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## THE SCOTTISH GOVERNMENT'S WHITE PAPER ON REFORMS TO THE PLANNING SYSTEM

Report by Head of Communities and Economy

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### 1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to update the Committee with regard the Scottish Government's White Paper on reforms to the Planning System and to seek approval to make a submission to the Scottish Government.

### 2 BACKGROUND

- 2.1 In September 2015, an independent panel was appointed by Scottish Ministers to review the Scottish Planning System with the objective of bringing together ideas to achieve a quicker, more accessible and efficient planning system. The report of the panel "Empowering Planning to Deliver Great Places" was published 31 May 2016.
- 2.2 Scottish Ministers published their response to the report on 11 July 2016 which included a commitment to consult on a White Paper outlining proposed reforms to the Planning System with the ambition of enabling a Planning Bill to be brought forward late in 2017. Responses to the consultation should be submitted to the Scottish Government by 4 April 2017.

### 3 SUMMARY OF THE PROPOSED CHANGES

- 3.1 A summary of the main changes proposed to the Planning System are attached as Appendix A. The main headline changes are as follows:
1. The introduction of a statutory link between development and community planning with communities having the opportunity to draft the own 'local place plan' which will form part of the development plan.
  2. The removal of strategic plans and the introduction of regional partnerships to address cross boundary issues – planning and transportation.
  3. Regional priorities and housing numbers to be set at a national level.

4. Review of Section 75 developer contributions process and the introduction of an infrastructure levy to deliver infrastructure.
5. Local Development Plan to be every 10 years rather than 5, but with scope to amend sections of the plan as circumstances change.
6. Replace the Main Issues Report with a consultation draft plan.
7. The use of 'Simplified Planning Zones' to deliver housing.
8. Increased engagement of children and young people.
9. Increased engagement with local communities.
10. Move towards a full cost recovery planning system by introducing changes in planning application fees (see Section 17 of Appendix A).
11. Increased financial penalties for breaches of planning control.
12. More decisions to be made locally – increased remit for Local Review Body.
13. Ministers to make more decisions – rather than appointed Reporters.
14. Elected Members to receive planning training and potentially be tested.
15. Planning authorities should be proactive in delivering housing by selecting sites for development rather than reacting to sites being proposed.
16. Introduction of national validation checklists to improve the quality of planning application submissions.
17. Develop closer links between planning and other government strategies.
18. Removal of the zero carbon technology development plan policy requirement from the Climate Change Act (2009).
19. Increased permitted development rights.
20. Measuring performance against the quality of outcomes and places.

## **4 PROPOSED RESPONSE**

- 4.1 The White Paper sets out 38 questions and invites comment. The draft response to the questions is attached as Appendix B and reflects comments made by elected member during a briefing held on 14 February 2017.

## **5 RECOMMENDATION**

- 5.1 It is recommended that the Committee:
- a) notes the contents of the report; and
  - b) submits the response to the White Paper questions as set out in Appendix B of this report.

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**Background Papers:**

### Places, People and Planning

#### The Scottish Government's White Paper on Reforms to the Planning System

##### The Government's Vision

*"Planning should be central to the delivery of great places and a force for positive change. Scotland's economy needs a planning system which is open for business, innovative and internationally respected. Our people need a planning system that helps to improve their lives by making better places and supporting the delivery of good quality homes."*

##### Headline Proposed Changes

1. The Introduction of a statutory link between development and community planning with communities having the opportunity to draft their own 'local place plan' which will form part of the development plan.
2. The removal of strategic plans and the introduction of regional partnerships to address cross boundary issues – planning and transportation.
3. Regional priorities and housing numbers to be set at a national level.
4. Review of Section 75 developer contributions process and the introduction of an infrastructure levy to deliver infrastructure.
5. Local Development Plan to be every 10 years rather than 5 years, but with scope to amend sections of the plan as circumstances change.
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7. The use of 'Simplified Planning Zones' to deliver housing.
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10. Move towards a full cost recovery planning system by introducing changes in planning application fees (see Section 17).
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The White Paper is separated into four main subject areas:

- Making Plans for the Future;
- People Make the System Work;
- Building More Homes and Delivering Infrastructure; and
- Stronger Leadership and Smarter Resourcing

Summary of key changes for each subject area are as follows:

### **Making Plans for the Future:**

1. **Aligning community planning and spatial planning.** To be achieved by introducing a requirement for development plans to take account of wider community planning and can be supported through future guidance.
  - Continued commitment to a plan lead system;
  - Developing opportunities for communities to influence the development plan;
  - Local Planning Authorities (LPA) to recognise the value the development plan has in delivering Council corporate objectives; and
  - Introduce a statutory link between development and community planning.
2. **Regional partnership working.** Strategic Development Plans (SESplan) should be removed from the system so that strategic planners can support more proactive regional partnership working.
  - Remove strategic development plans from the system;
  - Introduction of regional partnership working to address cross boundary issues and coordinate infrastructure priorities;
  - Regional planners should provide the link between national and local tiers of government;
  - National Planning Framework (NPF) to set regional priorities;
  - Regional partnership working to co-ordinate housing delivery as set in the NPF;
  - Introduction of an infrastructure levy to fund infrastructure projects;
  - Regional partnerships could include business representatives;
  - The potential for regional partnerships to also have responsibility for regional transport matters;
  - City Deal/Growth Bid areas could provide 'regional partnerships'; and
  - Regional partnerships could be set up to look at specific issues such as climate change – the boundaries of the partnerships may change depending on the project.

