinburgh, East Lothian, Fife, Midlothian,  
Scottish Borders and West Lothian Councils
-  Strategic Development Plan for Glasgow:  
East Dunbartonshire, East Renfrewshire, Glasgow City,  
Inverclyde, North Lanarkshire, Renfrewshire,  
South Lanarkshire and West Dunbartonshire Councils



# 10:

## Stages of Plan Preparation

Strategic Environmental Assessment	<b>Ongoing Requirements</b>		Ongoing
	Identify need to review by monitoring and maintaining awareness of changing issues. Update development plan scheme and internal project plans.		
	<b>Publish updated development plan scheme with consultation statement</b>		Issues Stage
	Prepare main issues report.		
	<b>Publish main issues report for early targeted consultation</b>		
Receive and consider responses. Prepare proposed plan. Prepare proposed action programme.			
<b>Publish proposed plan and action programme for consultation</b>		Proposed Plan	
Carry out neighbour notification on new site specific proposals in local development plans. Consider responses and negotiate objections. Publish amendments and update on consultation statement.			
<b>Examination and Approval/Adoption</b>		Examination and Approval/Adoption	
<i>Strategic Development Plan (SDP)</i>	<i>Local Development Plan (LDP)</i>		
<ul style="list-style-type: none"> <li>▶ Proposed SDP submitted to Scottish Ministers for approval. Independent examination by SEIRU on outstanding issues.</li> <li>▶ Reporter submits recommendations to Scottish Ministers. Period for comments to be submitted to Ministers. Ministers consider and decide to approve, amend or reject plan.</li> <li>▶ Strategic Development Planning Authority publishes approved plan and, within 3 months, the action programme.</li> <li>▶ Period for Court challenge.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Independent examination by SEIRU on outstanding issues.</li> <li>▶ Reporter submits recommendations to planning authority. Planning authority considers and amends plan.</li> <li>▶ Scottish Ministers notified of intention to adopt plan. Scope for further action by Ministers, if not content.</li> <li>▶ Planning authority publishes adopted plan and, within 3 months, the action programme.</li> <li>▶ Period for Court challenge.</li> </ul>		

## Appendix Six: Modernising Development Management

### *E-Planning*

New technology has huge potential to make the planning service more transparent, accessible and efficient. Planning authorities across Scotland have been improving service delivery by placing planning information online, allowing people to track the progress of individual applications or find out about development plans. Some planning authorities have developed systems that allow planning applications to be submitted online. Where these e-planning services have been provided they have proved to be very popular with users. New technology is also being used to improve the planning appeal process and the information available through the Executive's Planning Homepage.

The Executive will continue to work with planning authorities to increase their use of new technology to improve service delivery, public access and involvement. Existing advice in PAN 70 will be updated to keep pace with e-planning advances. The E-Planning Group will continue to meet regularly to discuss progress, resolve common problems and look ahead to software and service options. It will also explore opportunities to share the costs involved in developing e-planning systems.

### *Planning agreements and obligations*

The intended purpose of planning agreements is to enable planning authorities to enter into agreements to allow them to restrict or regulate the development or use of land where the same outcome cannot be achieved by the use of planning conditions.

Planning agreements are sometimes necessary to make a development acceptable in planning terms, but are criticised for increasing delays in granting planning permission and for being hidden from public scrutiny. We therefore intend to update the guidance on the use of planning agreements, at present set out in Circular 12/1996, to secure greater transparency, access and involvement in the process of their negotiation. This will include new guidance on best practice in drawing up agreements to speed up their production and make the process more open and accessible. It will cover setting out and making public the Heads of Agreement and monitoring arrangements, and details of how any financial contributions have been used. We will include in the Planning Bill a requirement that each concluded agreement is placed on a public register. We will also take steps to improve the skills of planning authorities in negotiating agreements. We will consult on a revised version of the Circular once the Planning Bill has been introduced.

We will also expand the scope of existing legislation on planning agreements to introduce unilateral obligations in the planning system. Unilateral obligations are already possible in England and Wales, where they operate in the same way as planning agreements, but are often put forward by a developer for use at appeal hearings. This can be a useful means of resolving a stalemate in the negotiations, for example where there is a dispute with the planning authority over conditions, or to meet an objection on a planning appeal. Unilateral undertakings may, for example, allow an applicant to enter into an obligation to deliver certain benefits, typically in relation to improved infrastructure like roads, which can then enable the planning permission to be granted by a planning authority.

