LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

9th Meeting, 2018 (Session 5)

Wednesday 14 March 2018

The Committee will meet at 9.00 am in the James Clerk Maxwell Room (CR4).

1. **Planning (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from—

   Graeme Purves, Chair, Built Environment Forum Scotland;
   
   Diarmid Hearns, Head of Policy, National Trust for Scotland;
   
   Aileen MacKenzie, Planning Manager, Scottish Water;
   
   Aedán Smith, Convener, Planning Group, Scottish Environment LINK;

   and then from—

   Cllr Steven Heddle, Environment and Economy Spokesperson, COSLA;
   
   Robert Gray, Chair, Heads of Planning Scotland;
   
   Gavin Miles, Head of Planning and Communities, Cairngorms National Park Authority;
   
   David Leslie, Chief Planning Officer, and Kate Hopper, Senior Planning Officer, City of Edinburgh Council;
   
   Ailsa Anderson, Member, Steering Group, Scottish Young Planners’ Network.

2. **Planning (Scotland) Bill (in private)**: The Committee will consider the evidence heard earlier in the meeting.
The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk  
PRIVATE PAPER  
SPICe Summary of Written Evidence  

**Agenda item 2**

PRIVATE PAPER
Local Government and Communities Committee

9th Meeting 2018 (Session 5), Wednesday 14 March 2018

Planning (Scotland) Bill: Note by the Clerk

Purpose

1. This paper provides background information on Committee’s stage 1 scrutiny of the Planning (Scotland) Bill.

2. This Scottish Government Bill was introduced by the Cabinet Secretary for Communities, Social Security and Equalities, Angela Constance MSP, on 4 December 2017.

3. The Bill and its accompanying documents can be found online.

Background

4. The Committee launched a call for written evidence on Friday 15 December 2017 with a deadline of 2 February. The responses to the Committee’s call for written views have been published on the Committee’s webpage. A summary of the written views will be available in due course.

5. In addition the Committee members have undertaken community events in Skye, Stonehaven and Motherwell on 5 February 2018 and summary notes have been published on those discussions.

6. On 19 February 2018 members of the Committee has also visited Linlithgow to discuss local place plans with the Linlithgow Planning Forum and West Lothian Council Officials. A summary note has been published on this discussion.

7. An online survey was conducted principally seeking views from young people via the Scottish Youth Parliament and Youthlink. A summary of these views will be available in due course.

8. The Committee has also sought views on the Bill (from 20 February until 2 March) using Dialogue as well as hosting a conference in Stirling on 26 February with invited public and private sector representatives. Summaries of the discussions held at the conference are available on the Bill page on the Committee’s website.

9. A number of briefings have been published relevant to the Planning (Scotland) Bill by the Scottish Parliament’s Information Centre:

   Planning (Scotland) Bill: Proposed Infrastructure Levy
   The Planning (Scotland) Bill
10. On 16 February 2018 the Minister for Local Government and Housing wrote to the Committee on the Agent and Change principle confirming that the Scottish Government intends to “include explicit policy guidance in the next National Planning Framework and the SPP, implementing the Agent of Change principle”.

**Oral evidence taking**

11. At its meeting on 28 February 2018 the Committee took evidence from:

   **Panel 1:**
   - Planning Democracy, Community Land Scotland, Development Trusts Association Scotland, PAS;
   
   **Panel 2:**
   - Music Venues Trust, UK Music.

   [Link to the Committee papers of 28 February]
   [Link to the Official Report of 28 February]

12. At its meeting on 7 March 2018 the Committee took evidence from:

   **Panel 3:**
   - Homes for Scotland, Scottish Renewables, Federation of Master Builders Scotland, Scottish Federation of Housing Associations, McCarthy and Stone;
   
   **Panel 4:**
   - Royal Town Planning Institute Scotland, Malcolm Fraser, Professor Cliff Hague, Clydeplan.

   [Link to Committee papers of 7 March]
   [Link to Official Report of 7 March (available by 6.00 pm on Friday 9 March)]

13. At its meeting on 14 March the Committee will take evidence from:

   **Panel 5:**
   - Built Environment Forum Scotland, National Trust for Scotland, Scottish Water, Scottish Environment Link;
   
   **Panel 6:**

14. Submissions from those giving oral evidence at the meeting on 14 March are contained in Annexe A.
Next Steps

15. At its meeting on 21 March the Committee will conclude its evidence taking with evidence from the Minister for Local Government and Housing.
Dear Committee Members

Thank you for the call for Evidence in relation to the Planning (Scotland) Bill.

Built Environment Forum Scotland (BEFS) is an umbrella organisation that brings together 23 non-governmental organisations across Scotland’s built environment sector. Drawing on extensive expertise and knowledge in a membership-led forum, BEFS informs, debates and advocates on the strategic issues, opportunities and challenges facing Scotland’s built environment.

With the purpose and role of BEFS in mind, we would like to stress that existing Scottish Planning Policy states that “The planning system should promote the care and protection of the designated and non-designated historic environment” but legislation only provides protection for designated assets – listed buildings, scheduled monuments and conservation areas.

Undesignated heritage assets may not be recognised as of national importance but they are what makes local places distinctive and are often what communities’ value about their local environment. This Bill is an opportunity to strengthen the protection for Scotland’s non-designated cultural physical heritage, which in turn contributes to the preservation of all of Scotland’s tangible and intangible cultural heritage; heritage which greatly benefits our nation’s economic and social wellbeing.

It is also of note that those in the most deprived places have the least positive views about their neighbourhoods (Scottish Household Survey). The provisions within the Bill should ensure that inequalities of people and place are tackled, with the seldom heard supported and equipped to present their views.

The comments within this response were created and supported by the BEFS members listed in the appendix.

Yours faithfully

Ailsa Macfarlane
Policy & Advocacy Officer
1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

This is an opportunity to set out a clear statutory purpose and vision for the Scottish planning system, both of which are absent from this Bill. With this Bill, the Scottish Government could align the planning system, as it wishes to align the National Performance Framework, with international obligations; specifically the United Nations’ Sustainable Development Goals (SDG). The New Urban Agenda was agreed by the UN in 2016 as a step towards implementing the SDG 11 and is another international framework that the Scottish planning system should align with to ensure development is sustainable.

As it stands, the Bill could potentially weaken environmental protections and, without the context of the secondary legislation and policy guidance, does not demonstrate how the balance between development and community interests will be achieved. Without this secondary legislation, confidence in this Bill increasing public trust in the planning system or delivering appropriate development is low. The decision to amend the already amended Town and Country Planning (Scotland) Act 1997 is a missed opportunity to create new planning legislation that has vision and clarity of purpose.

Introducing legislation without a clearly defined purpose, with details to be clarified through further research, raises concerns that it may result in legislation whose operation is vulnerable to judicial review, whether in the Scottish Courts, the UK Supreme Court, or the European Court of Justice during what may be a prolonged transition period.

Scotland’s global reputation rests upon the quality of its natural and built environment, and is of social and economic value to residents and visitors. The Bill provides no additional mechanisms for protecting Scotland’s heritage – SDZs may undermine existing protection. Without provision for resourcing the place-making agenda, new developments may not be of a quality to deliver enhanced places for communities.

Given the present doubt over how EU legislative requirements (whether imposed by Regulations or by Directives) are to be incorporated into Scots Law (apparently via Westminster), the Bill should enact the principal requirements. Specifically Article 191 from the Lisbon Treaty.
2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

There is evidence of a need for additional affordable housing but the Bill’s provisions provide no further clarity on how this will be delivered. The mechanisms for increasing house numbers appear to be in the new gatecheck process in advance of the preparation of the LDP and the introduction of SDZs. Affordable housing may be provided through these routes but if it is still contingent as a small percentage of private sector housing it remains subject to the multiple variables affecting the market and is therefore unlikely to deliver in the quantity and quality needed.

Research for the Scottish Land Commission does not identify securing planning consent as the major barrier to house building. Further research on Land Value Tax is pending and may have implications for this aspect of the Planning (Scotland) Bill.

National and local plans should be focused on delivering and shaping well planned, thriving communities in well-connected locations, not on the quantity of units delivered. The amendments presented seem to place the focus on housing numbers, not their means of delivery nor their quality.

3. Do the proposals in the Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?

No. The NPF was originally conceived as a light-touch national spatial strategy. The Policy Memorandum itself explains (para. 26) that the NPF is a long-term strategy for Scotland, that it is the spatial expression of the Government Economic Strategy, and of the Scottish Government’s plans for development and investment in infrastructure. Yet the Government proposes (para. 28) that Scottish Planning Policy, which is not spatial and not concerned with strategy, should be incorporated into the NPF. The wider proposals risk the NPF becoming a top-heavy, general repository of planning policy that could quickly fall out of favour.

BEFS concern is not just with regional expertise and capacity, but also with regional agency. The proposed legislative changes seek to enhance the status of the NPF while making no statutory provision for strategic agency at the regional level. Far from being strategically empowered or given regional agency, planning authorities are to be obliged to work collaboratively “to assist the Scottish Ministers in preparing the NPF” (para. 31). This could result in an increasingly centralised planning system. Flexible arrangements for cross-boundary working could be achieved without merging national and regional scale planning into a single document (para. 33).

High-level regional spatial strategies - formed through regional partnerships with agreed strategic outcomes - informing the NPF, could go some-way to protecting and enhancing the value of the NPF.
The consultation paper rightly stressed the importance of bringing together Scottish Government policies across all sectors, including Energy, Climate Change, Land Use, Digital Technologies and the Marine Environment. There is a real danger that making the NPF part of the development plan could work against this holistic perspective, reducing its ability to address strategic spatial issues beyond the statutory definition of ‘development’ in Section 26 of the Town and Country Planning (Scotland) Act 1997.

The removal of the statutory requirement for strategic regional plans will have funding and resource implications. Local authorities may see this as an opportunity for cost saving, resulting in a reduction of the funding available to planning departments – if local authority funding is stretched why would authorities fund a non-statutory activity?

The non-statutory status proposed for regional planning can also be seen as reflecting a drift towards the, critically reviewed, model of City Deals, focused more on individual projects than spatial strategy. BEFS acknowledges the development of the Regional Economic Partnerships, and whilst this might represent a future structure for city region planning, without a statutory outcome or purpose much is left to the individual actors.

The 2014, Scottish Government commissioned, Review of Strategic Development Plans, made a series of recommendations. Based this this review the Scottish Government then committed to strengthen strategic planning, and set out a series of actions for Strategic Development Planning Areas, for both the Scottish Government's Planning and Architecture Division, and the Minister for Local Government and Planning to follow. Were these actions implemented and was their outcome independently evaluated?

SDPs have only been operational for 8 years and substantive evidence for the need to abandon them has not been produced as part of the recent review.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

The Position Statement acknowledged the need for dialogue between land use planning and community planning, and committed to a statutory link between development planning and community planning in the Planning Bill.

It is proposed that Section 3 of the Bill should introduce a requirement for the LDP to take into account the local outcome improvement plan for the plan area. How this link will work in practice still needs to be explained. There is a risk that local development planning may become subordinate to a community planning regime which currently fails to adequately empower communities.
There is a need for reciprocal requirements for local outcome improvement plans to take account of land use planning and have a place and space dimension. Without such provisions, and appropriate resource and guidance, there is unlikely to be any improvement in community planning practice.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

The preparatory work required for the creation of a simplified scheme will not be simple for planning authorities. The ability to include conservation areas and listed buildings within schemes will require extensive additional preparatory work to ensure that historic assets are protected, preserved or enhanced. It is unclear if the costs of this preparatory work are to be shouldered by the planning authority even when a scheme is upon the direction of Scottish Ministers. If a planning authority does not have the resource or access to relevant expertise, the danger is that adequate Environmental Impact Assessments will not be undertaken and designated and undesignated historic assets will be put at risk. It will also be critical that SDZs prioritise high quality development as well as speed of delivery.

BEFS are concerned that SDZs may undermine existing protection. If SDZs are not brought forward through a plan-led system they could threaten Scotland’s natural and built heritage due to a bypassing of scrutiny.

The Bill provides for requests for a scheme to be made, but does not specify from whom the request may come. Landowners, developers and local communities may all have an interest. If there are multiple requests for schemes, what guarantees are there that adequate resources will be made available?

The integration of transport and planning is one positive advantage of a scheme, but why limit this to SDZs? While the Policy Memorandum reasserts the importance of ‘place’ (paras. 4, 18, 42 and 43), few of the Bill’s provisions explicitly advance the place-making agenda. If the intention is that schemes should be resourced to deliver places of quality, which meet the needs of communities and safeguard and enhance heritage assets that are valued locally, then it may be more appropriate to call them Place Development Zones (PDZs). Linking such zones to specific land value capture mechanisms may help to deliver higher quality affordable housing, while also promoting social well-being.

The complexity which has resulted in only modest uptake of the SPZ mechanism does not appear to be significantly addressed in the proposals for SDZs. We note that the Law Commission is currently undertaking a consultation reviewing the planning system in Wales that recommends the withdrawal of SPZs and the greater use of local development orders.
6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

If LPPs were adequately resourced to enable communities to acquire the skills they need to prepare them, with their proposals incorporated at an earlier/evidential stage, they could be a mechanism for embedding the aspirations of communities within the planning system in a way which encouraged: inclusivity, an integrated approach, and promoted both understanding and trust in the system.

It is by no means clear that LPPs will ensure that community aspirations are integrated into the process more effectively. Under the provisions of the Bill, the LDP is only ‘modified’ in light of consultation, not developed by or with the communities it is supposed to serve. LPPs are likely to be most effective when prepared with the local authority in a stakeholder role. This will require resource, which is not committed by the Bill’s financial memorandum. The example of Pollokshields Community Council work in this area is just one example, which would appear indicative, of the challenges involved in the process.