3. **Improving national spatial planning and policy.** The National Planning Framework (NPF) can be developed further to better reflect regional priorities. In addition, national planning policies can be used to make local development planning simpler and more consistent.
  - Increase the influence of NPF;
  - Aligning planning through the NPF with other strategies such as climate change, energy, transport and digital strategy;
  - NPF to set regional priorities;
  - NPF to be drafted every 10 years with a 30 year vision;
  - Increased weight of NPF and Scottish Planning Policy (SPP) in decision making;
  - NPF to be accompanied by a delivery programme for infrastructure; and
  - Reduce the size of NPF and SPP and simplify its contents.
4. **Stronger local development plans.** The plan period should be extended to 10 years, and that 'main issues reports' and supplementary guidance should be removed to make plans more accessible for people. A new 'gatecheck' would help to improve plan examinations by dealing with significant issues at an earlier stage.
  - Replace Main Issues Report process with a Draft Plan for consultation;
  - The Draft Plan should then be amended to reflect the consultation process;
  - Review Local Plan every 10 years;
  - Local Plans to be flexible and have scope to be amended to reflect changes in circumstances;
  - Supplementary guidance should be incorporated into the plan rather than be separate documents;
  - A manual should be drafted to explain how applications are considered;
  - Plans should be simplified and made more visual/map based;
  - Still need independent scrutiny of development plans – but speeded up by 'gatechecks' throughout the process; and
  - The development plan scheme shall explain how the communities' views have been reflected in the plan.
5. **Making plans that deliver.** Strengthen the commitment that comes from allocating development land in the plan, and improve the use of delivery programmes to help ensure that planned development happens on the ground.
  - The plan should provide certainty – sites allocated will be developed;
  - Sites should be identified in the plan only if they can be delivered – site proposers must demonstrate sites can be developed;

- Consideration being given to the concept of an allocated site being given planning permission in principle;
- The use of 'Simplified Planning Zones' to deliver housing;
- Use of broader zoning approach to housing allocations rather than being site specific – although priority sites could be specified;
- Greater scrutiny and public involvement for sites that have not been identified in the plan;
- Early engagement with key agencies as part of the site allocation process – key agencies will not then object to planning applications on allocated sites; and
- Action programmes to be replaced with delivery programmes, timetabling when development is going to take place on the ground.

### People Make the System Work:

6. **Giving people an opportunity to plan their own place.** Communities to be given a new right to come together and prepare local place plans. The plans should form part of the statutory local development plan.
  - People/communities to help design their places rather than just comment on plans;
  - Communities have the right to prepare their own 'local place plans' for their communities which will become part of the local development plan;
  - Local place plans must meet the broader requirements as set by the local development plan;
  - LPA will support communities prepare their plans;
  - Local place plans will need to be approved by the local community;
  - Scottish Government will help resource those communities in most need; and
  - Community Council's to be given more opportunity to influence local development plans with increased consultation rights.
7. **Getting more people involved in planning.** A wider range of people shall be encouraged and inspired to get involved in planning. In particular, the introduction of measures that enable children and young people to have a stronger voice in decisions about the future of their places.
  - LPA to develop ways to engage with children and young people during the preparation of the development plan;
  - A gatecheck will be introduced to ensure youth groups/organisations have been engaged; and
  - Children and young people to be involved in the preparation of national planning policy.
8. **Improving public trust.** Pre-Application Consultation can be improved, and there should be greater community involvement where proposals are not supported in the development plan. We also propose to discourage repeat applications and improve planning enforcement.
  - Community Councils and key agencies shall be involved in the preparation of the development plan scheme and the scheme shall be authorised by the LPA convenor and chief executive;
  - The development plan scheme shall map out how communities can get involved in the development plan process;
  - Developers shall hold more than one public event with regard a major applications and feedback how they have considered issues raised by local residents/communities;



- Additional engagement shall take place for sites which come forward which are not allocated in the development plan;
- The development sector shall consider using the Scottish Government's 'Place Standard tool' to engage with communities;
- Remove the right to a 'free go' application – an application fee shall be required for amended applications;
- The introduction of an increased fee for retrospective planning applications;
- The introduction of easier/quicker measures for LPA to recover direct action costs from landowners/developers; and
- Increase in the financial penalties for breaches of planning control.

9. **Keeping decisions local – rights of appeal.** More review decisions should be made by LPA rather than centrally. The system should be sufficiently flexible to reflect the distinctive challenges and opportunities in different parts of Scotland.

- Third party right of appeal will not be introduced;
- Expand the range of applications which can be subject to local review;
- Enabling a greater range of applications to be determined by officers under Councils schemes of delegation will enable more appeals to be determined by the local review body rather than Scottish Ministers;
- More appeal decisions to be made by Ministers rather than by Reporters;
- Planning training for elected members and the potential for elected members to be tested on their understanding of planning;
- The introduction of a fee to request a review or on the submission of an appeal; and
- Decision notices shall summarise how the communities' views have been considered.

### Building More Homes and Delivering Infrastructure:

**10. Being clear about how much housing land is required.** Planning should take a more strategic view of the land required for housing development. Clearer national and regional aspirations for new homes are proposed to support this.

- Housing numbers to be set nationally – to enable LPA and communities to focus on delivery;
- Market analysis shall be used to assess Housing Need and Demand Assessments (HNDA) to reduce the disputes over housing land supply numbers; and
- Councils shall publish a housing site register outlining what land is available for housing.

**11. Closing the gap between planning consent and delivery of homes.** We want planning authorities to take more steps to actively help deliver development. Land reform could help to achieve this.

- LPA should be proactively defining where development should take place rather than just react to sites coming forward;
- Site allocations must be supported by evidence that a site can be developed;
- The introduction of a national planning application validation checklist;
- Sites should be de-allocated if they cannot be delivered and additional sites added if required;
- LPA should intervene to help sites be developed – using land assembly powers/improved compulsory purchase powers;
- Support communities to purchase and develop sites; and
- Consideration the introduction of a development land tax to encourage site holders to progress sites.