# 10:

We will issue new guidance to cover such obligations, which will require the applicant to produce the draft obligation well in advance of the appeal hearing, so that both the reporter and the planning authority have an opportunity to assess its suitability. The same tests of relevance should apply as with negotiated planning agreements. Like agreements, undertakings will bind the land and be enforceable by the planning authority against future owners of the property.

We also intend to introduce into legislation a means by which planning agreements and obligations may be modified or discharged under the planning system. This will include a right of appeal against a planning authority's failure to give notice of its determination of an application for modification or discharge of a planning agreement or obligation. It is already best practice in terms set out in Circular 12/1996 to incorporate a review mechanism within planning agreements.

#### *Standard application forms*

There is support for simplifying the planning application process by introducing standard application forms, written in plain English. This will make the application process faster and more user-friendly. Standard application forms could also assist in the electronic delivery of the planning service, particularly the online submission of applications.

Through the Planning Bill we will introduce a power to require the use of standard application forms nationally. This will apply to applications for planning permission, consent under Tree Preservation Orders, the display of advertisements and listed building and conservation area consents. Full consultation on the format and content of these standard forms will be undertaken before any consequential amendments are made to the General Development Procedure Order. PAN 48 on Planning Application Forms will also be reviewed.

#### *Reduce time period for appeals from 6 months to 3 months*

Applicants for planning permission currently have 6 months from the date of the decision on their planning application within which to appeal to Ministers against a refusal of planning permission, or against the conditions subject to which permission is granted. In light of concerns about the length of this period of uncertainty for objectors and planning authorities, the Executive has decided to reduce this time period to 3 months. This 3 month period still provides the applicant with sufficient time to consider whether to proceed with an appeal. This reduction will also apply to the period within which appeals on the basis of a deemed refusal of planning permission may be made to Ministers and to appeals to be decided by a local review body.

#### *Power to decline to determine applications*

Concerns have been raised about the ability of applicants to apply repeatedly for similar developments on the same site. Objectors believe that this simply serves to wear down opposition to controversial proposals. On the other hand, it is recognised that amendments to a proposal can make it acceptable in planning terms e.g. alterations to the mix of uses in a development, density, layout or design of the proposal. There is therefore a need to strike the right balance between allowing repeat applications in order to make useful amendments to proposals, without allowing such repetition to be used to exhaust opposition.

We intend that planning authorities will be able to decline to determine applications where they have determined more than one similar application in the previous 2 years, and the issues surrounding the application have not significantly changed. This allows applicants to submit one similar application in order to address any issues arising from a previous refusal. If refused, the planning authority would then have the discretion to decline to determine subsequent similar applications within the following 2 year period.

#### *Duration of planning permissions*

Currently, the planning system gives successful applicants for planning permission 5 years within which to commence development, unless the planning authority specifically sets a longer or shorter period. There is concern that, as a default, 5 years can be too long for planning permissions to be left unimplemented. It can create a climate of uncertainty for local people near the site, and for the planning authority, as to whether development will actually be carried out.

We also recognise the developer's need to have a degree of flexibility when it comes to starting a project. Once planning permission is in place, there may be further steps required, in relation to finance for example, and market conditions will determine the best time to begin development.

Under the modernised system that we propose, planning authorities will still be able to decide an appropriate period within which development must be begun, but, where no alternative period is set: the statutory period will be reduced to 3 years, instead of the current 5 years. This will reduce uncertainty and retains a reasonable period for developers to delay starting work.

#### *Advertising weekly lists*

In order to improve the public's awareness of planning applications, planning authorities will in future be required to produce and publish a weekly list of planning applications. This will contain details of undetermined applications currently before the planning authority. This list will be open to public inspection and planning authorities will be able to place these lists on their web sites. Planning authorities will also be required to advertise the availability of this list. Parties who are interested in development proposals in their area should therefore be able to access information on relevant planning applications easily.

# 10:

## *Notified applications and conditions*

Certain categories of planning application require notification to Ministers before planning permission can be granted. This allows Ministers to consider whether the case requires to be called in for their determination. We intend to give Ministers an additional power which will enable them to direct the planning authority to consider granting permission subject to such conditions as Ministers set out in that direction. The intention behind this proposal is to avoid the unnecessary call in of applications that we think can be dealt with in a more expeditious manner.

## *Mezzanine floors*

There has been a trend for business, especially retailers, to increase substantially their internal floor space without making any change to the exterior of the building through the introduction of mezzanine floors. This type of change does not currently require planning permission but can have implications for the number of people visiting the area and thereafter implications for traffic flow and parking facilities. The combination of these may have an impact on the amenity and environment of the area.

