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The Scottish Parliament

Communities Committee

5th Report, 2006 (Session 2)

Stage 1 Report on the Planning etc. (Scotland) Bill

Volume 1: The Report



The Scottish Parliament

Communities Committee

5th Report, 2006 (Session 2)

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Professor Greg Lloyd, University of Dundee
Professor Alan Prior, Heriot-Watt University

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Graham U'ren, Royal Town Planning Institute in Scotland
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Law Society of Scotland
Faculty of Advocates
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Law Society of Scotland
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SEPA

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- Confederation of British Industry Scotland
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- Airtricity
- GVA Grimley LLP
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- GVA Grimley LLP
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- Airtricity
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Avich & Kilcherenal Community Council
Jackie Baillie MSP, Sarah Boyack MSP and Pauline McNeill MSP

Nina Baker
Sophia Ballantyne
Kate Barclay
Heidi Bartlett
Stan Blackley
Mr S Blow
Dr Brian Boag
Chas Booth
Jill Boulton
British Aggregates Association
British Waterways Association
Erica Brock
Bill and Jenny Brockie
Julie Brown
Ronald Brown
Fiona Brunk
BT PLC
James Buchanan
Steve Burgess
Alison F Cairnie
Ail Campbell
Joan Carter
T Carter
Vicki Chad
Chartered Institute of Waste Management
City of Edinburgh Council
Cockburn Association
Colinton Amenity Association, Currie and Balerno Community Councils
Kevin Connor
Core Solutions
Council for Scottish Archeology
Professor Stuart Crampin
Commission for Racial Equality
Professor David Crichton
Cromar Community Council
Alan Cruikshank
Culter Community Council
Juliette Daigre
Disability Rights Commission
Jacui du Rocher
Dumfries Friends of the Earth
Dumfries and Galloway Council
Dunfermline and Coast Association Community Council
Ruth Durie
East Ayrshire Council
East Renfrewshire Council
Andrea Elderfield
Ennstone Thistle
Errol Community Council
Falkirk Council

Sarah Fallon
Federation of Edinburgh and District Allotments & Gardens Association
Ferryhill Heritage Society
Alison Fielding
Fife Council
Angela R Flanagan
Morag Fleming
Friends of the Earth Scotland
Friends of the Earth Tayside
David Fyfe
Ros Gasson
Cara Gillespie
GL Hearn
Konstanze Glaser
Glasgow City Council
Glenfarg Community Council
Deborah Goodall
Doanld Gorrie
Govan Community Council
Grosvenor LTD
Johannes Haile
Gemma Hamilton
Rachel Hanson
Helensburgh Community Council
Helensburgh Study Group
Karen Higgins
Highland Council
Historic Houses Association for Scotland
Pauline Hodge
CB Howard
Andy Hunter
Hutton and Paxton Community Council
Rosamund Ingle
Ivan Irvine
ISIS Waterside Regeneration
John Muir Trust
Caroline Johnston
Melanie Johnston
Keir Homes
Elspeth Kelman
RDV Kite
Paul Knights
Marion Kolata
Alistair J Lauder
Ledingham Chalmers
Elizabeth Lindsey
Macfarlane Homes
Kenneth MacInnes
Alan MacKay
Dr Nikki MacLeod

Kirsty MacLeod
Mactaggart & Mickel
Alice Maguire
Marchmont and Scienes Community Council
Chris Marks
Ruth Marsden
Sarah McBurnie
Richard McCarthy
Peter McColl
Sue McGaffeny
Duncan McLaren
Mearns Community Council
Patricia S Miller
Miller Homes
James Milligan
Simon Milne
Scott Mitchell
Mobile Phone Operators Association
Simon Morris
Lianna Muller
E Deirdre Murray
National Grid Wireless
Robin Naumann
Patrick Neary
Nigg Community Council
North East Strategic Planning Committee
North Lanarkshire Council
Jean MM Oliver
Paull & Williamsons
Peebles Civic Society
Persimmon Homes East Scotland
Perth & Kinross Access Group
Perth & Kinross Council
Emma Pettitt
Caroline Phevlín-Stewart
Chris Pomphrey
Portobello Campaign Agaisnt the Superstore
Naomi Ralph
Ian Reeve
Renfrewshire Council
Sally Richardson
Emily Roff
William Roper
Professor Rowan Robinson
Royal Incorporation of Chartered Surveyors in Scotland
Royal Society for the Protection of Birds
Rural Housing Association
RuralScotland
Scottish Committee of the Council of Tribunals
Scottish Council for Single Homelessness