**12. Releasing more ‘development ready’ land.** Plans should take a more strategic and flexible approach to identifying land for housing. Consents could be put in place for zoned housing land through greater use of Simplified Planning Zones.

- The use of Simplified Planning Zones to deliver housing;
- LPA to put in place a masterplan/general consent for a site to promote development; and
- Developers to help fund Simplified Planning Zone work.

**13. Embedding an infrastructure first approach.** There is a need for better co-ordination of infrastructure planning at a national and regional level. This will require a stronger commitment to delivering development from all infrastructure providers.

- NPF and local development plans to direct investment funding;
- Scottish Government to broker solutions between LPA and developers to get sites moving;
- Develop details relating to the infrastructure levy;
- Consider how developer contributions could support other funding streams such as City Deal bids;
- Development plans should reflect infrastructure investment priorities; and
- Improved regionally partnerships will help deliver infrastructure.

**14. A more transparent approach to funding infrastructure.** We believe that introducing powers for a new local levy to raise additional finance for infrastructure would be fairer and more effective. Improvements can also be made to Section 75 obligations.

- Need to reconsider Section 75 arrangements in terms of the time to conclude and the uncertainty of costs;
- Restricting developers ability to discharge/modify legal agreements; and
- Infrastructure levy to help fund strategic infrastructure – this will not replace S75 requirements or national investment funding.

**15. Innovative infrastructure planning.** Infrastructure planning needs to look ahead so that it can deliver low carbon solutions, new digital technologies and the facilities that communities need.

- There is need to improve the relationship between transport strategy and planning strategy;
- Increased government funding towards some infrastructure such as the provision of schools;
- Recognition of the importance green infrastructure makes to the economy;
- Planning needs to accommodate low carbon energy infrastructure;
- Removal of the zero carbon technology development plan policy requirement from the Climate Change Act (2009); and
- Extension of permitted development rights to enable digital infrastructure to be installed.

### Stronger Leadership and Smarter Resourcing

**16. Developing skills to deliver outcomes.** We will work with the profession to improve and broaden skills.

- Planning setting a vision rather than micro managing the environment;
- Planning should articulate the value it contributes to society;
- Planning should highlight its achievements;
- Look at shared services and/or shared skills; and
- Closer working with other professionals – Architects and Engineers.

**17. Investing in a better service.** There is a need to increase planning fees to ensure the planning service is better resourced.

- Increase the maximum planning fee (its currently 10% of that in England;
- Move towards a full cost recovery planning system;
- Aligned cost of service to the quality of service;
- Higher fees from retrospective planning applications;
- Charging for appeals and review decisions;
- Enabling agencies to charge for their services;
- Introduction of discretionary charging including pre application discussions;
- Charging for establishing Simplified planning Zones;
- Remove 'free go' submissions;
- More funding for government functions supporting development;
- Ensure fees structure is clear; and
- Introduce a fast tracking service for a higher fee.

**18. A new approach to improving performance.** We will continue work to strengthen the way in which performance is monitored, reported and improved.

- Planning authorities to have service improvement plans;
- All LPA should have 360 degree feedback from customers;
- Identify a national performance co-ordinator who champions improvement across all planning authorities;
- Measure services based on the quality of outcomes and the quality of places; and
- Although the government is committed to supporting LPA improving performance, the penalty clause for poor performance remains an option.

**19. Making better use of resources – efficient decision making.** We will remove the need for planning consent from a wider range of developments. Targeted changes to development management will help to ensure decisions are made more quickly and more transparently.

- Increase in permitted development to enable more developments to take place without reference to LPA including: digital telecommunications infrastructure, development which helps to reduce emissions causing climate change, development to support the resilience of the farming sector, allotments and community growing schemes, change of use of town centre premises and aquaculture development.
- Introduction of a national planning application validation scheme; and
- Review of procedures with regard the determination of planning applications.

**20. Innovation, designing for the future and the digital transformation of the planning service.** There are many opportunities to make planning work better through the use of information technology. The planning service should continue to pioneer the digital transformation of public services.

- Improve and increase the use of technology – use of visualisation technology, data sharing and mobile technology.

### Places, People and Planning

#### The Scottish Government's White Paper on Reforms to the Planning System

#### Midlothian's Response to Planning White Paper Consultation

##### **Section A: Do you agree that our proposed package of reforms will improve development planning? (Questions 1 – 8)**

Generally the white paper represents a commendable attempt to address some of the issues with the current development plan process and to identify progressive solutions/changes. Much of what is proposed makes a lot of sense in principle. Aligning the development plan process with community planning, the shift in emphasis to focus on delivering outcomes as opposed to procedure, more transparent/accountable governance, enhanced engagement and extending the review cycle to enable more focus on delivery. However, the current system is still relatively new and there is concern that perhaps insufficient time has elapsed in which to realistically assess any inadequacies and potential changes to redress. Equally the white paper is silent on the likely level of resources required to successfully implement the proposed changes. Given the variations in physical geographies across the country, this could be a significant impediment to the consistent and efficient delivery of planning services.

Generally supportive of the changes proposed under consultation questions Q1, Q4, Q5, Q7 and Q8. The proposal to replace Strategic Development Plans with improved regional partnerships as set out in Q2 raises potential concerns particularly the removal of a statutory body/function and the possible replacement with a discretionary option. There is a lack of any robust argument as to why the Strategic Development Plans need to be replaced. In principle improved regional partnerships sound a good idea but the white paper conveys a degree of uncertainty as to how improved partnerships would work, the spatial extent of these partnerships, how they would be resourced, their governance and accountability and most particularly their authority. Whatever the eventual provision at a regional level it should be provided on a statutory basis and should set a clear framework for the direction of growth and the infrastructure requirements to support it. Given the relationship between land use planning and transport planning the proposed regional partnerships should reflect these current boundaries. The proposal to afford greater weight to the National Planning Framework (NPF) and Scottish Planning Policy (SPP) as set out in Q3 is unnecessary. The current arrangements are appropriate and should remain the same in any revisions to the planning system. Preparation of NPF is okay as it stands. In respect of Q6 we do not agree that sites allocated in the LDP should be afforded planning permission in principle – the allocation gives the support for appropriate development in principle.