We propose to bring such mezzanine floor projects within the planning system by specifying that works involving the substantial increase in the gross floor space of a building will be defined as development, and therefore require planning permission. The actual circumstances and sizes of floor space involved will be set out in secondary legislation.

## *Managing change in the historic environment*

Effective protection of the historic environment continues to be an important objective of the planning system. The planning system should also help to release the potential of the historic environment to contribute to wider objectives such as tourism, sustainable development and regeneration. Crucial to these objectives is the effective and efficient operation of the listed building, conservation area and scheduled monument consent mechanisms.

As part of this package of planning modernisation, we intend to update the provisions in the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 to:

- ▶ provide scope to reduce the need for Scottish Ministers' involvement in certain listed building consent applications in certain local authorities;
- ▶ tighten controls over demolition works in conservation areas;
- ▶ widen the scope for investing in conservation areas by ending the practice of classifying conservation areas as being 'outstanding' for grant purposes; and
- ▶ overcome other minor technical and procedural issues around the more effective operation of the provisions in the Act.

The associated Regulations, that set out the processes through which applications for listed building and conservation area consent are made, will also be updated in due course and opportunities taken to improve their efficiency and effectiveness.

We also recognise that there may be scope for more radical improvements through combining elements of the various relevant consent mechanisms. Although the proposed Planning Bill is unlikely to be the vehicle to take this type of change forward, Historic Scotland will lead an exercise to examine whether such an approach could be workable, and whether the potential benefits could justify changes to the legislation.

#### *Tree Preservation Orders*

Trees are a valuable part of our built environment contributing to landscape quality, local amenity and nature conservation. A Tree Preservation Order (TPO) is an order made by a council to prohibit the cutting down or damaging of trees without consent. Research carried out in 2002 indicated that TPO legislation required updating and a subsequent consultation paper issued in December 2004 sought views on a number of detailed proposals. These proposals have considerable support, and we will now take forward the following proposals through the Planning Bill:

- ▶ that all TPOs have immediate effect, remaining in force provisionally for 6 months or until confirmed;
- ▶ that there should be a general requirement on planning authorities to monitor and review TPOs;
- ▶ that planning authorities should have an emergency power to prohibit certain works on trees;
- ▶ that statutory undertakers should notify planning authorities when they conduct works on protected trees;
- ▶ that replacement trees should remain subject to the original TPO; and
- ▶ that historical value should be added to amenity as a reason for serving a TPO.

Other supporting provisions will be promoted through secondary legislation.

## Appendix Seven: Modernising Public Local Inquiries

### **Background**

The Town and Country Planning (Scotland) Act 1997 allows for Local Inquiries to be held:

- ▶ in respect of appeals against planning decisions (under sections 47 and 48);
- ▶ as an examination in public of a structure plan (under section 10(4)-(5)); and
- ▶ to consider objections to a local plan (under section 15).

Appeals against planning decisions and public examinations of development plans are actually heard by a person appointed by the Scottish Ministers, which in practice means a reporter from SEIRU.

### **Policy Context**

The overall aims of the proposed changes are to:

- ▶ ensure that the strengths of the present system are maintained whilst enabling planning decisions to be made quickly so that the Scottish economy is not disadvantaged in a time of rapid change; and
- ▶ allow those interested in a development proposal to make their views known and have them taken into account, without being intimidated by the process.

The challenge in improving the existing system is to ensure that local people do find it easier to contribute to the process, without prejudicing the achievement of a more efficient system.

In order to address this challenge we are proposing a number of measures.

# 10:

## **Make Appeal Hearings More Efficient**

Where an appeal is lodged against a planning decision, we consider that there is good reason for the right to a planning inquiry to be qualified so that the process is reserved for those cases where the subject matter cannot be addressed through written submissions, or through greater use of hearings, which are less formal than inquiries.

To achieve this objective we propose that appellants or planning authorities that request an inquiry should be required to give reasons for the request. Scottish Ministers would consider these and determine whether an inquiry would be held or whether the appeal could be determined following a hearing or written submissions.

We propose that, in order to speed up the processing of appeals, reporters be given greater scope to set and enforce a timetable for the process. On occasion, parties request that consideration of an appeal should be delayed. We propose to set a limit on this period.