Scottish Disability Equity Forum
Scottish Enterprise Party
Scottish Environment Protection Agency
Scottish Environmental Services Association
Scottish Estates Business Group
Scottish Natural Heritage
Scottish Planning Consultants Forum
Scottish Public Services Ombudsman
Scottish Raptors Study Group
Scottish Salmon Producers Organisation
Scottish Water
CE Shannon
Shetlands Islands Council
Donald Smith
Southbank Court Residents Association
Springfield Properties
Scottish Rural Property and Business Association
Alistair G Stark
Sheena Stark
Stewart Milne
Stirling Council
Rebecca Sturrock
Sustainable Communities Scotland
Juliet Swann
Mark Symonds
Blanche Tinney
TRANSform Scotland
Unision Scotland
Matthias Volkert
Walker Group
Susan Warren
Voirrey Watterson
West Lothain Council
Charlie Wood
Kerri Wood
Woodlands and Park Community Council
Joanne Worrall



The Scottish Parliament

Communities Committee

Remit and membership

Remit:

To consider and report on matters relating to housing and area regeneration, poverty, voluntary sector issues, charity law, matters relating to the land use planning system and building standards and such other matters as fall within the responsibility of the Minister for Communities.

Membership:

Karen Whitefield (Convener)
Scott Barrie
Cathie Craigie
Christine Grahame
Patrick Harvie
John Home Robertson
Tricia Marwick
Dave Petrie
Euan Robson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee

Steve Farrell

Senior Assistant Clerk

Katy Orr

Assistant Clerk

Catherine Fergusson
Jenny Goldsmith

Support Manager

Sam Currie



The Scottish Parliament

Communities Committee

5th Report, 2006 (Session 2)

Stage 1 Report on the Planning etc. (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Planning etc. (Scotland) Bill (SP Bill 51) was introduced to the Scottish Parliament on 19 December 2005 by Malcolm Chisholm MSP. The Bill was accompanied by Explanatory Notes (SP Bill 51-EN), which include a Financial Memorandum, and by a Policy Memorandum (SP Bill 51-PM) as required by Standing Orders. On 21 December 2005, the Parliament designated the Communities Committee as lead committee and the Local Government and Transport Committee as secondary committee in consideration of the Planning etc. (Scotland) Bill. Under Rule 9.6 of the Standing Orders, it is for the lead committee to report to the Parliament on the general principles of the Bill.
2. The provisions of the Bill that confer powers to make subordinate legislation were referred to the Subordinate Legislation Committee under Rule 9.6.2. In addition, the Finance Committee took evidence on matters relating to the Financial Memorandum accompanying the Bill. The reports of these Committees, together with the report of the Local Government and Transport Committee, are attached at Annex A.
3. The Bill proposes amendments to the Town and Country Planning (Scotland) Act 1997, referred to in the Bill as the principal Act, and to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. For this reason, a single section of the Bill may introduce a whole new part or a number of new sections into the principal Act, or propose changes to a number of sections of the principal Act. Notably, section 2 of the Bill on development plans, substitutes the complete Part 2 of the principal Act. The Bill also proposes to repeal a number of sections of both Acts.

LIST OF RECOMMENDATIONS

4. The following paragraphs list the main findings, recommendations and conclusions contained within the report.

5. **The majority¹ of the Communities Committee welcomes the Planning etc. (Scotland) Bill. The Communities Committee has made a number of recommendations in this report in response to the evidence that it has heard or received on the Bill. It urges the Scottish Executive to take these into account with a view to introducing amendments to improve the legislation at the later stages of the Parliamentary process.**

6. **The majority² of the Communities Committee recommends that the Parliament agree the general principles of the Planning etc. (Scotland) Bill.**

The Bill as amending legislation

7. **The Committee welcomes the intention of the Executive to introduce a consolidated version of parts of the Town and Country Planning (Scotland) Act 1997 before the Stage 1 debate on the Bill. Nevertheless, it is of the view that a consolidated version of the 1997 Act, taking into account the amendments introduced both by the Bill - if passed - as well as any other associated pieces of legislation, would make a significant contribution to making planning legislation more accessible to all of those who use the system, and to the public in particular.**

8. **The Committee acknowledges that the Executive will have a great deal of implementation work, such as the preparation of a wide range of subordinate legislation, to carry out should the Bill be passed. However, it recommends that a consolidated planning Bill should be introduced as soon as is practicable after the Bill receives Royal Assent.**

Subordinate Legislation

9. **The Committee recognises that there is currently a considerable amount of secondary legislation which applies to the planning system and which will need to be amended. It also found the additional information provided by the Minister for Communities on likely secondary legislation to be useful. Nevertheless, it noted that on a number of occasions witnesses were unable to give a final view on the merits or otherwise of certain provisions introduced by the Bill, given that the detail of these provisions would be contained in secondary legislation.**

10. **The Committee considers that this absence of detail has meant that it has restricted its ability to scrutinise certain provisions contained in the Bill. The Committee therefore believes that much of the secondary legislation either introduced or amended by the Bill should be**

¹ Patrick Harvie dissented, Christine Grahame abstained

² Patrick Harvie dissented, Christine Grahame abstained.

introduced subject to the affirmative procedure. Specific recommendations in this regard are indicated in the relevant sections of the report below.