(Q4) Extending the statutory review period to 10 years is a positive step and should provide a context to focus on delivery and resolve issues/remove constraints associated with stalled sites. The proposal to re-introduce reviews in between formal

review cycles is welcome but if the focus of the plan is on delivery then perhaps the present approach of reviewing/amending the Action Programme should remain and apply to the Delivery Programme. This approach may prove to be more expedient and efficient in terms of time and cost. The role of supplementary guidance is to provide more detail as to how the policies and proposals of the plan will be delivered (the extent of which would not be appropriate to include in the plan). To be given material weight it has to be subject to consultation and sign-off by Ministers. The proposal doesn't appear to add any more value to the system than already exists. In fact by retaining more important content/detail in the plan risks increasing the size of the plan, potentially the complexity of the plan and, perhaps the accessibility of the plan (to a wider, non-planning audience) – counter to current thinking. The white paper also suggests removing the Main Issues Report (MIR) from the process and preparing a draft and proposed plan. The MIR (together with the Monitoring Statement) highlighted where the extant plan was succeeding or failing and what needed to change. Creating two plans with equal consultation, notification and publication procedures is likely to result in increased costs and increased pressures on existing resources for local authorities, however it is accepted that interested parties and communities would welcome the opportunity to comment on a draft plan rather than on a MIR.

(Q5) Examinations should be retained. They represent a degree of independent scrutiny in a process that involves a significant amount of vested interests of one sort or another and provides an opportunity for anyone who wishes to make and have their representation on planning matters heard. It is an important part of the process and as currently arranged has become more streamlined, less adversarial and more accessible for more people. More could be done in conjunction with the DPEA to address the amount of work required in preparing submissions for examination – paper and electronic etc – to realise more efficiencies. The proposed “gatecheck” is another proposal which may be sound in principle but in practice could be a double edged sword. On the one hand it would add another stage into the process with the timing and resource implications that would arise (does the local authority pay the DPEA for conducting the gatecheck and how much would that cost?). On the other hand by passing the gatecheck it would remove potential representation and examination time on such issues as housing land matters. Unfortunately the white paper does not provide sufficient detail to come to a decisive position on this other than it closely resembles the “test of soundness” required under the Local Development Framework process in England. An alternative option might be to review the requirements in the existing “statement of conformity” (prior to examination) to include some or all of the suggested issues for the proposed gatecheck. At this stage of the plan process it may be more appropriate to consider these issues, particularly housing and infrastructure. The suggested use of mediation is not considered necessary or appropriate as it already exists in the form of a draft plan supported by consultation, a proposed plan with the opportunity to submit representations to the plan (in support of or against the plan) and an examination where the Reporter is the final arbiter on outstanding issues.

(Q7) The more information available when considering site selection for housing or other uses the better informed those choices will be and it will provide greater certainty that the site can/will be delivered over the plan period. The draft Planning Delivery Advice Note: Housing and Infrastructure provides a model template for the

call for sites process as well as advice on infrastructure assessments and utilities contacts. The call for sites template could provide an element of consistency in gathering information about sites and also assist developers in identifying what local authorities require and contributing to a more effective site selection and assessment process. Also agree that planning authorities should become more proactive in the site selection process and managing the emerging strategy options rather than the existing reliance on the call for sites process – controlled by land owners and developers. As part of the suggested “zoned” approach to identifying short and longer term housing needs, safeguarded sites could also be encouraged, particularly to assist the transition period between plans where publication of the replacement plan is delayed and to avoid the risk of a shortfall in the effective housing land supply.

(Q8) The ability to deliver the policies and proposals of the development plan should be paramount. The current development plan system introduced the requirement for Action Programmes to address this very situation but coverage of LDPs is not complete therefore it is perhaps too early to assess how effective Action Programmes are in practice. However, key to implementing the plan are resources be it human and/or financial. As a minimum the Delivery Programme should:

- Include and identify the organisations (or partnerships) and costs of the identified requirements and interventions;
- Identify details of the infrastructure and facilities required to support the scale of growth planned;
- Indicate a delivery programme for allocated housing sites (informed by the HLA); and
- Provide the basis for aligning post adoption monitoring activity by planning services as well as engaging wider corporate buy-in within Council service sections to making the plan work.

### **Section B: Do you agree that our proposed package of reforms will increase community involvement in planning? (Questions 9 – 16)**

(Q9) Support the principle of this and encouraging communities to become more involved, and try and remove perceptions that the planning system is unfair and acts against local communities in favour of development interests. The planning system needs to harness interest and enthusiasm where it exists and develop confidence in the system where it is not present. It is critical that the system generates consistent and reliable outcomes and that development on the ground follows the expectations set out at the earliest stages of the process.

Midlothian Council does have concerns about the resource implications and time delay implications for development plan preparation from greater community involvement. Thorough consideration on how greater community involvement would be made and resourced is required. The most effective solution would be for greater involvement by all parties at the earliest stages of production of the development plan.



Producing local place plans will increase the cost and time taken to produce a development plan. The consultation paper indicates that not all communities will be able to produce such plans quickly, and that training is likely to be required. More resources would certainly be required. If local place plans were to be prepared, their statutory position, and how they fit into the production of a development plan needs to be clear. All parties will require to know the exact role and influence local place plans will have in the production of a development plan. This should include detail on which takes precedent where there is a different position between a community's local place plan and a development plan produced by a planning authority.