LPPs should feed into the Evidence Report to ensure that community aspirations and relevant community assets are identified at an early stage and considered as part of the gatecheck. Otherwise there is a danger that the gatecheck will be a technocratic exercise primarily concerned with housing numbers and their delivery.

The Bill should require planning authorities to engage with communities on the identification of community aspirations and relevant community assets at the evidence gathering stage, whether or not a LPP has been prepared.

The financial memorandum suggests LPP costs of £13K yet independent research carried out by Strathclyde University places the average Scottish Government contribution at £18K with additional funding from other sources. Information from those conducting recent charrettes have stated that the cost is usually £30-40K. A proposed Leith Place Plan has recently received Scottish Government funding of £35K, building on the Leith Blueprint engagement exercise which was reported to have cost £46K. If these are the actual costs of preparing an effective LPP then the financial memorandum has grossly underestimated them. In turn the memorandum does not mention the costs of upskilling communities. If communities, particularly those in areas of deprivation, are not provided with the resources to equip themselves with the necessary skills, they may have to rely upon costly consultants. This is not a desirable outcome.
We are unclear about the practical difference between the requirement to “take into account” the NPF and the requirement to “have regard to” any LPP in Section 20AA.

The Policy Memorandum states that regulations for pre-application consultation will require two public events, but unless the consultation meaningfully responds to community issues it will remain an unsatisfactory process.

Community Councils could be required to play a role in LPP preparation, as they should be representing the opinions of a community area. The community council structure already exists and should be strengthened to increase community engagement following the principle of subsidiarity.

The recently published report ‘Shaping better places together: Research into facilitating participatory placemaking’, supported by the Scottish Government, highlights the investment required in time and expertise for good community engagement.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

Whilst the ability to recover expenses is seen as a potentially positive addition, the intention that enforcement should remain discretionary, rather than statutory, is seen as a serious impediment to effective enforcement.

There is acknowledgement in the Bill that the current enforcement powers are not being used. This is seen as a further issue of resourcing for the Scottish Government and planning authorities. If a planning authority does not, or cannot, resource an adequate enforcement team, the level of the fine is immaterial.

Enforcement should be a statutory power and needs to be monitored, with the publishing of planning authority enforcement statistics produced as a matter of course. It has been suggested that the Ombudsman could be empowered for planning enforcement. It is acknowledged that this too may present resource challenges.

The £50k limit to fines seems to go-against the aim of fully taking into account the potential financial benefit for the applicant – and is not seen as a true deterrent to those wishing to evade their planning requirements.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and
amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

The Infrastructure Levy proposals have not been set out in a sufficiently clear and comprehensive manner to enable respondents to judge if they have the potential to be the ‘best way’ to secure investment, or may impact levels of development. There are too many unanswered questions, as is highlighted by the recognition of the need for further work in this area in the Policy Memorandum (para. 155). As it stands there is additional confusion over how the Infrastructure Levy and retained Section 75 would coexist. This issue is also linked to review of Land Value Capture, currently being undertaken by the Scottish Land Commission, and is unlikely to be resolved without close and detailed work between agencies and departments.

A 2016 report presented to UK Government in early 2017 notes several concerns found with the English process. Namely: cost of implementation, varying views as to effectiveness, low impact on housing numbers, increase in exemptions over time, and disparity between areas of economic difference.

With reference to the above – but raised by many respondents - the nature of implementing the Levy across Scotland, and the economic differences between authorities, may prove challenging as land-value, affordability thresholds, and house prices would be difficult to balance with complex infrastructure needs.

In considering the funding of infrastructure, the Scottish Government needs to avoid locking the system into a mechanism where infrastructure funding is increasingly dependent upon development, or into a system that fuels a land or housing market that is assumed to be continually rising.

9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

Training would be beneficial, not just for those making development management planning decisions, but for elected members in general, especially given the provision that the LDP needs approval from the full Council not a delegated committee. Councillor training should be available to community councillors so that an understanding of roles and responsibilities is shared.

The question of an examination raises further questions: by whom would this be set/reviewed? As well as querying the potential delays that this could bring to the system; would a committee be prevented from making a decision until all members had completed their training/exam? A void in decision making created by this process (as would be inevitable following local elections) would not be desirable to applicants or decision makers, putting undue stress on the planning system.
When considering the use of examinations for Council committee members it is understood that currently, only those on Licensing Boards need to sit an exam. It is suggested this may not be a rigorous process, with candidates sitting a 40 question, multiple choice examination. This format would not be seen as suitable to enable candidates to grasp an understanding of the purpose and desired outcomes of a strategic planning process.

BEFS noted that a planning committee does not need to be entirely elected members, and trained planners on a planning committee could be extremely beneficial – for example Cairngorm National Park Planning Committee.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

Is performance, in the sense of speed and percentage of approvals, the correct standard? The quality of places for all our citizens, with: appropriate infrastructure; sustainable economic growth; high environmental standards; affordability across housing tenures; and high-quality, shared, build standards; would be a more fitting measure.

Without increased resources, and with multiple changes to the Planning system within the Bill, it is unclear how planning authorities are being enabled to improve on their performance as it is currently understood.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high –performing planning system the Scottish Government wants? If not, what needs to change?

Full cost recovery is welcomed but would only be effective if fees were hypothecated appropriately, to the benefit of the planning service.

Whilst additional flexibility within the charging system initially appears positive it could prevent a level playing field across Scotland. Such flexibility could also appear unfair, or to benefit certain types of planning applications, if not scrutinised and monitored appropriately.

Ultimately, as is noted in the proposed Bill, more detail is necessary before a full answer to this question can be provided.
12. Are there any other comments you would like to make about the Bill?

Supplementary Guidance

The total removal of statutory supplementary guidance may have unintended consequences. There is a high degree of inconsistency across local authorities as to what they present as supplementary guidance and this may reflect previous Scottish Government advice on simpler LDPs being supplemented by detailed supplementary guidance. It is important that detailed local guidance on the protection and care of conservation areas, listed buildings, battlefields, gardens & designed landscapes is not diminished in the removal of Supplementary Guidance. Particularly when this guidance is considered in relation to the reduction of specialist officer roles relating to archaeology, conservation, landscape and other areas of expertise within local authorities.

We would ask the Scottish Government to clearly set out its understanding of what is Supplementary Guidance of a statutory nature, and what is local planning guidance that is a material consideration in the planning process, to ensure clarity in understanding the full implications of the proposal.

APPENDIX

Built Environment Forum Scotland (BEFS) is an umbrella organisation that brings together 23 non-governmental organisations across Scotland’s built environment sector. Drawing on extensive expertise and knowledge in a membership-led forum, BEFS informs, debates and advocates on the strategic issues, opportunities and challenges facing Scotland’s built environment.

The comments within this response were created and supported by the following members of BEFS:

- Archaeology Scotland
- Architectural Heritage Society of Scotland
- Association of Local Government Archaeological Officers in Scotland
- Chartered Institute for Archaeologists
- Cockburn Association
- Historic Houses Association, Scotland
- Institute of Historic Building Conservation Scotland
- Landscape Institute Scotland
- National Trust for Scotland
- Royal Incorporation of Architects in Scotland
- Royal Institution of Chartered Surveyors Scotland
- Scottish Civic Trust
- Society of Antiquaries of Scotland
Written Submission from the National Trust for Scotland

Planning is central to the protection of our natural and cultural heritage, and to shaping places that provide wellbeing and enjoyment. Scotland’s current planning system, as our own research finds, does not currently give sufficient protection to our heritage\(^1\), does not have sufficient checks and balances\(^2\), and leaves citizens feeling disempowered.\(^3\)

We therefore ask that the Committee consider how this draft planning bill can:

- Better engage with people and what they want from the planning system, including protections for their local built heritage and character, and for natural heritage and greenspace.
- Create a system that maintains and enhances our valued places, including meeting Scottish Government commitments to United Nations Sustainable Development Goals, specifically the fast approaching target: “By 2020, integrate ecosystem and biodiversity values into national and local planning, development processes, poverty reduction strategies and accounts.”\(^4\)
- Rebalance the planning system to give all involved greater certainty as to the outcomes sought, the ways in which these will be delivered, and the required level of democratic scrutiny and control.

1. **Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?**

No. The current bill primarily amends existing legislation, rather than delivers a new approach to planning. The question itself is somewhat odd, seeming to suggest that development is a zero sum game, where development inevitably conflicts with communities and with protections for the built and natural environment. We would prefer to see a more positive approach where development is envisaged as sustaining and enhancing community life, and a good quality environment.

Specifically, we would wish to see a positive role for the planning system in preventing inappropriate development, in improving middling proposals, and in promoting developments that help deliver a range of economic, social, cultural and environmental outcomes.

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\(^1\) The National Trust for Scotland (November 2017), *Planning for Scotland – citizen views* Less than half of Scots thought their local historic character or greenspace had been well protected or enhanced by the planning system.

\(^2\) Ibid. 90% of respondents thought communities should have equivalent rights of appeal to developers.

\(^3\) Ibid. 60% of respondents felt they had no influence on planning decisions affecting their local area.

\(^4\) [http://www.un.org/sustainabledevelopment/biodiversity/]
Alignment of the planning system with the Land Use Strategy, and the application of ecosystems services to planning by 2020, as required by the United Nations Sustainable Development Goals, would help ensure these multiple benefits are secured. The current planning bill is Scotland’s best opportunity to meet this target. The lack of public engagement in developing policies and plans, resulting in citizen concerns and opposition to specific developments, is a continuing feature of the planning system. Our own research found that 60% of Scots felt they have no influence on planning decisions affecting their local area (27% felt they had a little influence, and only 9% a reasonable amount of influence). The current bill proposals do not address this dissatisfaction. Several proposals in fact appear to increase the central government role, and therefore the distance between the decision-makers and those affected.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

The planning system was created to manage development in such a way that private interests can be reconciled with public interests. It should not have a bias towards any particular type of development. Our own research\(^5\) found that the Scottish public’s current priorities for the planning system were varied, with outdoor areas and greenspace (49% of respondents), housing (47%) public facilities and shops (46%) and transport (40%) all identified as needing improved delivery.

The Policy Memorandum identifies the purpose of the bill as being to enable good quality development. The Financial Memorandum identifies the purpose as being to create a more effective planning system with a sharper focus on delivering development and high quality places. Enabling better place-making is evidently a core objective of the bill; increasing housebuilding is a subsidiary objective to this.

The bulk of Scotland’s housing supply, some 2.6 million dwellings, already exists and will change only slowly. Current house-building rates are around 17,000 completions a year, representing a 0.65% addition to total stock. Even at the very highest levels of housebuilding in the last century at 40,000 dwellings a year, reached in the early 1970s, this is still only a 1.5% change year on year. The key to a liveable Scotland will therefore continue to be keeping buildings in good repair, adapting these as needed, and ensuring that employment, public services and transport support existing settlements.

On the specific issue of planning controls – which are intended to help secure the appropriate housing types in the appropriate locations – these are only one factor in new housing supply. For new housing developments, research\(^6\) finds that variability within planning authorities, developer appeals, and the impact of large sites can all lead to delays in planning decisions. The solutions are therefore likely to involve

\(^5\) The National Trust for Scotland (November 2017), Planning for Scotland – citizen views

\(^6\) Ball, Michael (January 2010), Housing Supply and Planning Controls - The impact of planning control processing times on Housing Supply in England, National Housing and Planning Advice Unit
greater capacity and skills within local authorities, greater adherence to development plans and less reliance on appeals, and a more varied mix of development sites and sizes.

Land supply through planning permission is obviously only one factor in the supply of new housing. Market demand, and ability to pay, will be major factors. In terms of build-out rates\(^7\) housing developers appear to prefer to build at a rate that secures their return on investment, increasing or slowing production to marry up market demand with their target price. This research suggests that an increase in land supply would not lead to a significant increase in production rates, and that it would take time for a fundamental shift in the balance of demand and supply to result in lower land prices.

3. **Do the proposals in Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?**

No. While the bill proposals are clear on the removal of the current system of Regional Development Plans and their supporting processes, there is no suggestion as to what should replace this, nor how comprehensive, robust or transparent these systems should be. The Policy Memorandum states: "In light of this emphasis on subsidiarity more generally, it would be counter-productive to prescribe how regional partnerships should be formed or operate for strategic planning interests."

We would wish to see a statutory approach to regional planning that guarantees that relevant issues are taken into consideration, and that there is a transparent process with adequate citizen involvement.

The removal suggests that planning is moving in the direction of City Deal model – a project basis rather than a strategic approach. We would suggest that this not a particularly democratic model and could heighten public dissatisfaction with regards to effective engagement in the process.

We would argue that for issues best planned at a regional scale – for instance, transport infrastructure, energy infrastructure, major settlement boundaries, landscapes - there needs to be more, rather than less, regional planning.

4. **Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?**

LDPs and the National Planning Framework need to remain distinct. The NPF was designed as a framework for national spatial planning and should remain so. The bill

\(^7\) Adams, David, and Leishman, Chris (February 2008), "Factors Affecting Housing Build-out Rates", University of Glasgow
proposal that the most recent document will prevail and that, in practice, the Minister will use discretionary powers to ensure compatibility is not appropriate or practical. One must maintain primacy; otherwise current proposals will lead the system open to extensive legal challenge. Due to Parliamentary pressures, specific developments in the NPF themselves can only be given limited scrutiny by MSPs, and cannot readily elicit or incorporate community aspirations. Public awareness of the NPF is also very low\(^8\), and greater reliance on it is therefore likely to increase the democratic deficit.