## **Make Examination of Development Plans More Efficient, Transparent and Accessible**

Many contemporary local plan inquiries are far removed from the original intention of a relatively informal exchange between the interested parties concerning the future use of land. There are concerns that members of the public find it difficult to engage, the number and duration of local plan inquiries has resource implications, and there is potential to delay the determination of other cases.

In future there will be a mandatory requirement for public examinations of development plans. Inquiries will form part of the range of techniques available. One of the principal ways in which we hope to make these examinations more accessible to local people is to reduce the use of inquiries. These create barriers to participation in two ways. First, the semi-judicial nature of proceedings can be intimidating to those not used to legal procedures and cross-examination and secondly, it can require a great deal of time and resource to prepare for and take part in inquiries. In future, there will be an even greater emphasis on written submissions, reducing the time and resource commitment for participants. More use will also be made of a range of less formal examination procedures, such as hearings and round-table discussions. These provide a far less intimidating atmosphere in which people can make their views known, and should also prove less costly. These informal processes are being tested in current local plan inquiries; experience is showing that these have been well received and that there is no reduction in the rigour with which important issues are considered.

We propose that planning authorities will be requested both to negotiate and, where appropriate, mediate before the examination stage. Where necessary to deal with complex or technical issues, the planning inquiry route may still be used.

## Appendix Eight: Content Of Proposed Planning Bill

### **Changes to Development Planning**

Introduction of **Strategic Development Plans and Local Development Plans**.

**Abolition of Structure and Local Plans** – the existing two tier system of development plans.

**Speed up significantly** the drafting of plans, with only one ‘proposed plan’ to replace current two stages of draft and finalised plans.

Place a **statutory duty on planning authorities to update plans** every 5 years.

Give Ministers powers **to direct that certain development plans be updated**.

**Direct notification of owners, occupiers and neighbours** of new site specific proposals in local development plans.

**Mandatory public examination of strategic development plans**.

Planning authorities to have a duty to publish a **Development Plan Scheme and Action Programmes**.

**Duty on agencies to engage** in development planning and take account of development plans in their policy formulation and decision making. (e.g. SNH, SEPA, Scottish Water etc).

Requirement for planning authorities to publish a schedule of **land in their ownership** to which development proposals in the local development plan relate.

**Reduce scope for inquiries to delay the examination of development plans**, by using alternative methods.

**Appointment by Scottish Ministers of reporters** to local development plan examinations.

**New framework** to define the scope for planning authorities to depart from the reporter’s recommendations after local development plan examination.

Provide powers for Ministers to set out **transitional arrangements** in regulations.

### **Changes to Development Management**

**Introduce new hierarchy for handling planning applications**. These will be classified as national developments, major developments, local developments and minor developments.

**Define enhanced status for national planning policy documents**.

**New schemes of delegation** within planning authorities and revised arrangements for local handling of appeals.

# 10:

**Early determination of appeals** and changes to other appeal procedures.

**Reduce time period** allowed for appeal from six months to three months.

**Standard application forms** for planning permission.

**Promote the use of e-planning** to encourage provision of planning information and services online.

**Issue guidance to planning authorities** to ensure that consultations on planning applications are proportionate and appropriately targeted, to minimise delay.

**Improve the framework relating to the use of planning agreements** (called Section 75 Agreements) including allowing applicants to submit unilateral planning obligations as part of the appeal process, to speed up decision making, and requiring all completed agreements to be available in public registers.

Wider power for planning authorities to **decline to determine applications** which are similar to applications submitted within the previous 2 years.

**Direct notification to neighbours** of appeals against enforcement notices.

**Provision of full record of relevant factors and reasons for decisions** and full text of planning decisions.

**New procedures for notifying local people of intended developments** and greater use of hearings to discuss views of developments.

**Statutory duty for developers to carry out pre-application consultations** on certain types of proposals.

**Provision for Ministers to direct an independent inquiry** where decisions contrary to professional advice or departures from the development plan are frequently taken.

### **Other Issues**

Measures to **strengthen the enforcement system**, including:

- ▶ introducing an offence under Planning legislation where a retrospective application is not submitted, when required;
- ▶ introduce Temporary Stop Notices, capable of taking immediate effect;
- ▶ introduce notification of commencement of development; and
- ▶ re-state and clarify the need for, and information required by, a Planning Contravention Notice and ensure the current prosecution powers for non-compliance are simplified.

Revise provisions for **Tree Preservation Orders**.

**Review and update legislation on planning fees and charges.**

**Changes to the definition of listed building** – to clarify the position on partial demolition of non-listed buildings within conservation areas – and other updating of the listed buildings legislation.

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