Local policy plans may oppose particular types of development in an area, particularly large scale housing development; therefore their status in development plan preparation requires being clear to all parties. The consultation in paragraph 2.7 highlights the issue of communities not wanting to take development. This will be a real issue for a planning authority adopting the local place plan where the local place plan is contrary to national planning policy or the emerging development plan.

If a local place plan is contrary to SPP or the emerging local development plan, and not adopted by the planning authority, given the time and effort taken to produce the local place plan, this non-adoption is likely to create frustration, disappointment and disenfranchisement within the local community with the planning system. These matters require to be fully considered and how such issues would be resolved before the rolling out of a requirement for local place plans.

Consideration is required for instances where a community can be incentivised to accommodate development in situations where they may not want development but the planning authority does to meet strategic identified requirements such as the provision of housing. Conversely consideration is required where a community may want a particular form, scale or type of development, but the planning authority has a different position. These matters are linked to the status to be afforded to local place plans and this must be clearly set out in relevant legislation or regulations. How consultation would be undertaken on local place plans, and how representative of a community the body preparing them is, also requires detailed consideration.

If local place plans are to truly represent community interests, they should inform the production of the development plan, and the local place plans should be informed by national planning policy. However, this raises the prospect of local place plans not incorporating identified development requirements that would ordinarily be in the development plan. Therefore development requirements in the statutory development plan should inform local place plans.

Other than a statutory community council, it would be very difficult for a local authority to choose and designate a single body, if a number applied, to prepare the local place plan.

The expectation that local place plans will only need to be 'generally in line with local and national planning policies and other legislation' is different to the expectations on the development plan. This may introduce tensions if a local place plan is to become part of the development plan. Clarity is required on if, and who would take a local place plan through the "gatecheck" process identified in the consultation paper.

(Q10) There is already a statutory duty on planning authorities to consult with community councils. There is a lot of knowledge and input that can be obtained from local communities to help shape and influence a development plan. Paragraph 2.15 indicates that community councils would be given a stronger role in the actual plan production. This is supported in principle, but is likely to create frustrations from the community council if their aspirations are not supported by a planning authority and if the aspirations are contrary to national planning policy, identified development requirements, or a development plan. This could potentially cause frustration, and disappointment within the local community with the planning authority and planning system.

Having further community council involvement in development plan production will increase the time taken to produce the document.

Consideration is required as to what is meant by the “community” and which communities are consulted. Also consideration is required as to how representative a community council is of a community, and whether they should be given more status as a consultee in the preparation of a development plan. With regard to how communities might be identified and defined in the legislation, referred to in paragraph 2.13 of the consultation, community planning partners and relevant local and public bodies can assist with this.

While this can be supported in principle, the benefits are uncertain if local communities are kept informed of the timescales and process of producing development plans. There should be a policy based expectation that communities are consulted on how they would like to be involved in development plan preparation, but it isn't something that needs set out in legislation.

(Q11) Spread good practice of methods of increasing engagement and seek views of community groups as to how they would wish to be consulted. Support the use of the Place Standard as advocated in paragraph 2.24 of the consultation.

It would be helpful if training and capacity building was available to community councils and other bodies for free from a central source rather than relying on planning authorities to organise and fund it (even when it is delivered by PAS). The lack of definite answers about what, when and how development is actually going to happen, and how people can have a genuine influence at an early enough stage needs to be taken into account when making plans for involving people. There needs to be jargon free explanation of why development is needed, up to and including the housing figures set by the NPF. It can be hard to decipher why more development is needed under the current arrangements.

Encouraging children and young people to engage in the planning system should be supported in principle. However, it should not be to the detriment of other groups in society, but can potentially help with the planning of communities and areas people want, and encourage the next generation of those interested in ‘place making’.

(Q12) With regard pre application consultations (PAC) there needs to be clearer connection and identification of changes made to a development as a result of public consultation. This should reflect a genuine commitment from the developers to the local community. The PAC process needs to provide an incentive to add quality and engage people. There needs to be much higher expectations on developers, much clearer explanation of what PAC is for and the impact community participation in it will have. Developers need to be accountable to the community and community groups they have consulted by reporting back on changes. Communities could perhaps have the opportunity to feedback to the planning authority about the quality of the PAC. Introduction of penalties for poor quality PAC should be considered to help improve the quality of the PAC.

(Q13) With regard to the removal of the 'free go application', it is important to note that applicants often submit an amended/improved application following engagement with the planning authority and that without the 'free go' option applicants may be reluctant to improve proposals in response to interested parties or planning officers.

(Q14) With regard increasing penalties for non-compliance with enforcement action – this would be a useful deterrent against breaching planning control. Furthermore, the monies received in any prosecution could be used for environmental improvements in areas detrimentally effected by breaches of planning control.

(Q15) With regard to the current system regarding appeals and notices of review, Midlothian considers:

- More decisions taken by officers should be subject to the review process by the Local Review Body rather than an appeal considered by a Reporter – this should include reviews of advert consent applications, listed building consent application and applications to modify/discharge planning obligations; and
- Appeals considered by the Scottish Government should be determined by Ministers rather than a Reporter.

At a recent meeting of this Council's Planning Committee, on which all Members sit, there were particularly strong concerns raised by the Committee as a whole over the continuing unsatisfactory arrangements for the determination of planning and other environmental appeals. Under the present system it is regularly the case that decisions by Scottish Government Reporters cut across the settled view of this Council and the communities it serves on issues that directly impact on those communities. The most recent examples in Midlothian have been the granting of planning permission for a hot food takeaway in immediate proximity to a secondary school, and the granting of advertisement consent for a commercial premises' sign within a town centre conservation area.