With regard to the shift to having interim reviews of LDPs in a ten-year timeframe, it is unclear what the new arrangements for community engagement will be. It would also be possible for ministers to amend LDPs. It is unclear whether these amendments will undergo any scrutiny or wider engagement. The benefit in having a ten-year timeframe is that it allows for long-term planning provided these plans are applied consistently over the period. This benefit is negated if the plans are amended without consultation and to a degree where they cannot be relied upon by those contributing to them.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

Simplified Development Zones would not remove safeguards, rather they would be frontloaded, based on the anticipated usages. The examples to date have involved only a small number of use types, in a restricted area, and for variations within a restricted palette of interventions. SDZs are therefore less likely to be suited to more complex or large-scale developments, or where residents are affected, without accompanying investment in master planning and site investigation.

The bill proposals are based on the example of only two Simplified Planning Zones: Renfrew town centre, and Hillington industrial park. The first was relatively cheap at a cost of £15,000, covering three streets in Renfrew, and allowing change of use between residential, retail, food and drink, and office use; and minor alterations to exteriors. All other developments were required to go through normal planning controls. Hillington Park SPZ was more expensive, at £200,000, but covers a larger area at 200 hectares. Under the control of a majority land owner, it was possible to anticipate the types of development that might come forward, with the main planning issues already known. As there are no residents on site or close by, the scheme would have had less social impact or affect the delivery of public services.

These schemes therefore illustrate both the benefits, and the limitations, of SPZs. They are likely to work best where there is a relatively restricted palette of potential developments, which can then be anticipated and planned for, and where impact on

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\(^8\) As low as 11% of Scots, according to our own public opinion research carried out in July 2012.
alternative uses is low. They are therefore likely to be less applicable where there are multiple uses, multiple owners, and where residents could be affected.

It is proposed that ministers are given powers to direct and amend these zones, though again it is unclear how or if these decisions and amendments will be consulted on. Section 54 of the 1997 Planning Act excludes SSSIs, Conservation Areas, green belt and other natural heritage protections from such Zones. We would wish to see this approach retained within the primary legislation due to the designated status of such protected areas and are concerned to see the proposal to remove this exclusion. Research on SPZs highlighted the need to pay special attention to Conservation Areas. It also recognised the existing duty to pay special regard to listed buildings, recognising that ‘Listed Building consents are typically focused on detail, meaning that it is unlikely that sufficient information about a future proposal would be available to allow pre-consenting’. We are not aware of any evidence that makes an effective case for including designated assets within the proposed SDZs and would argue that consenting regimes exist in order to ensure more detailed scrutiny of assets of special value.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

No, much more could be done here to improve both the performance, and public perceptions, of the planning system. Our own research found respondents with the most perceived influence, were the most satisfied with planning outcomes.

However, the bill appears to propose a reduction in community involvement in decisions affecting their area. With the increase in ministerial and central authority over local plans, the removal of regional development plans, greater use of the centrally-determined National Planning Framework, and the lack of new opportunities for local communities to contribute, it is unclear how communities will have adequate say in the development of their areas. This is significant when considering that already 60% of Scots feel they have no influence on the planning system. We would not expect this to decrease with the implementation of current proposals.

With regards to the Local Place Plan, these could be effective tools of engagement. However, currently there is little incentive for a community to produce one due to the capacity and resource required to do so. This is exacerbated by the relatively low

status of community councils, the natural level at which to produce such a plan. This local level of government could potentially be bolstered if the place plans extended beyond development control, to directing the care and maintenance of existing assets. For communities, it is often the level of maintenance that makes assets usable, or not\textsuperscript{10}.

7. **Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?**

We support the proposed changes to enforcement. However, we would observe that the single greatest deterrent is not the penalty, but effective enforcement. If there is no enforcement, then it does not matter how high the penalty is.

8. **Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?**

We support the principle of developments affecting local infrastructure helping fund that infrastructure.

We would note that there is recent research\textsuperscript{11} on England’s equivalent Community Infrastructure Levy which has identified: issues with consistency in application (by local authority and by type of development); lower levels of income than first expected, with fees based on viability and what the developer can afford to pay, rather than infrastructure need; difficulties in developing complex sites where the burden and risk of providing infrastructure has been transferred to local authorities; and a higher level of bureaucracy.

In developing a Scottish approach, we would ask that a consistent approach to charging be encouraged, that this addresses the real costs of infrastructure provision, and that the process does not disadvantage small and medium-sized developers.

9. **Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?**

Yes.

\textsuperscript{10} Quality of place, not simply basic provision, is closely linked to usage and enjoyment. For example, public perceptions of the quality of their greenspace has declined (from 40% very satisfied in 2011 to 23% in 2017), at the same time as the weekly usage of greenspace has declined, from 63% in 2009 to 43% in 2017. Perceptions of decline were higher in lower income areas. Source: greenspace Scotland (2017) Greenspace Use and Attitudes Survey 2017

\textsuperscript{11} CIL Review Team (October 2016), A New Approach to Developer Contributions
10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

The measure of the planning system is whether it is delivering the desired public outcomes. There is a role for measuring the efficiency of processes, but ultimately it is the effectiveness of the process that matters.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high-performing planning system the Scottish Government wants? If not, what needs to change?

12. Are there any other comments you would like to make about the Bill?

Supplementary guidance

We question the proposed removal of supplementary guidance, which provides valuable direction on specific issues established in the Local Development Plans. This guidance was originally included in LDPs, but was removed to make these documents more succinct. While there is an argument for ensuring greater consistency of approach, there must also be scope for the system to be able to manage development that reflects the local character and richness of Scotland’s places.

Rebalancing the system

The current planning system is not perceived by citizens as empowering them or giving them a voice in how their neighbourhoods are being developed. This is exacerbated by the perception that the system is weighted in favour of developers, including their right to appeal local decisions. To rebuild trust in the system, we would ask the Committee to consider how the system can be rebalanced. This could potentially be through a more plan-led approach, giving communities and developers greater certainty; through limiting the grounds for challenge; or expanding the right to challenge decisions.

Vision for spatial planning in LDP

Section 3 of the bill introduces a new requirement for the LDP to take into account (and contribute to) the local outcome improvement plan for the area. It is proposed that the existing requirement for the LDP to provide a vision statement is repealed. While appreciating the aim to strengthen the link between community and spatial planning, we are concerned at the potential loss of a strong spatial vision at local plan level to attract community support. Retaining a vision statement within the LDP
would also strengthen the ability of the LDP to contribute to environmental priorities set out in Local Outcome Improvement Plans.

**Permitted Development Rights**

We note the proposals to potentially broaden the scope of permitted development rights. While this is appropriate in many cases, the individual and cumulative impact of such developments also needs to be considered, and restrictions may be needed to manage development in protected areas.
Written Submission from Scottish Water

The following information details Scottish Water’s response to the twelve questions detailed in the call for written evidence on the Planning (Scotland) bill which was introduced to the Scottish Parliament on 4th December 2017. Only those questions relevant to Scottish Water’s area of expertise or engagement with the planning system have been answered.

1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

Scottish Water has been engaged through the Planning Review and is supportive of the Planning (Scotland) Bill. Scottish Water would like further clarity on the proposals for ‘Simplified Planning Zones’, ‘Local Place Plans’ and the proposed ‘Infrastructure Levy’ and will support the development of the proposals in the Bill and secondary legislation where it is relevant as this develops further. Further information on this is included in the relevant questions below.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

No comment.

3. Do the proposals in Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?

Since the Strategic Development Planning Authorities (SDPA’s) were formed Scottish Water has, along with the other Key Agencies, engaged with them. Scottish Water would want to see the knowledge, experience and information which has been shared and developed with the SDPA’s be maintained through the development of regional partnerships.

There needs to be a clear mechanism for cross boundary engagement to ensure that this is maintained in areas where there were SDPA’s and where other regional partnerships are planned to ensure the success of these.

If these things are done then the regional partnerships will have a strong foundation from which to develop regional planning further without the SDPA’s.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on...
delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

Scottish Water support the proposal to remove the Main Issues Report but work needs to be undertaken to understand what information will be required to inform the proposed gate check. This will help all stakeholders to ensure that the appropriate level of engagement and resource can be allocated to this part of the process to ensure that any issues which could impact the delivery of sites, are identified as early as possible in the process. Engaging with communities at this early stage to gather their views and to develop their understanding of the background work which feeds into the plan may help to address some of the concerns which can be expressed later in the development journey.

Scottish Water supports the proposals for the creation of delivery plans which should help to ensure that sites move from the development plan through to development management. Updating these delivery plans regularly will also help communities understand that concerns they may have are being considered and addressed giving greater community confidence in the plans.

Scottish Water supports the move from a 5 year to 10 year plan and the option for plans to be updated within the plan period if required. This will help to ensure that the plans provide certainty of where development will occur. Further work will be required to understand the mechanism for plans to be updated.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

Further information is required in relation to how technical assessments and infrastructure provision would be dealt with in order to support Simplified Development Zones (SPZ’s). Scottish Water is unable to reserve capacity within its infrastructure so there would need to be a way to monitor the rate of development over time and the impact of this on available capacity. The promotion of early engagement and collaborative delivery plans within an area may be a more sustainable approach to enabling development within an area.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?
Further information is required to understand the remit of Local Place Plans and how engagement with these would be managed. During the Planning Review Scottish Water has raised concerns that infrastructure providers and Key Agencies may need to provide information to both LDP’s and Local Place Plans. This would lead to a duplication of effort and the risk of confusion as information may vary between the two if they are being developed at different times. There is a need to ensure that resource is focussed in the right place to ensure maximum benefit for all. Increased community engagement in the LDP process may be a more effective way to engage local communities and share information that creating additional plans.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

No comment.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

Scottish Water has been engaged in a number of workshops relating to the proposed Infrastructure Levy. The funding of infrastructure is a challenge and it is still not clear how the proposed infrastructure levy would work to address the existing challenges. Scottish Water is committed to supporting development and has clear funding policies in place to support development including an infrastructure fund which gathers contributions from developers to support future development. Scottish Water will continue to engage in discussion relating to the proposed Infrastructure Levy.

9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

Yes, Scottish Water supports the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making. Along with the other Key Agencies Scottish Water is keen to support the development of this training.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

No comment.
11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high –performing planning system the Scottish Government wants? If not, what needs to change?

No comment.

12. Are there any other comments you would like to make about the Bill?

Scottish Water is supportive of the proposals to remove supplementary guidance from LDP’s and for this to be consolidated along with Scottish Planning Policy within National Planning Framework 4. Scottish Water are already working in collaboration with the Scottish Government Water Division, SEPA and the Society of Chief Officers of Transportation in Scotland (SCOTS) to jointly influence the Scottish Government planning team to ensure that surface water infrastructure is considered earlier in the planning process. This engagement will continue to with the aim that guidance on the management of surface water is included within NPF 4. We would also be keen to support the LDP/Masterplan to include a minimum requirement for wastewater and surface water infrastructure, and encourage the review to identify a plan to understand where training and upskilling is required to aid implantation of these changes on the ground.

Scottish Water supports the exclusion of a Third Party Right of appeal as part of the Planning (Scotland) Bill.
Written Submission from Scottish Environment LINK

Introduction

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society. Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment.

Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland. LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits. LINK members are regularly involved in planning matters and therefore welcome the opportunity to comment on this consultation.

We have responded to the questions posed by the Committee in the attached annexe.

Summary

As currently presented, the Bill would fail to deliver a more sustainable future for Scotland and would significantly reduce opportunities for engagement and environmental scrutiny.

The Scottish Government proposals intend to strengthen the plan led system, which is welcome. However, the loss of the Main Issues Report stage and shift from a 5 year to a 10 year development plan cycle would severely reduce opportunities for public involvement in shaping their local places. This will be compounded by the removal of Strategic Development Plans and Supplementary Planning Guidance, which often dealt with important topics such as environmental protection at regional and local levels. Similarly, while an increased period of parliamentary scrutiny for the National Planning Framework is welcome, this is completely overshadowed by the shift from a 5 year to a 10 year plan cycle, which would severely reduce opportunities for public involvement in shaping the strategic development of Scotland. In addition, there is still no requirement for parliamentary approval of the Framework, a critically important national document but which the Scottish Government has almost full control over.

Simplified Development Zones could result in planning permission being automatically granted, without the need for a developer to submit a planning
application or to consult with communities. This could include development in highly sensitive areas including SSSIs, National Scenic Areas, Conservation Areas and green belts.

While some parts of the Bill and accompanying documentation hint towards new engagement mechanisms, these are not clearly articulated and seem highly unlikely to be equal to those lost. To make these reduced engagement opportunities even more concerning, even though the planning system should be about making Scotland better for everyone, the Scottish Government has insisted that while developers should continue to be provided with two chances to gain planning permission if their first application is refused, through an appeal process, no other interested individuals or organisations will be allowed any similar, or equal, right of appeal.

This response was compiled on behalf of LINK Planning Group and is supported by:

Association for the Protection of Rural Scotland
Badenoch & Strathspey Conservation Group
Friends of the Earth Scotland
Froglife
Planning Democracy
Ramblers Scotland
RSPB Scotland
Scottish Campaign for National Parks
SCAPE Trust
Scottish Wild Land Group
Scottish Wildlife Trust
Woodland Trust Scotland

Aedán Smith Convener of the LINK Planning Group
Daphne Vlastari Advocacy Manager Scottish Environment LINK

1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

No. Unfortunately, the Bill does not reflect the concerns previously raised by Scottish Environment LINK in the planning review process. LINK’s overarching concern is that the priority of the Bill and wider planning reform is to streamline planning by making for a faster development consenting process by reducing consultation opportunities and further de-regulating planning rather than producing a system that genuinely prioritises engagement and creating better places for all of Scotland. We attempt to highlight some measures here which may help rebalance this.