It is cases such as these that undermine local democracy and the accountability of Councillors to their communities and electorate. Local communities and their representatives, including community councillors and district ward councillors have the greatest knowledge and stake in the welfare of the residents of their localities. Accordingly, seemingly arbitrary decisions by Reporters who have little or no knowledge of the communities in which a particular case is located, would seem to be directly at variance with the Scottish Government's consistently expressed position of seeking to

ensure that, wherever possible, decisions are taken at the most appropriately devolved level.

### **Section C: Will these proposals help to deliver more homes and the infrastructure we need? (Questions 17 – 25)**

(Q17) Housing numbers could be set at a national level in liaison with individual Councils - The largest authorities in each region cannot have a disproportionate say.

(Q18) Strengthening validation requirements through the introduction of local validation lists will assist in the front loading of applications and speed up the application assessment process. However Midlothian is not persuaded that all major housing applications should have to supply viability information in order to be validated. Applicants should need to demonstrate sites are viable before being allocated in the development plan.

(Q19) To assist in the delivery of housing, land could be transferred to Councils to facilitate the delivery of affordable (Council) housing, Council's compulsory purchase powers to assemble land for delivery of housing could be simplified, the introduction of a flexible approach in town and city centres to parking, spacing and open space standards to encourage higher density developments in well connected and sustainable locations.

(Q20) The introduction of Simplified Planning Zones would not be appropriate in relation to residential development where there is a strong housing market and where the requirement to apply for planning permission is not a barrier to house builders promoting sites for housing. Development sites often have complexities in relation to design, scale and layout which needs to be considered on an individual basis and through public consultation and therefore a Simplified Planning Zone approach would not be appropriate. Simplified Planning Zones are more appropriate for industrial/commercial uses.

(Q21 – Q22)) A national agency with forward funding facilities would be a better approach to that proposed, otherwise in reality little would change from the existing arrangements. What constitutes key infrastructure i.e. transport and education provision needs to be clearly defined and priorities and delivery plans identified. Regional partnership working, on its own, would improve infrastructure delivery without a national infrastructure agency and centralised forward funding.

(Q23) The existing arrangements to discharge/modify planning obligations works – no need to change.

(Q24) A new infrastructure levy is not necessarily the way forward in addressing matters of infrastructure and providing certainty and clarity for developers, the public, interested parties and Councils. The experience of the introduction of the Community Infrastructure Levy in England has demonstrated that there can be hugely complex issues of viability, identifying at the outset the full cost of infrastructure and establishing a charging regime with Councils likely to struggle to undertake such work. Introducing a levy may provide a notional mechanism for

securing the monies for infrastructure however in itself it does not actually deliver the infrastructure which requires working between relevant agencies with the necessary expertise to do so.

The introduction of community infrastructure levy should be solely in relation to strategic cross boundary matters such as transport infrastructure – for instance in South East Scotland contributing towards improvements to the A720 City Bypass or Borders Rail and/or health infrastructure. The levy should be an additional cost rather than being taken out of the Section 75 monies which are required to meet the consequential impact of a proposed development. Each authority should have an equal say in how the money is spent – not just the largest Councils. It should only be applicable in relation to major developments and should be administered by an identified relevant local authority or regional partnership. It should be applied to residential development, retail development and Class 4 offices and be on a charging zone basis to be determined by the local authority.

The most effective way of addressing the identified infrastructure issues/shortages is for the government to proactively work with Councils to forward fund identified infrastructure from a central fund administered by a national infrastructure agency. For a number of years Midlothian has taken the risk of forward funding infrastructure such as schools and then recovering the costs through S75 agreements. This approach reduces risk for the development industry and does bring clarity of cost for developers (they are paying towards something tangible which already exists with a known cost). It does however bring risks to Councils.

One of the key issues which Councils face in relation to infrastructure and its delivery is access to expertise beyond that purely related to the negotiation of planning obligations. Councils are facing budget pressures which affect staffing provision and the ability to undertake key work in relation to infrastructure delivery. A Council may for instance have identified that a new, key road junction is required to unlock development. However the Council does not have the in house expertise to design, cost and build such a junction.

What would be helpful is if the government could facilitate a central draw down arrangement (through a national infrastructure agency) for Councils to draw on when they needed expertise in relation to highways, education and financial modelling amongst others.

It is also suggested that the procedures in relation to DPEA be amended. At present whilst the parties to the appeal might identify the need for a planning obligation during the course of the appeal proceedings, most commonly work would only be progressed on an actual obligation after a reporter had issued a notice of intention, subject to a suitable obligation. As such a 3 month period would be given for completing such an agreement but in practice much longer will often be given. The result of this can be that appeals can become long drawn out affairs where issues around obligations are not fully considered during the main appeal assessment and then there is a long period whilst those aspects are explored further by the parties. In England during appeal proceedings it is necessary where a need for an obligation is identified, that a completed agreement or unilateral undertaking is submitted to the inspector for consideration prior to the assessment of the appeal. The obligations are

prepared on a without prejudice basis in the event that the Reporter/Ministers are minded to allow the appeal. If no such obligation were provided by the specified date and the inspector considered one were necessary, the appeal would be dismissed even if the scheme were acceptable in all other respects. This approach focuses the minds of all parties at an appropriately early stage.

(Q25) The zero carbon technology development plan policy requirement from the Climate Change Act (2009)/Section 3F of the Town and Country Planning (Scotland) Act 1997 as amended could be removed as changes in Building Standards legislation has superseded planning controls with regard the carbon emissions from buildings.

### **Section D: Do you agree the measures set out will improve the way that the planning service is resourced? (Questions 26 – 34)**

(Q26) The Scottish Government needs to provide leadership by clearly identifying what the key aims of the planning system are and how planners fit in to this process. A clearer understanding of what the proposed improvements are intended to achieve is essential. It may also be possible for the Scottish Government and the Royal Town Planning Institute (RTPI) to better promote planning, and its virtues, in order to achieve better buy-in from local communities and non-planning parts of local authorities.

While local authority planning teams need to be strong leaders it is essential that leadership comes from all sectors involved in the planning process.

Specifically at local authorities there must be buy-in from the Council's chief officers and elected members of the Council. Development Plans should be signed off by Chief Executives and Leaders of the Council. Responsibility for ensuring that their plan is delivered should be a key aim of elected members of Councils.

If quality decisions are to be taken with regards to quality places these need to be taken by professionals with the appropriate training and skills. In order to support this the Improvement Service should, in consultation with individual planning authorities, offer tailored training to planners and elected members.

The important role of the private sector in the planning process needs to be recognised, with that recognition also comes responsibility to be an active partner in delivering good planning and development.

(Q27) Once a clear understanding of what the improvements to the planning system are trying to achieve it will become clear what the priorities are for developing skills.

The principle barrier to planners developing their skills is the lack of time available to attend courses and other training events. Therefore, there needs to some work done to investigate how to deliver intensive task based on-the-job training so that experts go in and support teams in developing new skills by working alongside them through actual tasks. This will enable tasks to be completed with support while also providing teams with the skills to carry forward and repeat tasks. Increased

resources at local authorities would potentially allow time for more senior planners to work through tasks with more junior colleagues.

Another barrier to skills development is the lack of relevant training events taking place. The Improvement Service needs to be better resourced to be able to deliver tailored services to local authorities and private practice. In addition, the further education establishments could be encouraged to carry out and share research in accessible forums.

Training in areas such as influencing others, infrastructure delivery and community engagement would be beneficial in developing and preparing planning staff for the future.

The language in the White Paper suggests that that skills development is only needed in planning authorities. This is not the reality and needs to be challenged. There needs to be action to ensure all professionals understand the realities of working in a planning authority. In the past it was common for planners to spend some time working in the public sector, but this has been noticeably less common since the 1990s. Secondment opportunities and opportunities for architects and surveyors, not just planners, to experience work in planning authorities should be made available when training. Much comment is made regarding planning authority planners needing training on viability but those in the private sector may benefit from some experience of balancing the demands of local communities, consultees and applicants.

The White Paper suggests better education links and potential for bringing in interns/graduates/trainees. These aspirations should be supported but it is not clear that appropriate resource will be available to pursue this proposal. In addition, it is unclear how junior members of staff within local authorities and private planning practices can be expected to influence outcomes or challenge normal procedures without appropriate training at further education level.

Albeit outwith the planning profession, there needs to be a robust programme of training available for elected members. For the development plan to be a more trusted document it is essential that training is provided to ensure that plans are appropriately interpreted and applied. However it is delivered, any elected member training must be specifically tailored, with input from the planning authority. This element of skills development could be supported by an accreditation process in order to strengthen the robustness of decision making at Councils, and increase faith in a system about which developers and communities are often sceptical.

It would be regrettable to expend significant resources creating a nation of highly skilled planners if those submitting development proposals and those making the final decisions on applications are not also trained and developed.

(Q28) It is essential to take direct action at the national level to be clear about when multi disciplinary working is happening there. It is necessary to accept that planners shouldn't be trained in all matters, and identify which professionals are needed to support the changes being proposed, from community development and learning workers to design professionals.

The Scottish Government should enable those government agencies involved in the planning system to engage properly, as delays in engagement ultimately delay the delivery of development. Each agency should be structured to align with the functions of planning authorities in order to support the delivery of development. Each planning authority should have a main point of contact at each agency. Agencies need to be willing and able to engage at all levels and stages of the planning process.

Development viability reports, if taken forward as a proposal, could include statements from the relevant government agencies.

(Q29) It is necessary for the Scottish Government to be clear on what the purpose of the planning system is and what the targets are.

For planning authorities to improve performance it is essential that resources are improved. Full cost recovery is one aspect of this. Efforts to ensure full cost recovery by increasing planning fees should be supported.

Enhanced resources at the Improvement Service will support improved performance at local authorities.

There is a benefit to the idea of a national performance co-ordinator who will be able to monitor performance and also share ideas across all authorities. However there are numerous questions about how this would work; who is going to pay for this resource; will they have scope to investigate the standard of submissions and examine the amount of work involved in getting a proposal to an acceptable state; assess the quality of development on the ground; and, will this person review Planning Performance Framework submissions?

The proposal for 360 degree feedback for authorities is supported, but there also needs to be a performance review of developers/agents. There needs to be some incentive for developers/agents to improve their standards.

In general the delays in the development management process are caused where insufficient information has been submitted to support an application or where negotiations are required in order to achieve an acceptable scheme. Therefore, in order to improve performance, it is necessary to ensure that acceptable and fully detailed applications are submitted by applicants. Incentivising pre-application discussions is one way of doing this.

(Q30) More monitoring of outcomes from planning would be beneficial.

The monitoring of performance statistics in relation to planning application determination times should be continued.

In addition it is essential to find a way to monitor quality of development and response to public engagement.



A national performance co-ordinator could be involved in the auditing of planning decisions, particularly at local review body level. There should also be some form of auditing, with the potential use of questionnaires and Place Standard tool, local community reaction to the places being created and their involvement in the process.

(Q31) Increasing the fees will make planning more self sustaining within Councils and will strengthen standing.

Ensuring the planning fees remain within the planning function at local authorities would be of critical importance in resourcing the service. The proposal to allow key agencies to charge planning authorities should be resisted.