An overarching purpose of planning – to achieve Sustainable Development
The lack of consideration given to sustainable development is a major concern. The need to achieve sustainable development is more urgent than ever. This has been recognised internationally through the development of the UN Sustainable Development Goals (SDGs). The Scottish Government has been an enthusiastic supporter of the SDGs, making it all the more disappointing that the opportunity hasn’t been taken to further these ambitions through this Bill. The duties set out in current Planning legislation for development plans and the National Planning Framework to contribute to sustainable development were welcome when introduced but should now be extended and strengthened so that achieving sustainable development is an overarching purpose of the planning system, which also specifically applies to development management and to enforcement.

**Climate Change**

The Bill is also light on measures to deal with climate change given the critical role the planning system will need to play in both mitigating and adapting to climate change. The Climate Change (Scotland) Act 2009 puts a general duty on public bodies to act in a way that supports the delivery of emissions reductions targets – this should be translated into a more specific duty on planning authorities in developing plans and determining applications.

**Protected areas**

The Bill as presented will do little to prevent developments occurring in environmentally sensitive, protected areas or greenfield sites and possibly represents a greater threat to the environment through loss of Supplementary Planning Guidance, reduced consultation opportunities and the widening of the definition of areas that can be made into Simplified Development Zones, including designated sites, where scrutiny of development proposals could be significantly reduced. There is a high likelihood that this could result in additional frustration and conflict where proposals are controversial.

**Biodiversity**

Our obligations to stop the loss of biodiversity by 2020 are extremely challenging and it is important that the planning system plays its part in helping achieve them by preventing any additional net harm and creating additional habitat and other enhancement to replace that which has already been lost whenever possible.

The mitigation hierarchy is an approach designed to achieve a net gain of biodiversity, firstly through avoidance of impacts, then if impacts can exceptionally be justified, through mitigation or minimisation of impacts and finally, as a last resort only in very limited circumstances, through habitat restoration or compensation.
Protected areas are by their nature particularly sensitive and are already given additional protection. They will rarely, if ever, be suitable for development but the hierarchy would provide a simple framework to aid development in other areas. A mitigation hierarchy is articulated in England’s 2012 ‘National Planning Policy Framework’ (NPPF) ‘when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles: if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.’ However, in Scotland a mitigation hierarchy has yet to be embedded in planning legislation or policy, and we consider the Planning (Scotland) Bill should take the opportunity do this in Section 1. This approach could be effectively progressed in association with a National Ecological Network for Scotland.

Parliamentary scrutiny and approval of National Planning Framework

The National Planning Framework is one of Scotland’s most important policy documents. It sets a long term vision for how Scotland will change over the next 20 to 30 years. It can identify nationally important infrastructure projects, which are sometimes needed but are almost always highly controversial, and it can have huge impacts on the economy, communities and the environment. The reforms proposed in the Bill will make it an even more powerful document, with more detail on what should happen at a regional level and an opportunity for full revision only every 10 years. Yet, despite the importance of the national planning framework for all of us in Scotland, Scottish Ministers only have to “have regard” to the views of the Scottish Parliament on the Framework. For such a critically important document, this is inadequate scrutiny. It should not be possible for Scottish Ministers to just impose their vision, there should be a requirement for parliamentary scrutiny and approval of the NPF.

Equal Rights of Appeal

The planning system should be about creating better places for everyone in Scotland. LINK strongly believes that there should also be an overarching objective of achieving sustainable development. However, it is impossible to see how this could be achieved in a fair and equal manner whilst applicants for planning permission are able to challenge planning decisions but no one else with an interest in Scotland’s places has an equivalent right to challenge decisions. This Bill is an opportunity to finally sort this long-standing injustice by ensuring communities of place and interest have a fair and equal right to appeal planning decisions. We believe this will create a level playing field to ensure meaningful public engagement; strengthen the plan-led system; enhance public trust; and improve plans and decisions by ensuring that complex and often highly contentious decisions to grant
permission are subject to the same level of scrutiny as decisions to refuse permission.

There is a huge lack of public confidence in planning and planning decisions. The Government’s own Barriers to Engagement\textsuperscript{12} research demonstrated this. The issue of appeals is raised consistently by members and supporters of LINK member organisations and was raised throughout the planning review. A recent National Trust for Scotland survey of the general Scottish public concluded that “90\% want local communities to have the same rights of appeal in the planning system as enjoyed by developers, indicating dissatisfaction with the balance of power in the system at present.”\textsuperscript{13}

Public confidence in the planning system will always be limited whilst this intrinsic inequality remains.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

The proposals may lead to an increase in the allocation of land for new house-building in development plans and the granting of planning consent for housing sites. However, this will not necessarily lead to an increase in house building itself since the delivery of housing is largely market rather than needs or planning process driven. Similarly it is not clear that the proposals will result in delivery of the type and quality of housing required to efficiently and effectively meet actual housing need.

The extent to which perceived planning constraints have really been a significant factor in restricting housing development is questionable. Many others have commented in detail on the relatively limited role that planning actually plays in restricting housing delivery. A recent example was published by the Scottish Land Commission\textsuperscript{14}.

Relying largely on speculative private sector led developments to deliver and fund affordable housing and infrastructure, including from s75 contributions, means that new housing comes forward on sites that are currently considered ‘deliverable’ or most profitable rather than in the most sustainable places. This is an inefficient means of addressing the real needs of society and can result in serious conflict when sites chosen are environmentally or socially inappropriate. New-build housing quality in Scotland also does not compare to the space standards, environmental performance or wider place quality achieved elsewhere in Europe. However, the

\textsuperscript{12}https://beta.gov.scot/publications/barriers-to-community-engagement-in-planning-research/
\textsuperscript{13}https://www.nts.org.uk/What-we-do/News/Planning-without-the-people
\textsuperscript{14}https://landcommission.gov.scot/pub/land-lines-the-housing-land-market-in-scotland-a-discussion-paper/
planning system is only a small part of the reason for this. Planning can, and should, take a more proactive role in identifying the most suitable, sustainable locations for the housing that is required to make Scotland a sustainable place. However, there is a need for a wider investigation into how these sites can be delivered.

3. *Do the proposals in the Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?*

We are broadly neutral on the proposal to incorporate regional planning into the NPF however we do strongly believe that some form of regional planning is necessary in order to help manage environmental issues at the regional scale. The failure of some of the Strategic Development Plans (SDPs) to tackle these issues is partly why their value has been questioned by some but it is not clear from the current Bill proposals how these regional spatial issues will be addressed.

There is also a need to ensure there is join up between regional planning, regional land use strategies and regional marine plans. The Bill should require that the NPF set out regional planning priorities which should be linked to the Land Use Strategy and its regional implementation and consider priorities across all land uses. A stronger duty for regional partnerships to collaborate on certain issues is also required in the Bill. This should include the duty to plan for the creation, protection and enhancement of green infrastructure and associated development. Regional partnerships should be made up of planning authorities, alongside a range of statutory and non-statutory bodies. Green infrastructure should be added to the list of matters at 3AA 2(d). This would help public bodies meet their biodiversity duty under the Nature Conservation (Scotland) Act and help to deliver the work set out in Scotland’s Biodiversity: a route map to 2020. Cumulative pressures and potential compensation sites for impacts on designated sites should also be considered at a regional level.

4. *Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?*

Plans for a 10 year review cycle are of potential concern. Communities and others will have less opportunity to input. This will be exacerbated by the proposed loss of the main issues report. There could also be a reduction in community engagement and environmental assessment as a result of the changes to the LDP process proposed in section 3 of the Bill. We are concerned that the removal of the main issues report (MIR) stage in particular could reduce effective engagement and early debate in the plan making and SEA process.
The MIR stage was one of the key changes introduced to support ‘frontloaded’ public participation in local development plans in the 2006 Act. The intention was to enable real ‘engagement’ in the early identification of key issues rather than just consultation on a draft plan. By dropping the MIR the Bill proposes a significant move away from this approach and a reduction of opportunities for front-loaded public participation.

We accept that the MIR has often struggled to function effectively but this is more a question of resources and practice than principle. It would be preferable to retain the MIR and its associated consultation opportunities in addition to a draft plan, particularly if the proposed move to a 10 year plan cycle does progress. The move towards a ten-year plan review cycle, with potential for ad-hoc reviews as required will also make the plan production process less transparent and less predictable for communities who already struggle to understand when and how they can influence the LDP. The statutory 5 year plan period introduced as part of the 2006 Act was in response to a perception that plans older than 5 years were out of date. It is therefore not entirely clear how a move to a 10 year cycle will not be a step backwards in this regard.

If the move to a 10 year cycle is confirmed, but with opportunities for revision, there will also be a need for wide ranging publicity around any proposed changes. The shift to a 10 year cycle would also mean a critical role for Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA). SEA and HRA will both need to be an essential integrated part of the preparation of plans, which will be in place for a significantly longer period during which environmental effects could become more significant and environmental baselines could change substantially. It is not clear what consideration has been given to this in preparation of the Bill. We consider delivery could be compromised if the evidence base is not correct and currently there is a lack of stakeholder consultation and engagement proposed at this early stage in the LDP process. There may also be issues if environmental assessment is not robust at an early stage in the LDP process and if HRA is deferred to project level instead of being undertaken at plan level. We would like to see a requirement to better integrate SEA outputs into the LDP, with clearer justification for the inclusion of environmentally damaging projects being required, and for HRA to be undertaken at a strategic, as well as project level for those projects/allocations where a reasonable amount of information is available in order to do this.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

No. The proposed powers are extremely broad and are explicitly underpinned by a perception that lighter regulation, bypassing community and environmental interests, will lead to more and faster development. The general failure of existing SPZs to deliver anticipated development also suggests they are unlikely to be successful.
If the proposals progress, it is, however, imperative that SDZs are produced through a robust and transparent process, ensuring full public engagement in their designation and planning, and compliance with the highest environmental standards. It is particularly surprising, and potentially concerning that the report ‘Research on the Use of Simplified Planning Zones and Equivalent Mechanisms Used Outwith Scotland’ (Ryden, August 2017) commissioned by the Scottish Government to inform this element of the Bill does not appear to discuss the merits of removing the restriction on ‘environmentally protected areas’ and in fact specifically states that these areas should continue to be excluded from SPZs. Given the strict requirements for the assessment of likely environmental effects at each stage of the development consenting process will, quite rightly, continue regardless of these proposals, it is difficult to see how Simplified Development Zones will be appropriate for designated sites or what the Scottish Government seeks to achieve from including protected areas within the scope of SDZs. We would like to either see all protected areas removed from the scope of SDZs or else significant new safeguards introduced to ensure that SDZs cannot be used to enable environmental harm.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

As discussed above in relation to the loss of SDPs and changes to the LDP process, we feel the Bill undermines the claims of the Scottish Government to encourage the ‘frontloading’ of engagement at the earliest possible stage in the process by weakening existing opportunities.

Local Place Plans are a potentially worthwhile means of enabling more proactive engagement in the formulation of planning policy. However, the decision to exclude these from the statutory development plan reduces their likely influence over decision-making. Given the time and effort that will be required of even the most well-prepared communities to prepare LPPs, the current proposals would seem unlikely to encourage significant additional community engagement.

There is also a worrying lack of detail or intention to provide support for communities and local authorities to ensure that LPPs are effective. It is unclear, for example, how communities would be provided with access to necessary specialist expertise in environmental impact assessment.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?
Compliance is an issue of concern to many of our member organisations and the proposed changes are broadly welcome. However, improved enforcement does not necessarily require legislative change but it does require improved resourcing and skills. In our experience, monitoring is also a critical but frequently under resourced area. Perhaps the highest profile example in recent years was the failure to adequately monitor open cast coal mines and the bonds and other financial mechanisms intended to deliver mine restoration, with disastrous consequences for many communities and local environments.

8. *Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?*

We are aware that in England and Wales, contributions required through the Community Infrastructure Levy (CIL) mechanism are not ring-fenced for particular mitigation measures and instead the destination of those funds is at the discretion of the local authority – so could be spent on entirely different infrastructure such as roads. The CIL Regulations have severely restricted the ability of planning authorities to require ‘pooled contributions’ (i.e. contributions from more than one development towards strategic mitigation) other than through the CIL. In addition, contributions towards indirect but essential ecological mitigation measures that are not ‘infrastructure’ (such as education or provision of advice) cannot be obtained through the CIL. The CIL system has therefore made securing ecological mitigation more complicated and less certain in England and Wales (see for example [www.ashfords.co.uk/article/pooling-contributions-regulation-123-of-the-community-infrastructure-levy-regulations-2010](http://www.ashfords.co.uk/article/pooling-contributions-regulation-123-of-the-community-infrastructure-levy-regulations-2010)).

It is important that the provisions for a new infrastructure levy in Scotland do not make ecological mitigation and compensation measures less certain or more difficult to secure. Equally, it is important that strategic ecological mitigation does not ‘fall through the gap’ between the new infrastructure levy and the existing/amended Section 75 provisions.

We consider it essential to extend the definition of infrastructure in the Bill to encompass green infrastructure.

9. *Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?*
Training is already provided for councillors and we support funding for additional training being made available. This must include SEA, EIA, HRA and wider environmental issues. However, it is vital that the content of any training that is provided is open to scrutiny and is not simply dictated from central government or delivered from a preferred provider with a limited viewpoint.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

Existing performance frameworks primarily measure processing speed. Efficiency indicators rather than quality of outcome indicators predominate. This is frustrating and of limited value in measuring progress towards a more sustainable Scotland. There is currently no meaningful measurement of quality of outcomes or public engagement, or how effective this is. A much wider debate is required about what constitutes good performance and how it should be measured.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high-performing planning system the Scottish Government wants? If not, what needs to change?

It is vital that planning departments and statutory advisors are adequately funded and resourced to ensure planning delivers sustainable development. We therefore support the potential to increase fee income if it results in better quality process and outcomes. It is vital that this includes improved resourcing for expert advisors within planning authorities and the key agencies.

12. Are there any other comments you would like to make about the Bill?

This response covers the headline concerns LINK Planning Group has with the Bill and we will make further detailed comment in due course.
Written Submission from COSLA

Introduction

1. COSLA welcomes the opportunity to provide evidence on the Planning Bill. This response is informed by 18 months of work with Scottish Government and partners since the independent review report was published in May 2016. In this time we have established a position on the key elements of the Bill for local government, on which this response now focuses. These key elements are:

- The removal of the requirement to prepare strategic development plans
- Local place plans
- Financial aspects of the Bill, including planning fees
- Performance of planning authorities
- Infrastructure levy

2. This response complements other, more detailed submissions from individual local authorities and professional local government associations, including Heads of Planning Scotland.

Removal of Strategic Development Plans (SDPs)

3. COSLA supports partnership working between councils and we believe that local authorities should be able to come together in ways that work for them. While we understand the premise behind the Scottish Government proposal is to direct energy and resources at establishing the spatial needs of a region rather in the process of developing a plan, we question whether what is being proposed is sufficiently thought through to warrant the removal of SDPs entirely. It is not clear, for example, how replacing SDPs with a general duty on local authorities to cooperate on the National Planning Framework (NPF), will work in practice. We acknowledge that the current system does not work as well as desired, and that preparing an SDP is a lengthy and resource intensive process. For this reason, the removal of SDPs was a recommendation of the independent review of planning, when the report was published in May 2016, just after the last Scottish Parliamentary elections.

4. Since the election we have seen multiple approaches to collaboration at a regional level, notably, and especially relevant to this Bill, the enterprise and skills review. We have also seen the increasing establishment of city and other deals within the public sector landscape. In short, the public sector and the prevailing policy which drives it, is not the same in early 2018 as it was in summer 2016. While this direction of travel is referenced within the Bills supporting documentation, we question whether the complete removal of SDPs now makes sense, when some form of regional planning seems increasingly essential to economic development. It is possible that reform of the current planning process could equally deliver a more flexible approach, without the need for whole-sale removal of SDPs.
5. We are also keen to ensure that local democratic process, even when this is expressed regionally and across boundaries is not undermined by incorporating regional spatial aspirations within the National Planning Framework. Regional collaboration must not, therefore, become a route towards centralisation. If Scottish Government’s proposals are to be enacted and the regional priorities of local authorities are to be incorporated within a reformed National Planning Framework, then there must be more clarity over how much say Ministers will have on what goes in, and what stays out of the NPF. Our clear preference is for a system which is within the full democratic control of the local authorities involved, as we believe this will provide authorities with the fullest possible say over what needs to be delivered to unlock the economic potential of their region.

6. Increasingly we are seeing a diversification in public sector delivery at a regional level because of city and related deals. The model which works in one part of Scotland is not necessarily supported in another. However, whatever model is preferred, regional spatial planning should have a significant role to play in the economic development of wider regions. We can see merit in allowing this diversification of regional spatial planning. This could mean that local authorities covered by a strategic development plan have the option of continuing with this model, if this is desired. However, other models, may also be pursued by local government. One example, which others may seek to adopt, is to join up the existing activity of the SDP, with the work of the regional transport partnership and economic planning for the region, using the developing governance arrangements for the city region.

Local Place Plans

7. COSLA supports strengthening the connection of local people to the services which affect their lives and communities. This major theme was explored by the Commission for Strengthening Local Democracy, which was supported by COSLA. Giving our commitment to strengthening local democracy, COSLA took the difficult decision not to support the original proposal for local place plans as set out in People, Places and Planning: A Consultation on the Future of the Scottish Planning System. This decision was based on a variety of issues, the most fundamental being a concern that local place plans had the potential to become restricted to more affluent and empowered communities, potentially drawing scarce resources away from less affluent areas in the process.

8. We are aware from the consultation sessions organised by Scottish Government that we are not alone in having this concern. While the Scottish Government has tried to respond to concern over their original proposals for local place plans, questions and potential issues remain. We, therefore, feel more scrutiny is needed before the principle of local place plans is agreed and that guidance will be essential to ensure local place plans complement local development planning and community planning.

9. COSLA supports the increased integration of spatial and community planning. It is by doing this that the needs of communities can be addressed in a comprehensive way. The Bill will reform the development planning process to increase the involvement of communities at the start of the process, thereby
ensuring the local development plans reflect the views of communities from the start. We support this approach. If this approach is undertaken correctly, local development plans will be developed in line with the views of communities, balanced against the views of others, including developers, and adopted by the council democratically. While local place plans may be complementary to this approach it should be recognised the planning system is being purposely reformed to better engage with communities.

10. While local authorities do not seem to be obligated in the Bill to support the development of local place plans, councils may feel that support and assistance will have to be offered if, once the plan is submitted, the local authority must have regard to any final local place plan. This could become a new burden on local authorities at a time of resource constraint. As we have previously highlighted, this will become a bigger concern if local place plans predominate in better off and, comparatively speaking, more empowered communities. The Bill is silent on the process which governs how local place plans are to be developed and whether local authorities will be able to prioritise local place plans to tackle inequality of outcomes. Without an ability to prioritise plans which arise organically from different communities, local authorities may have to treat all plans equally. This could lead to a conflict with council policy and the new socio-economic duty (also known as the Fairer Scotland Duty) which requires local authorities to consider the socio-economic impact of their decision making to reduce social and economic disadvantage. To avoid this, the relationship between local place plans and the local development plan must be made clearer, with the primacy of the LDP and the Community Plan emphasised. This does not necessary have to happen in the Bill itself and could be achieved through guidance.

11. As we have said the steps which a community body must take to develop a local place plan are not clear. Ideally, further detail should be provided before the principle for local place plans is agreed in the Bill, but at the very least this process needs to be clarified in guidance. If local place plans are to become an important contribution to the planning system, they will have to be supported by both citizens and the local authority alike. This will probably require the investment of time and resource from both communities and local authorities. It is likely that some communities may wish to draw on support to develop a local place plan, and it is not clear whether this has been considered by Scottish Government. Equally, if local place plans are to be credible to communities they will have to be representative of all the viewpoints within a community. As for local development planning, a process will be needed to ensure fairness and transparency, although we are keen to avoid introducing complexity and bureaucracy. We also envisage a need for a mechanism for reaching an agreement within communities and for balancing competing viewpoints. Again, guidance may be the best place for this information as we will want to ensure that there is some flexibility to adapt local place plans to the needs of different communities.

12. Although we support enhancing a community’s involvement in the planning process, we believe there are real questions about how statutory local place plans will operate. Given the potential complexity our preference is that
Community level plans should not be statutory, as the current system allows for planning to take place at this level. In this scenario, guidance could be developed allowing local authorities and communities to adapt the concept of local place plans to their own needs. To assist with this approach, investment could also be made available to local authorities to assist communities develop local place plans. This is an alternative proposal, but if the Bill is to include local place plans then guidance will also be required to ensure local place plans support and complement local development planning and community planning.

**Financial aspects of the Bill, including planning fees**

13. COSLA has responded to the Finance Committee’s call for evidence on the Bill’s financial memorandum. However, we felt it important to make some general comments about the financial implications of the Bill in this submission.

14. The costs and savings set out with the Bill are estimates and may not represent the true financial impact for local authorities. Some of the proposals within the Bill are difficult to cost, which is acknowledged by the financial memorandum. We expect that more work will be required to refine the financial implications of the Bill as proposals become clearer and as secondary legislation is developed, but also as a result of implementation, once the Bill is passed and the proposals enacted.

15. The financial memorandum assumes that part 1 of the Bill, including changes to the national planning framework, strategic development plans and local development plans will deliver savings for local government. As we have said, this is an estimate which will have to be validated by the experience of implementation, but it is important to note that while the Bill may lead to savings, this does not mean that the planning system, or indeed Local Government as whole, will see significant savings. We believe this for the following reasons:

- Firstly, the financial assumptions within the financial memorandum must prove accurate which will only be known once the Bill is enacted.
- Secondly, one of the key presumptions underpinning planning reform is that the development planning process should be made more efficient to release resources for the delivery of the local development plan. In other words, money and staff time should be allocated to make places better rather to make new plans. If this is to happen, resources will need to be re-invested in spatial planning, community planning and service delivery.
- Thirdly, the Bill will require local authorities to carry out new responsibilities. Currently not all local authorities carry out regional spatial planning through strategic development plans. As a result, the potential savings from the removal of SDPs will not apply to thirteen local authorities that are not currently part of a strategic development plan area. Moreover, the Bill will require all local authorities to collaborate to inform the new national planning framework so regional spatial planning will continue for authorities covered by a SDP, and will have be introduced for all other councils.
• This also applies to the introduction of new proposals such as local place plans and the assessment of planning authorities’ performance. The financial memorandum suggests discretionary spend for local place plans, but does not attach any figures to this assumption, most likely because the proposals are not detailed enough to be able to cost accurately. As we have set out earlier in this submission, councils may find that they have little choice but to support local place plans, if they are to have regard to the final plan. Equally, the assumption that the cost of section 26 of the Bill on performance will be zero to local authorities, but will lead to increased cost to Scottish Government do not ring true as the current system of voluntary performance reporting still requires considerable investment of staff time.

16. As with any new Bill we are happy to work with Scottish Government to help improve the accuracy of financial assumptions. In some situation this may require more detail on the proposals in question to be developed to allow this to take place.

Performance of Planning Authorities

17. COSLA recognises the importance of a well-run and high performing planning system. However, we have concerns about the three proposals in section 26 of the Bill, namely annual reporting, the national planning coordinator and the assessment of a planning authority’s performance. We believe these three proposals, taken together, are out of kilter with both a general trend of improvement in planning performance and the close working relationship which has characterised Local Government’s relationship with Scottish Government on planning. Local Authorities currently voluntarily report to Scottish Government on planning performance. The background to this is set out in the policy memorandum for the Bill as is the role of the High Level Group on Planning Performance, which is co-chaired by COSLA and Scottish Government.

18. The decision by Scottish Government to legislate on reporting came as a surprise. Scottish Government had been working with Heads of Planning Scotland to improve the Planning Performance Framework, which has evolved since it was first established. The working assumption as of October 2017 was that this work would continue and was separate from the Bill. Given that Local Authorities currently willingly provide the information that Scottish Government requires on planning performance, and have done so since 2012, we do not believe that introducing a statutory requirement is necessary. It is also not clear whether the proposed requirement for an annual report will mirror what is currently reported by local authorities. This detail, and how this information may be used by Scottish Government and in conjunction with the coordinator post and assessment power, has yet to be established.

19. It is worth emphasising the Bill proposals are being introduced against the background of a long-term trend of improvement in planning performance. The current information, which was presented to the High Level Group, shows that performance against key markers has improved significantly from 2012/13. In 2016/17, over 26,000 local applications were determined within 9.2 weeks, the
quickest since 2010, when we began collecting data in this way. While major application decision times, which account for 1% of all applications, has been criticised by industry, the source of delays are often with the developer and not the local authority. While we accept that performance can be improved further, there is no suggestion that Local Government is presiding over a poorly performing system. In fact, we argue that the evidence points to a generally well-run system, although one that would benefit from further investment, which can only realistically come from a planning fee increase.

20. Along with our partners on the High Level Group, COSLA has been in discussions with Scottish Government on the development of a coordinator post. Discussions were still ongoing as of the last meeting in October and we were not expecting the inclusion of the post in the Bill. The working concept behind the proposal, which arose in working group discussions which were hosted by Scottish Government, was that it would be able to offer support to local authorities to improve planning performance. A report to the High Level Group in October suggested roles and responsibilities for the post could include: overseeing performance monitoring, supporting the stakeholder feedback process, identifying skills gaps and assisting in solutions whether training, shared services etc; sharing of good practice and identification of opportunities for shared services or peer review. No decision was taken at the High Level Group and a further report was expected to be considered at the next meeting. In general terms, COSLA has been supportive of creating such a post although we always imagined it being a function of Local Government rather than a Scottish Government post. We do not oppose the proposal in the Bill, although we question whether legislation in this regard is strictly necessary, but we have questions over how the performance coordinator will work and how the post could relate to the proposals for assessing a planning authorities’ performance.

21. It is the proposals on assessment which give us most concern. As far as we are aware, the appointment of an assessor for local government performance has never recently been discussed. It is our understanding that the coordinator and the possible appointment of an assessor are intended to be separate functions and will not be the same individual or individuals. However, it is how the two interact that requires most careful consideration. Taking the two proposals together we are now looking at something akin to the creation of an external scrutiny and inspection function for planning which encompasses improvement and the auditing of planning authorities’ performance. It is not clear, for example, how the two roles will interact and whether there will be any link. We do not know, for example, whether a judgment by the coordinator that a planning authority’s performance has not improved by some markers could lead to a separate assessment. The financial memorandum indicates that the costing of the Bill is based on an assessment rate of one every two years, which suggest a relatively rare occurrence. However, we would welcome some clarity from Scottish Government on their initial thinking for how frequently assessments could take place. This is also important to judge the possible resource implications for local authorities, as currently no funding is available to local authorities to cover the cost of the new performance regime. We are also unaware whether this approach has been discussed with the Accounts
Commission, as the Commission is responsible for coordinating and facilitating scrutiny in local government.