Should the appeal and local review body process require the same level of work as it does at present an applicant's right to appeal should not be adversely affected by a requirement to pay an additional fee. To introduce a fee to the appeals process may impact on an applicant's ability to appeal a decision.

Removing the requirement to advertise in the local press and replacing it with a requirement for the application to be advertised on a central website and the Council's own website would remove the necessity to charge applications additional sums, which has been problematic in the current arrangements. Should the requirement remain for adverts in local papers there must be a way for planning authorities to recover the cost.

Discretionary charging for pre-application discussions and Simplified Planning Zones should be allowed. It is essential that the pre-application process is incentivised and that there could be discretion to reduce a planning application fee if a developer has taken into account advice, and satisfied certain criteria, when submitting the application on the basis that this may reduce the level of work required in assessing the application. Discretionary fee arrangements based on agreements reached through a processing agreement may provide more scope for planning authorities to resource and plan work to react to circumstances.

Removing the 'free go' will perhaps encourage better engagement and proposals from developers at the outset but there is concern about this proposal. Removing the 'free go' is likely to result in more local reviews and applicants not amending/improving schemes because of the additional costs.

The suggestion that there will be higher fees for retrospective applications will not bring much benefit and may deter some applicants from applying. It is unclear how charging higher fees for proposals not complying with the development plan will work. This would need to be assessed first.

While the proposal to increase fees would be welcome in Midlothian it is acknowledged that much higher fees may discourage developers in other parts of the country.

(Q32) There is potential for some amendments to permitted development rights. However, there would be greater benefit in consolidating and clarifying the existing,

often cumbersome, arrangements and updating out-of-date regulations in order to concentrate local authority resources to dealing with actual development proposals.

One of the aspirations of the planning system is to ensure the delivery and retention of quality places. Existing permitted development rights, particularly in relation to dormer extensions, already jeopardise the quality of places. Further extension of permitted development rights, if not carefully considered, have the potential to harm places further.

There is benefit in removing the Prior Notification procedure and updating the advertisement regulations. There is some scope to carry out some amendments to householder permitted development rights.

In respects to class 1 of the order the site coverage calculation needs to be altered. Hard surfacing is currently classed as development when considering an extension to a dwellinghouse but is then not development when assessed in its own right. This is confusing and needs to be resolved.

It is necessary to improve permitted development rights for flatted dwellings. In particular Class (2)(c), where it is possible to form numerous new window/door openings but not possible to enlarge an existing opening(e.g. change a window opening into patio doors is a common query). It should also be possible to use the 1m “bubble” on flats.

It should not just be householder permitted development rights being reviewed. Within class 33 of the order there needs to be a definition of enactment and more restriction on development within conservation areas despite value of works.

The effective and balanced use of permitted development rights, paired with other measures, can encourage certain types of development. Equally, reduced permitted development rights can be used to discourage certain development. These measures could be considered in promoting healthy living, sustainability and quality of place agendas.

It is not clear how changes to permitted development rights in town centres in order to stimulate vitality could be assessed prior to the submission of a planning application. Individual Councils need the opportunity to consider what types of developments are likely to lead to an improvement of vitality and viability in their town centres. This needs to be carried out through the assessment of planning applications. Development that may improve vitality in one town centre may not be appropriate in another.

There needs to be a more regular review of permitted development rights in order to ensure that they keep up-to-date with emerging developments and technologies, e.g. electric charging points.

(Q33) It is necessary to reconsider the PAC process, in particular timescales and whether it should also be a requirement for developers/applicants to engage in pre-application discussions with the planning authorities at this stage.

Midlothian Council already has validation checklists but supports the work being carried out by Heads of Planning Scotland in this regard.

It would perhaps be beneficial to allow flexibility to extend the period of a PPP application so long as this did not result in uncertainty for local communities. However, the current arrangements should be sufficient for the submission of detailed aspects.

There doesn't appear to be any significant benefit in amending the S42 application procedure.

There doesn't appear to be any significant benefit in amending the MSC procedures.

It would be beneficial to amend the arrangements to allow more flexibility for pre-determination hearings to be heard either by planning committee or full council.

(Q34) While the aspirations to make greater use of digital technologies are generally supported it must be acknowledged that there are significant resource implications and technical constraints which will limit use. High speed internet access is variable across Scotland and local authorities and communities should not be disadvantaged due to poor broadband infrastructure.

Current technologies will be limited to use by planning authorities and only the largest scale developments. However, the use of virtual and augmented reality technology will help the public visualise proposed developments and engage with the planning process. As the technologies become more commonplace they will become more accepted. There is no reason, other than due to lack of resource, that planning should not be at the forefront of using digital technologies.

There needs to be better use of spatial mapping technologies, in particular to mapping constraints and opportunities.

### **Additional Optional Questions**

(Q35 and Q37 - Equalities) The proposals are likely to have a positive impact on communities in particular children and young people with enhanced engagement in Planning. This will hopefully lead to a more engaged and informed community taking a lead in local place making, having greater sense of ownership of their local environment and feeling more involved in the planning process, both in relation to development planning and decision making. In relation to a potential negative impact – promoting greater use of IT may disadvantage those who do not own or use a computer.

(Q36 - Costs) In relation to the impact on business, the cost of submitting a planning application will potentially increase, but this should be balanced with increased certainty. The prospect of local planning authorities being charged by other agencies for planning advice and consultation responses could off-set any gain from increased application fees. The proposals seek to increase community engagement – although

this could add value to the planning system there will be an addition resource commitment required.

(Q38 - Environment) The consultation makes very little comment on the quality of the environment or the quality of design – this is of concern. Place making and the delivery of homes and infrastructure needs to be the priority. There is a lack of detail at this stage to predict their likely environmental impacts.