22. It is worth noting that the legal framework being established for assessment, while lifting from what was originally in the 2006 Planning Act, has the potential to be strictly applied to any local authority. Once enacted, Ministers will have the power to make the appointment and set the scope of the assessment, and once appointed the assessor will have significant access to documentation, facilities and individuals in the local authority. Failure to comply, without a reasonable excuse, to the requirements of the assessor, could lead to a person within the local authority committing an offence, and liable to a fine if convicted. While this type of approach is set out in other legislation and is not new, it is a marked change in tone from the partnership orientated approach which has been a long-standing feature of work on planning performance. For us, it is surprising to go from several years of constructive engagement with Scottish Government on planning performance to the threat of a court case against local government staff, and without any prior consultation. This proposal was not discussed at the last High Level Group which was held at the end of October.

23. It must be remembered that Scottish Government also maintains on statute the planning penalty clause, which can financially penalise councils for what they deem to be underperformance. The proposal in this Bill, therefore, comes on top of section 55 of the Regulatory Reform (Scotland) Act 2014, which in an ideal world COSLA would like to see repealed, and suggests a lack of trust by Scottish Government of local government’s commitment to improvement, which is not borne out by the evidence. Moreover, these measures are likely to reinforce the impression that the speed of decision making is the metric which matters most to Scottish Government and that they are, by extension, putting developer’s interest first. This could undermine balance within the system and detract from place making and the wider engagement of communities, which has been such a significant theme of planning reform.

24. Finally, we do not have a clear statement from Scottish Government on what performance level they wish to see achieved, and what local government should be doing that it is not currently achieving. We argue strongly that if Scottish Government does indeed want to see quicker decision making on some major applications, they should be transparent about this and on the wider implications of doing this. They should also provide local government with the tools to achieve this aim, some of which we acknowledge are in this Bill such as discretionary charging, and move to a position that local authorities can recover their full cost through planning fees. We absolutely believe that the proposals in section 26 of the Bill make a fundamental review of planning fees and a move to full cost recovery for local government even more urgent.

Infrastructure Levy

25. COSLA is supportive of the principle of an infrastructure levy if it can be set, collected and spent locally. We support Scottish Government having the power to introduce a levy, but we will need to see the draft regulations before offering more
than principled support for the proposal. We have offered our assistance to Scottish Government to develop the levy in partnership with Local Government.

26. Ideally, we wish to see a levy working as part of a suite of local choices by which Councils can make decisions locally and flexibly, and which ensure accountability to their communities. The re-investment of the levy should have tangible and understood benefits to local communities, which seek to improve economies locally. It is also worth stating that we do not see an infrastructure levy being different to any other form of local taxation and that, therefore, it needs to meet some basic key principles, over and above what has been set out so far. In line with COSLA’s local taxation principles, we would, therefore, argue that a levy should be fair and easy to understand; be efficient to collect; avoid de-stabilising the underlying tax base; should be determined locally including any exemptions; and should empower local authorities to raise local funding for local priorities.
INTRODUCTION

Heads of Planning Scotland (HOPS), which is the representative organisation for senior planning officers from Scotland’s 32 local planning authorities, 2 national park authorities and 4 strategic development planning authorities, welcomes this opportunity to provide a formal response to the Call for Evidence. We would be happy to expand on any points and provide further clarification to the LGCC. (Detailed Topic Papers are available on each question posed).

In the last 2 years HOPS has had a particular focus on the planning review work streams and the preparatory work being carried out by the Scottish Government (SG) towards the implementation of a new Planning Bill and the related secondary legislation and detailed matters. HOPS has positively engaged in the planning review process throughout, including providing oral and written evidence to the Independent Panel and detailed Papers as requested by the SG. From the outset HOPS has set out its vision for the planning reforms, based on the following 3 strategic objectives,

1. Planning needs to be repositioned as a strategic enabler, as well as a statutory, regulatory function. It has to be at the core of local authority activities and needs enhanced recognition within national and local government as a critical contributor to the economic and environmental agendas, including plan making and community engagement.

2. A high-level priority is the urgent need for proper and proportionate investment in the planning system to resource a high performing system capable of delivering the outcomes we all aspire to at national and local level. This is seen as a critical “game changer” for HOPS which needs to underpin all other planning reform changes. Full and sustainable cost recovery is needed to enable reinvestment in key planning work areas and to achieve improved performance levels.

3. A more simplified and streamlined planning system which is more efficient and effective, which frees up planners from processes and procedures to enable them to contribute to implementation, delivery and engagement activities. HOPS has proposed further areas for consideration by the Scottish Government to take this objective forward.

The planning system in Scotland is recognised internationally as an exemplar of best practice and although it is not broken it does require some radical and innovative interventions if it is to be in a position to respond to the growth and sustainable development of Scotland’s economy, infrastructure and communities. The vision for the new planning system has to be bold, radical and world class in its ambitions and as the Minister said in introducing the review it has to be “root and branch”.

HOPS recognises that the keystones in the wider planning reforms which we are seeking such as effective leadership, transformational culture change, a digital revolution, re-skilling the planning workforce for the new agenda, more effective
community engagement, land reforms and a fairer and more inclusive planning system for all, are outwith the legislative bounds of the Planning Bill. They are however, the critically important elements to be advanced in the related work areas if we are to succeed in creating a new, innovative ambitious and vibrant planning system which is transparent, accountable, adequately resourced and a standard bearer for excellence and innovation.

HOPS supports the positive and creative direction of travel set out in the Bill for the repositioning, simplifying and streamlining of the planning system but our comments are fettered due to the lack of detail and precision presently available. HOPS is also concerned that the financial assumptions set out in the accompanying Financial Memorandum (separate HOPS submission made) are not detailed or specific enough due to the lack of prescription and the lack of certainty around the take up rates.

Forward budgeting for all planning authorities will be difficult to manage with any degree of precision and certainty. HOPS has consistently campaigned for a sustainable and self-funding approach to planning fees, resources and full cost recovery, all of which will become more critical in the years ahead.

HOPS RESPONSES TO THE SET QUESTIONS

Q1 Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

YES. HOPS considers that the balance of needing to secure the appropriate development, taking account of community’s views and protecting the built and natural environmental assets is a crucial factor in the planning system. The system is underpinned by the need to act in the public interest and to take decisions which comply with the Development Plan and National Policy, unless material considerations indicate otherwise. The balance of these decisions and the weighting afforded to the different elements in the overall assessment is always the crucial and defining aspect in every planning decision taken.

Proposals include earlier proactive and more integrated engagement with communities and stakeholders at the local level, fuller and longer consultation processes at the national level which will see integrated strategies and policies set out for Scotland, and the new Simplified Development Zones approach will target growth and investment areas without sacrificing environmental safeguards. Existing “protection” processes for Environmental Assessment, specialist consultations and publicity for Listed Buildings, Conservation Areas etc. will continue.

The speed of decision making is vital for economic growth and HOPS considers that more effective, upfront community engagement will assist in achieving the Government’s aims.

Q2 To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?
The proposals will not achieve this automatically but are positive supportive measures. The provision of more, quality housing was a key issue to be addressed in the planning review consultation process. There are many initiatives which will assist in creating a supportive planning environment for this objective to be met but the planning system is only one part of the complex processes linked to housebuilding activity.

The housing “toolkit” in the Bill will make a positive contribution to the complex issue of creating more, quality homes but it will require to be combined and complemented with other interventions and initiatives.

- Possible options for an infrastructure levy which may clarify the funding requirements for house building in a more transparent manner. This is critical to providing infrastructure upfront.
- The change to Delivery Plans makes provision for the local authority chief executive and full council to sign off the delivery programme, raising awareness, corporate commitment and deliverability.
- A streamlined refocus at national level for the National Planning Framework and Scottish Planning policy with the inclusion of regional housing targets and greater clarity and certainty.
- The statutory development plan for any area, consisting of the NPF and the LDP, will give a clearer, simpler structure and, where appropriate, consistency to the development plan. By doing so it will improve confidence in where and how Scotland will develop and reduce the need for repeated and frequent debate on implementation of well-established policy principles.
- The new approach to Development Planning will ensure decisions about future development are guided and influenced at appropriate national, local and community levels, to secure greater certainty for investors and communities alike.
- New streamlined Local Development Plans will include more community engagement and span a 10-year horizon which should provide more certainty and confidence for housing investors. The proposed simplified measures for updating/amending are critical to producing more responsive plans which can change more quickly in response to changing economic/market conditions.
- The “frontloading” of the planning system has long been an aspiration, but the Bill provisions aim to ensure it can be better achieved through fuller and more meaningful collaboration, reduced procedure and a clearer focus on outcomes and delivery.
- Simplified Development Zones which will attract housing investment in to growth areas without the need for planning consents through the normal routes.

These individual changes and improvements, together with the exclusion of an equal right to appeal, will help to encourage a more efficient and responsive planning system which should generate and stimulate more confidence and certainty in housing investments and housing delivery. Other areas such as compulsory
purchase, land reforms, land values and uplifts, clearer and consistent guidance on Housing Land Audits and Housing Land Supply definitions to avoid unnecessary challenges and appeals, also need to be tackled in tandem. Although there are no “game changers” it is critical to integrate and provide mechanisms to deliver strategic infrastructure upfront to enable housing to come forward.

**Q3 Do the proposals in Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?**

HOPS has a balanced view on this but we support the direction of travel that frees up time away from bureaucratic plan preparation and processes at all scales, to enable a focus on implementation and delivery. HOPS also supports strategic planning as an “essential element of the overall planning system” as stated in the Policy Memorandum.

HOPS has previously expressed concerns that the replacement of SDPs with a regional partnership approach, requires clearer evidence to justify the case for change, clarification of the actual expectations for the new arrangements, and clarification of how these objectives are to be delivered. Unfortunately given the lack of evidence and specification around the future arrangements, these matters remain concerns and emphasis the need for clear transitional arrangements to avoid a vacuum.

This lack of specification is in part a response to the differing regional partnership arrangements that are emerging around the country and is therefore in part a deliberate feature of the proposals to enable bespoke regional partnerships to be formed. However, given that most of these regional partnerships are embryonic or do not yet exist, and those that do exist are economically led and focused, whether or how a role for strategic planning will be addressed within these regional partnerships, is not clear.

What the Planning Bill intends is the removal of the Strategic Planning Authorities without replacement by an alternative vehicle to deliver this “essential element” of the Planning System. The authorities will require to revisit/consider afresh, how they will cooperate to fulfill the Bill’s intended requirements to cooperate to provide information to assist in the preparation of NPF. HOPS wants to seek early clarification as to how Scottish Ministers intend to utilise the powers to direct 2 or more authorities to work together as it is unclear as to whether this will be enacted as a duty on the authorities or a Ministerial power of intervention. Is it intended for example, that a series of directions follows the Bill’s enactment?

**City regions, city deals, partnerships and other arrangements, such as regional transport partnerships, all need to be integrated in spatial, economic**
and transportation models which work locally. Alignment of strategic planning, transport and economic development are key requirements moving forward.

Q4 Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focused on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

YES. HOPS supports the changes being proposed for the Local Development Plan process and believes it will bring better clarity and focus and a simplified process. The emphasis on early and fuller engagement, a front-end gate check process and an emphasis on delivery rather than action are all positives measures. The proposal to have a quicker and simpler updating/amendment process to allow elements of a plan to be updated without a full replacement is crucial. Where there is no significant change in an area there is no need to review a plan earlier.
A streamlined and simplified process is always to be welcomed and the additional elements on early engagement, evidence gathering, checking and monitoring will all contribute to an enhanced and more transparent system for all the major stakeholders. Reviews will still be necessary but the proposals are supported.

Q5 Would Simplified Development Zones (SDZs) balance the need to enable development with enough safeguards for community and environmental interests?

YES. This is a measure to update and refresh the existing system of Simplified Planning Zones (SPZs). SDZs are given particular prominence within the Bill with more detail and prescription than any other topic. This signals a step change in direction by the Scottish Government to focus on growth and investment areas in support of the priority for economic growth.

The take up of SPZs across Scotland has been extremely poor and it is not certain whether SDZs will fare any better as they are discretionary. HOPS view is that they will not be widely used. SDZs should be identified and progressed as part of the Local Development Plan process, to ensure a plan-led approach to development and not an ad hoc process which is solely investment driven. The Bill allows Ministers to create an SDZ in a local authority area which appears to be a “centralising” power but the criteria for establishing them is unclear.

The prospect of widening the scope to include conservation areas, green belts and national scenic areas is also welcomed, provided that there is no weakening of standards to be applied.

The proposal to include other consents (road construction consents, listed building consent, conservation area consent, and advertisement consent) is also welcomed as it will provide a better and more efficient service to applicants and developers.

Q6 Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the
proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

YES. HOPS welcomes any initiative which contributes to early and meaningful engagement with the community and feels that more needs to be done to improve and enhance existing engagement processes. Spatial and community planning need to be integrated at the corporate level and linked in to community planning. The critical issue in all of this is the ability of local communities and individuals to involved in the early and proactive preparation of plans, but this needs to be better thought out and properly resourced to ensure that it reduces inequalities and is accessible to all parties who want to be involved. This links in to other initiatives where we are creating a surge in opportunities for community involvement in governance and service delivery in Scotland.

HOPS is positive about Local Place Plans (LPPs) in principle, provided it is not an additional layer of planning. Our main concerns are about resourcing, timetabling and the need for compliance with the LDP. Better managed and wider engagement, consultation and participation is definitely required, and this can also be accommodated within existing spatial and community mechanisms. The Bill reinforces the existing legislative requirement for spatial planning to take account of community planning outcomes and HOPS considers this to be the critical element. We need to avoid having too many “layers “of planning at community level to avoid confusion, cluttered diaries and duplication of scarce resources. We need to integrate and simplify not complicate and clutter and our concerns are,

- how the critical links with community planning and Locality Plans would work in practice
- how we would support communities which would most benefit from LPP but perhaps don’t have the capacity or resources to undertake such a project
- that councils would inevitably be expected to support or fund LPP and LPAs do not have the budgets to facilitate LPPs. The resource implications need clarified.
- managing expectations.

Q7 Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

YES. HOPS supports the changes proposed in the Bill to strengthen enforcement powers in this way, but further procedural and process changes are required. HOPS believes that the toolkit of enforcement powers has been strengthened by the new measures, but it is essential that local authorities use these powers, in order to gain that trust and confidence from local communities referred to above.

The integrity of the planning system is undermined if breaches are not enforced and planning conditions not complied with as members of the public feel let down.
Without adequate resourcing and Council support the quality elements of developments are not delivered. As part of the comprehensive review of fees charging for enforcement activities needs to be included.

Q8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

The Bill enables regulation for a new infrastructure levy that will complement the existing system of planning obligations. We support this in principle, but don’t think that this is enough to address the huge shortfall in infrastructure provision that we’re currently seeing in Scotland. We are urging the government to consider how there is going to be improved horizon scanning for infrastructure needs, and in the absence of statutory regional planning the drive needed to ensure that key projects are delivered. The Scottish Government also seems interested in exploring capturing land value uplift, and HOPS supports this approach, especially through the Land Commission.

The introduction of an Infrastructure Levy and subsequent Regulations are broadly supported, but these measures alone will not be sufficient to fund the local/strategic infrastructure required to deliver development ready residential and commercial land allocations. Principally this is because there is a responsibility on local authorities to provide infrastructure which in most cases is front funded with the recouping of funds through developer obligations reliant on the completion of commercial/residential units completions.

Infrastructure funding and the relationship between infrastructure and development delivery has been widely debated and consulted on by the Scottish Government. While the need for change is not being challenged, cognisance needs to be taken of the limitations to revenue generation by means of a levy, the resource implications for planning authorities, impact on development viability and consequently the delivery of development. Strategic infrastructure is needed upfront to unlock and facilitate economic growth and HOPS supports the Scottish Futures Trust as the national body to be responsible for working with all parties to deliver this strategic infrastructure.

Q9 Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

YES. HOPS strongly supports the proposals set out in the Planning Bill to introduce mandatory training for all councillors who sit on Planning Committees or Local Review Bodies. In particular, the introduction of a national training agenda and examination/course completion for those councillors. This will ensure national
consistency and will provide a comprehensive training manual which will be kept up to date. It will provide a minimum national standard of training which will require to be supplemented by local requirements, illustrated by local examples and case studies to be more meaningful and relevant to the councilors.

HOPS considers that there should be an emphasis on much more detailed training for those involved in Local Review Bodies. There are specific and unique differences between a member being part of a planning committee and a member being on the LRB. The proposed training has to be customised to suit.

More informal training for MSPs to assist them in their parliamentary duties on planning matters is also recommended by HOPS.

This new provision will bring planning training into line with the current arrangements for training for councillors on Licensing Boards which has proved workable and successful.

**Q10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?**

**YES,** although the proposed measures appear to be formal and centralised. HOPS is committed to the continued provision of and enhancement of planning performance assessments and introduced Planning Performance Frameworks (PPFs) in 2011 where all LPAs submit, on a voluntary basis, an annual report on performance measures, key indicators and proposed improvements. Planning performance levels have improved year on year supported by HOPS and the Improvement Service.

The new roles of Assessor and Coordinator need careful consideration before implementation. The Coordinator needs to sit separately from the SG and also separate from the Assessor post.

HOPS has previously highlighted to the Scottish Government the extensive work on performance undertaken by the Planning Improvement Service in England and Wales and the key role and activity they undertake in assisting authorities in identifying best performance and improvements. We have requested that this support function is critical to improving performance on a consistent and sustainable basis and should be examined in more detail on a joint basis between the Scottish Government, COSLA, HOPS, RTPI and the Improvement Service.

The Bill proposals put the current arrangements into a more formalised 3 tier structure and provide for Directions and Regulations by Ministers, which we anticipate will be prepared on joint basis with key stakeholders, including HOPS. We are concerned about these provisions which are akin to an external audit by Ministers in a detached way from current planning performance requirements and improvements.
It is also critical that the performance of the Scottish planning system is measured and not just the performance of the LPAs as there are brakes on performance outwith the control of Councils. This will require additional resources to LPAs and the ability to reinvest.

**Q11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high-performing planning system the Scottish Government wants? If not, what needs to change?**

**YES.** The introduction of Discretionary Fees is essential, although they will not fill the gap in funding that HOPS considers is required. They must be nationally agreed and placed on a statutory basis. This will not be significant enough or sufficient to fund local councils to the level required to create a sustainable and sufficiently resourced planning service to deliver increasing customer and stakeholder expectations and to improve performance and quality in response to the new planning system.

The adequacy of funding levels for planning services has been widely researched and consulted on by the Scottish Government over the last 10 years. What is not in doubt is the requirement for a comprehensive assessment of the resources and funding required for planning services and a commitment from the Scottish Government to carry out the necessary improvements, including a radical approach to increasing planning fees to enable full cost recovery. Fundamental to this wider approach is a guarantee that the funding and income received via planning applications and other charges, both discretionary and mandatory, are retained solely by the planning service. This will ensure that the requisite budget control and the ability to reinvest in planning skills, resources and improved performance actions is directly managed and implemented outwith the normal corporate budget process.

**Q12. Are there any other comments you would like to make about the Bill?**

**YES.** The Planning Bill is small component part of the overall package of reforms being considered and proposed by the Scottish Government and needs to be seen in that context. **Critical areas to achieve real transformational change include, leadership, culture, behaviours, more simplification and streamlining measures, review of planning funding, land value uplifts, compulsory purchase, Use Classes, additional Permitted Development, shared services, community engagement initiatives, climate change, energy and place-making etc.**

HOPS and the RTPI supported the statutory designation of a Chief Planning Officer and we are disappointed that this is not being proposed at this stage. It would help to strengthen and reposition planning at local government and corporate level and be a new indicator for the linking up of spatial and community planning, taken together with the new sign-off responsibilities for Chief Executives.
HOPS does not support an Equal Right of Appeal as it would increase delay and uncertainty through to the end of the planning process running counter to the whole thrust of the Bill and wider review of planning in streamlining and front-loading the system. It could discourage investment and could be used to block or delay development which is needed in the public interest. The challenge here is for the SG to provide balance in the system to ensure that inward investors and developers are attracted to Scotland and there are no excessive hurdles/disincentives, such as uncertainty and slower decision making.

HOPS submitted a formal response to the Finance and Constitution Committee on the Financial Memorandum highlighting concerns about the costs and estimates set out, the lack of detail and certainty, and the confusion between cash costs and productivity costs. HOPS has consistently campaigned for a comprehensive review of planning fees and resources towards a full cost recovery model.

Successful city region planning is the keystone for wider economic growth and prosperity for Scotland, particularly and focused on Glasgow and Edinburgh and they may require a bespoke solution. The introduction of Local Place Plans may not be the only solution to generate greater community engagement and trust in the planning system. HOPS believes that existing plans at the spatial and community planning levels are sound, provided they are better integrated and joined up.

The possibility of an infrastructure levy is one way of assisting local authorities to provide much needed infrastructure, but the sums generated will not be sufficient. National funding for key projects will be required as well as an overhaul of all existing funding mechanisms.

HOPS CONCLUSIONS

HOPS considers that the Scottish Government has consulted widely and in a participative manner throughout the review process, and HOPS has contributed positively, with support, queries, recommendations and criticisms where appropriate. We will continue to work proactively with SG.

The direction of travel outlined in the Bill is welcome and partly responds to the 3 strategic objectives identified by HOPS on page 1. More needs to be done however and HOPS looks forward to continuing to work jointly with the Scottish Government and other key stakeholders to ensure we achieve our joint aims for wider improvements and enhancements to the planning system.

Our shared ambitions include,

- A properly resourced planning system with the capacity to deliver the improvements we all believe are needed
- Further reducing bureaucracy and processes
- Enhancing public engagement, participation and involvement using current exemplars
- Creating more trust and confidence for all parties
- Re-focusing on people, places and quality
• Planning as a facilitator and investor rather than negative and controlling
• Planning as the springboard and catalyst for economic growth and prosperity across Scotland

These have to be assessed against the Planning Bill and wider Planning Review and related proposals.
1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure appropriate development with the views of communities and protection of the built and natural environment?

Yes, although we have concerns about some of the detailed proposals. Our responses to the questions below provide more detail on our specific concerns.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

The enhanced status of the Delivery Programme should enable planning authorities to place greater emphasis on co-ordinating and delivering the infrastructure improvements required to support housing growth. The proposed infrastructure levy may also help in this regard, though we are not convinced that it will be sufficient to overcome infrastructure constraints, particularly in rural areas where costs remain high for smaller developments.

However, it must be recognised that many complex factors influence the scale and rate of housing delivery. The planning system is only one of these. Other drivers such as economic conditions, fiscal policy, market behaviour, access to finance, and labour availability in the development industry all have a significant impact on the level of house building. In our experience in the Cairngorms National Park, the most effective stimulus to get housing development on the ground and to open up housing sites has been public investment in affordable housing. This helps private development cash flow and provides an incentive to open a site.

Whilst the proposals in the Bill are likely to go some way towards increasing housing delivery, other measures will be needed if higher levels of new house building are to be achieved on the ground. Such measures could include enhanced funding support to local authorities and housing associations, funding and other practical support for communities that want to pursue housing development themselves, and support and training to enable planning authorities to make greater use of land assembly powers.

3. Do the proposals in the Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?

The Cairngorms National Park Authority (CNPA) does not wish to make any specific comment on the proposals to remove Strategic Development Plans. However, any arrangements to maintain planning at a regional level following the ending of
Strategic Development Plans will need to be flexible enough to accommodate needs and reflect existing arrangements in different parts of Scotland.

National Parks already have National Park Plans and multi-agency partnerships that support their delivery. National Park Plans set the strategic context for development planning within the National Parks, as outlined in para. 86 of current Scottish Planning Policy. We consider this current model of regional planning to be effective and appropriate for National Parks.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

The CNPA supports the proposal to extend the lifetime of LDPs to 10 years and to increase the focus on delivery via the Delivery Programme.

The CNPA also broadly supports the introduction of the proposed ‘gatecheck’ during early stages of LDP production. However, we remain of the view that any gatecheck must draw conclusions on key matters and remove the need for these to be reconsidered during the final examination of the LDP – e.g. signing off housing land supply targets / housing land requirements. Otherwise it could add time and cost to the process for limited additional value. We note that much of the detail on what matters are to be assessed at the gatecheck will follow in regulations, but we are pleased that the Policy Memorandum indicates agreement on housing land requirements is likely to be included.

We have some concerns about the process to be followed if the gatecheck concludes that insufficient information has been submitted to allow the planning authority to prepare the LDP. The procedure outlined in section 16A (6) – (8) means that the entire gatecheck process would have to be repeated (potentially on more than one occasion) in this event. This is likely to have significant time and cost implications, and is unlikely to support timeous delivery of the plan. The CNPA considers that a more streamlined process for assessing additional/supplementary evidence might be more appropriate in these circumstances.

The CNPA is pleased to see that the Bill includes provision for LDPs to be amended between full reviews. This is essential to ensure that plans continue to meet the needs of communities and developers if circumstances change during the plan period. The requirements for procedural steps, publicity and consultation on LDP amendments remain unclear, and it is noted that these will follow in regulations. The CNPA considers that any such provisions should, as far as possible, enable partial
amendments to be undertaken in a streamlined way without needing to follow all of the procedures associated with a full update.

We have some concerns with the statement in the Policy Memorandum that LDP amendments will be permissible in only limited circumstances. Care must be taken to ensure that the circumstances where amendments could be triggered are not defined too narrowly at the national level. One size does not fit all, and a change in circumstances that might be relatively insignificant within a large urban area could have a much greater impact on the overall LDP strategy in a more rural context. Sufficient local flexibility to trigger an LDP amendment will be essential if the plan is to remain responsive to the needs of communities throughout its 10 year lifetime.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

The CNPA would be interested in exploring the potential for Simplified Development Zones, and we welcome the Bill’s proposals to enable such schemes to be progressed in a wider range of circumstances than is currently allowed. In the context of the Cairngorms National Park, where around 50% of the total land area is designated under the Natura network, we would expect that a significant amount of up-front work would be required in order to introduce any Simplified Development Zone.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

The CNPA fully supports community engagement at the local level and, along with partner organisations, already commits significant resources to help communities play a greater role in shaping their places.

We welcome the Bill’s proposals to ensure that Local Place Plans must have regard to the LDP, as this addresses our previous concerns that such plans could be seen by some as a mechanism to frustrate rather than enable development. We also welcome the clarification on the process by which Local Place Plans could be incorporated within the LDP via the amendment provisions.

However, we remain concerned about the potential for different community bodies to produce ‘competing’ Local Place Plans for the same area. It is unclear what implications this could have for Local Development Plans. We also remain
concerned about the risk of disproportionate Local Place Plan take-up, with more affluent and well-resourced communities being more likely to take the opportunity to produce such a plan than less affluent ones. As far as we can see, the Bill does not provide any assurance that financial or technical support will be available to community bodies wishing to develop Local Place Plans. Consideration will need to be given to how this will be provided and to the role that planning authorities, and/or organisations such as Planning Aid Scotland, would be expected to play in providing any such support. The ultimate response to these issues will carry resource implications that will need to be considered and addressed.

The CNPA also wishes to reiterate our previous concerns about the proposal to remove Main Issues Reports from the LDP process, as in our experience they have increased public awareness of and involvement in the development of plans.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how could these provisions be improved?

Yes. The CNPA strongly supports the Bill’s strengthened enforcement provisions.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are the any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

The CNPA supports the Bill’s infrastructure levy proposals in principle. A mechanism to enable collective/pooled contributions towards strategic infrastructure requirements is likely to enhance delivery in many areas. However, account will need to be taken of the development economics of rural areas, where market conditions may not easily support such a levy. It should not be mandatory to introduce a levy in any given area. Section 75 agreements should be retained to mitigate and address the impacts of individual developments where these are not covered by any levy.

9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

Yes, in principle. The CNPA supports member training and already has an extensive training programme for planning committee members.

Nevertheless, we have some concerns about the practicalities of the proposed requirements. The requirement for members to complete training courses and
examinations through accredited providers will require scrutiny. Significant peaks in demand for training can be expected at certain times, particularly following elections, and it will be necessary to ensure that training is proportionate and can be provided timeously to allow continuity of decision making across Scotland. This is a particularly important issue for the CNPA, as we have no scope for planning applications to be delegated to officers and all planning applications are therefore determined by planning committee.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help to drive performance improvements?

Yes, the proposals to make annual performance reports a statutory requirement and to enable the appointment of a national performance co-ordinator should help to drive continued performance improvements.

It is noted that the required form and content of annual performance reports will be prescribed through future regulations. The CNPA would request that any national performance indicators defined through regulations should have regard for the unique circumstances of the Cairngorms National Park Authority as a call-in planning planning authority for development management, meaning we call in and determine less than 10% of the planning applications made in the Cairngorms National Park. These tend to be the more complex and time consuming applications, which means our overall decision making timescales are not easily comparable with national averages.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high-performing planning system the Scottish Government wants? If not, what needs to change?

The CNPA supports the Bill’s proposals in relation to fee flexibility. We particularly welcome the changes which enable a higher fee to be set for retrospective planning applications. CNPA considers that the ultimate objective of any further amendments to fee regulations should be to continue the move towards full cost recovery for development management services.

12. Are there any other comments you would like to make about the Bill?

The CNPA would draw attention to the status of the two National Park Authorities in Scotland. These are not local authorities but are planning authorities, or act as planning authorities. These terms are often used interchangeably and this can cause confusion and uncertainty in a National Park context. Care should therefore be taken to ensure that the terms ‘local authority/authorities’ and ‘planning
authority/authorities’ are used correctly throughout the Bill and within any associated regulations and policy guidance.
Written Submission from the City of Edinburgh Council

The City of Edinburgh Council welcomes the opportunity to give evidence on the Bill and will continue to actively engage in the review of the planning system. The responses to the questions are derived from the context of planning in Edinburgh, the unique challenges the city faces and the experience of a well-developed Local Development Plan Action Programme.

The submission responds to the questions set out in the call for evidence.

1. **Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?**

   The Bill in itself will not deliver this aspiration. The legislative framework is one part of the process to deliver an improved planning system. As an inclusive process, an improved planning system requires the collective will of all those who participate in the process.

2. **To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?**

   This is dependent on a range of factors, one key aspect being the delivery of infrastructure which is addressed in Questions 4, 5 and 8.

3. **Do the proposals in Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?**

   This aspect of the Bill is of importance to Edinburgh where a number of benefits are derived from regional planning. Accepting that there are no defined boundaries for regional partnerships, the voluntary cooperation of those required to make a partnership effective may not always exist. The duty within the Bill extends to the provision of evidence for the National Planning Framework, which requires cooperation across planning authorities. From this authority’s experience of current strategic planning arrangements, there is uncertainty as to whether this enough to ensure cooperation across the range of interests needed for effective regional planning. Accountability of regional partnerships will be key and it is not yet clear how communities, developers and stakeholders would engage with regional partnerships.

   Some specific aspects requiring further consideration include:
- Defining the role, duties and powers of the regional partnerships alongside issues such as the coordination of funding for infrastructure projects and the City Region Deal
- Continuing the focus on travel to work areas and the strategic relationship between transport and land use planning – a review of the strategic transport authority is integral to addressing issues with infrastructure across the city region
- The partnership should set targets (including housing), regional priorities and spatial strategy through the National Planning Framework (NPF) and coordinate delivery with other member authorities
- The issue of ‘city growth corridors’ and the how the Edinburgh – Glasgow metropolitan region will develop in the future needs to be explored through joined-up regional planning as an input to the NPF

There remains a concern about increasing the role of Scottish Planning Policy (SPP) in local decision making, with the transference of policy from the local to national levels resulting in undemocratic centralisation lacking transparency.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

Moving from a requirement to update the plan within 10 years rather than the current 5 years raises issues of concern in relation to Edinburgh as a growing and changing city. Although the Council could decide to review and update a plan in a shorter timescale other partners, on which there is a dependency for plan preparation, may programme resources on the longer timescale. This reduces the flexibility for infrastructure requirements to be updated to reflect changing circumstances. This is also covered in response to Question 8.

In the context of Edinburgh, all types of supplementary guidance (SG) allows us to address the changing nature of growth (including delivery speed and location of new housing and other development) far more efficiently and timeously than through the development plan. If the statutory provision for SG is removed, non-statutory SG will continue to be required as a process for updating of infrastructure actions.

All SG requires consultation before it can be adopted making this a transparent process. There is a need to include sufficient detail in SG to provide clarity for developers and communities.

There is general support for the reference to “action” programmes to be replaced with “delivery” programmes to be approved by full Council. However, there could be
some confusion whether they are now housing land delivery programmes, as per the 
Edinburgh approach, to monitoring the delivery of land and housing.

5. **Would Simplified Development Zones balance the need to enable 
development with enough safeguards for community and environmental 
interests?**

Whilst Edinburgh has not made use of previous Simplified Planning Zones, the 
proposals for Simplified Development Zones (SDZs) could support the delivery of 
ew development and allow the Council to set delivery and infrastructure 
requirements in advance, with a tariff based approach. The benefit of this would 
reduce uncertainty in funding of infrastructure.

This authority supports a plan-led system and the opportunity to explore areas for 
SDZ status in the LDP process. We would advocate the use of masterplans, 
frameworks and design codes to manage development in Simplified Development 
Zones. The resource to undertake this would require to be identified and funded.

In respect of the community and environmental interest, this Council would expect a 
frontloaded process as part of any designation to ensure community involvement, 
with it being essential that archaeological and historic environment issues are 
addressed and where necessary, conditions requiring environmental mitigation work.

6. **Does the Bill provide more effective avenues for community involvement 
in the development of plans and decisions that affect their area? Will the 
proposed Local Place Plans enable communities to influence local 
development plans and does the Bill ensure adequate financial and technical 
support for community bodies wishing to develop local place plans? If not, 
what more needs to be done?**

This Council supports the link between the development plan and community 
planning. Closer alignment can help to deliver wider Council outcomes with the 
community plan one mechanism to deliver aspects of the local development plan, 
albeit the local development plan retains primacy in the planning decision-making 
process.

The Council is developing this approach through the use of ‘Locality Improvement 
Plans’ and there are concerns that Local Place Plans could raise expectations, 
require additional resource (by the Council and community) and add to already 
complex processes.

7. **Will the proposed changes to enforcement (such as increased level of 
fines and recovery of expenses) promote better compliance with planning 
control and, if not, how these could provisions be improved?**
This Council suggests a number of changes to improve public confidence in the system, including:

Fixed penalty fines – the use of fines is not a workable enforcement tool. Fines are so low that an offender may choose to pay it to be immune from further enforcement action. A solution may be to allow the planning authority to impose repeat/increasing fines until the breach has been remedied. The Council supports any additional powers which make it easy to recoup any unpaid fines, such as imposing a charge on the land.

Planning Contravention Notices (PCN) and Section 272 notices - under existing legislation the failure to comply with PCN/s.272 notices should be referred to Procurator Fiscal but in practice this is not a realistic option as it is not seen as a serious offence. Without proper sanctions, these notices are ignored which slow down the investigation process and is a financial burden on the planning authority which has to gather the necessary information. A possible solution would be to introduce a fine that can be served quickly and easily in the same way as a parking ticket.

Retrospective applications – Circular 10/2009 suggests that authorities should be seeking retrospective applications for breaches that require permission but are otherwise generally acceptable. However there is often little value in the planning authority seeking an application given resources have been used to investigate the breach and satisfy ourselves that any harm is likely to be minimal. If the authority is to seek an application, it should be allowed to charge a higher fee for such applications in order to cover its costs. The fact that the offender has to regularise the unauthorised development (at a higher than normal fee) may also help to improve public confidence in the system.

Powers to decline to determine a retrospective application – some offenders submit retrospective applications when enforcement action is being taken. In some circumstances, the offender can play the system to prolong the unauthorised use/development. To prevent this, the planning authority should have the discretionary power to refuse to accept applications were enforcement action has been taken. The statutory means to decline to determine an application would help to improve public confidence in the system.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?
This Council has concerns about whether an infrastructure levy is the best solution in the absence of details. Key considerations include:

- Levy would likely only address cross boundary or strategic infrastructure. There could be support for a levy if it were to be used for city-wide infrastructure, replacing Section 75 legal agreements.
- The Elsick Decision at the Supreme Court is a significant issue – for much strategic infrastructure it is recognised that a direct relationship cannot be made. Strategic and cross boundary infrastructure in the Edinburgh City Region is required is due to historic growth. New development is expected to remain a small part of the requirement, therefore new development would not be contributing towards a significant share of the infrastructure requirement. There would still be a resultant funding gap to be found to deliver infrastructure.
- It has been identified that nationally the levy could generate £75m, the expected infrastructure bill to deliver the development provided for in the Edinburgh LDP alone is £450m. A single piece of Edinburgh cross-boundary infrastructure – a renewed Sheriffhall roundabout has been estimated as costing £120m. The levy will not generate enough funding to deliver the required infrastructure.
- If a tariff was generated and charged on a site by site basis the levy is expected to impact on development viability and development’s ability to contribute towards infrastructure required to support the development, resulting in additional funding gaps for the Council.

A suggested way forward would be for the levy to fully replace S75 and allow the Council to develop an Infrastructure Plan for the city and strategic and cross boundary actions, based on the LDP Action Programme. This will require a full evidence base for the actions to be developed with support from a regional transport partnership prior to adoption of the infrastructure strategy. There will need to be an interim funding mechanism to ensure that infrastructure from current development plans is funded. In the longer term the Infrastructure Plan could replace the need for Supplementary Guidance on this matter, with a flexible approach to it being updated.

9. **Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?**

Yes, this is supported. This Council has delivered a comprehensive training programme for councillors over many years.

10. **Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?**
This authority has engaged in the ‘planning performance framework’ process and supports a cooperative approach to measuring the performance of planning authorities alongside the performance of other key players in the planning system. A high performing planning service should be measured through a range of performance criteria based on the quality of outcomes and not just one of speed by which planning applications are determined.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high –performing planning system the Scottish Government wants? If not, what needs to change?

Pre-application discussions add an important value to the development process for both the applicant and the community. The Bill’s proposals for discretionary fees are important and must enable planning authorities to charge fees to recover costs without the risk of challenge. This authority acknowledges that charging fees should be linked to an improved level of customer service, measured as part of regular monitoring as noted in Q.10. Authorities should also retain the flexibility to increase or reduce fees for some services to act as an economic stimulus.

The high volume and complexity of enquiries from customers can add a significant burden to the delivery of a high performing planning service. In Edinburgh, the protections across the city, including conservation areas (26.4% of properties in the urban area are within a conservation area – over 66,000 residential properties), having a high concentration of listed buildings (over 30,000 separately owned listed buildings), designations such as World Heritage Site status and increased tourism-related development pressures all generate high levels of community engagement which the Planning service must resource.

12. Are there any other comments you would like to make about the Bill?

Preservation of trees in conservation areas:

In previous reviews of Tree Preservation Orders, section 172 of the Town & Country Planning (Scotland) Act 1997, which provides protection for trees in conservation areas and produces a greater case load for planning authorities than Tree Preservation Orders (TPOs), has not been reviewed.

Section 172 requires that 6 weeks’ notice is given to the planning authority before work can be carried out on a tree in a conservation area. This period allows the authority to consider the effect and acceptability of the proposals. The authority cannot refuse consent or grant it subject to conditions. If the authority wish to prevent the work from taking place or to attach conditions to make the work acceptable (such as requiring the work accords with good practice or that there is replacement tree planting) then the authority has to make a tree preservation order.
The making of a TPO in response to what may be a one-off proposal can seem heavy-handed and there is no right of appeal against the making of an Order. This Council received over 500 such notifications for works in conservation area in 2017 and using TPOs to prevent or make otherwise unacceptable damaging tree work, even in a small percentage of cases results in significant legal and advertising costs and staff time which is unavoidable when making a TPO.

The Council consider that a change in the Act would create a more managed, efficient, proportionate and equitable way to deal with the high number of Section 172 notifications received. This would remove the requirement of having to make a costly and time-consuming TPO for each case against which there is no right of appeal.

Section 172 of the Act should be amended so that planning authorities can determine a notice of intent to carry out tree work in a conservation area within the 6-week period. If the authority considers the proposals submitted in a notification will have an unacceptable impact on amenity, could be made acceptable with some modification or by attaching conditions then the planning authority could refuse permission or grant permission subject to conditions where this is expedient in the interests of amenity. An appeal against such decisions could be introduced as it exists for an application under a TPO. If the 6-week period expires without a decision then existing provisions can remain and the work can be carried out as proposed in the notification.

Such a change would allow planning authorities to properly consider and deal with the amenity implications of tree work in conservation areas without the burden of having to make a considerable number of individual tree preservation orders. The process to apply for works to trees currently attracts no fee and we would note our response to Q.11.

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Chief Planning Officer