Scottish Executive Consultation Process

11. The Committee acknowledges the efforts of the Scottish Executive in carrying out such a detailed and thorough consultation process, although it is of the view that consultation on Good Neighbour Agreements would have helped to develop the proposals contained in the Bill. It was clear to the Committee from the evidence heard that almost all of the key stakeholders felt content with the way that the various elements of the consultation process had been carried out and the opportunities that they had to participate in it. Moreover, the Committee is also of the view that the efforts of the Executive have contributed to a widespread commitment among the majority of stakeholders to the modernisation of the planning system.

Delivering a Modernised Planning System

12. The Committee recognises the importance of an effective and modernised planning system for promoting sustainable economic development in Scotland. On the basis of the evidence heard, and the written evidence received, the Committee considers that the provisions proposed in the Bill have the potential to assist economic growth and development. However, it is of the view that the success of the Executive's proposals to modernise the planning system will rest on a number of factors, including the resources and capacity of planning authorities to deliver a more efficient service, the development of more widespread and meaningful public participation in the planning system and a change in culture among the key stakeholders. These issues are each discussed in more detail later in this report.

Culture Change

13. The Committee is highly aware of the need for a culture change and for a fresh approach to be taken by all participants in the planning system. It has been encouraged by the commitment made in evidence by key stakeholders to work towards effecting such a culture change and is of the view that this positive attitude should be harnessed to drive the process forward. The Committee also commends the Executive in this context for its engagement with the many stakeholders, not only during the consultation process, but also following the publication of the White Paper.

14. The Committee believes that for the package of reforms to work, there needs to be a real commitment from all stakeholders to examine their respective roles in the planning system and contribute towards a culture change. It considers that there must be a greater emphasis on transparency and constructive dialogue at all stages in the process which, if successful, may serve to break down the feelings of distrust that currently exist between certain stakeholders. The public must have confidence that they can participate fully in the process that shapes their communities and are listened to; developers must have confidence

that well-prepared, good quality applications will be considered quickly and efficiently; and planning authorities must demonstrate that their decisions are in the best interests of the area they serve. In this context the Committee considers that the Executive should prepare for its new role in the planning system and consider how to best commit and manage its resources to fulfil that role.

Resources

15. The Committee is of the view that the problems faced by planning authorities in recruiting and retaining professional planners in the public sector needs to be addressed as a priority if the proposed improvements to the system are to be delivered. It considers that this issue should be addressed not only by the provision of professional education and training for existing planners, but also by taking action to retain qualified staff and attract more planners in the short, medium and long-term. It was clear to the Committee that planning authorities are working with fewer staff than required and that additional trained planners will be needed for the reforms to be put into effect. The Committee calls on the Executive to seek to expand the number of graduates and post-graduates at the Scottish planning schools, and further consider how salary levels and career structures of planners who commit to work in the public sector could be improved.

16. The Committee also supports the view expressed in evidence that planning authorities could free up more planners to carry out strategic planning work by identifying tasks within the system which could appropriately be delegated to staff who are not qualified planners. The Committee is also of the view that resource savings could be delivered by a more widespread introduction of the e-planning systems referred to by some witnesses.

17. The financial resource issue is a complex one, especially as the Committee is aware that the planning finance working party is continuing to work on estimating the costs and that complete clarity will only be possible once the secondary legislation has been agreed. The Committee welcomes the Minister's commitment to provide a revised estimate of the resource implications from the Executive before the Stage 1 debate. However, it is concerned that this information was not available at an earlier stage to allow a final position to be taken by the Committee in this report on an issue which it considers to be of fundamental importance to the successful delivery of the measures proposed in the Bill.

18. The Committee acknowledges that it will take some time for the provisions to be fully implemented and take effect. However, the Executive will have a key role in driving the process forward and providing momentum to the process of change. The Committee considers that it would be helpful if, as part of this process, the Executive could produce an indicative timetable setting out the key stages of implementation of the Bill, if passed, including the programme for consultation on and introduction of secondary legislation and the

production of related guidance. The Committee calls on the Executive to provide this information before the Parliamentary consideration of the Bill is complete.

Public Participation

19. The Committee considers that the proposals to front load the consultation process, as presented in the White Paper and the Bill, are positive. A majority³ of the Committee is of the view that they represent a genuine attempt by the Executive to encourage engagement by the public and ensure that they have a greater involvement in how their communities are affected by development. However, the Committee considers that it will be a significant challenge to overcome the often deep-rooted distrust that many members of the public and community organisations have of the current system. It is considered imperative, therefore, that every effort is made to ensure that the role that communities play in the system is seen to be valuable and constructive; and that early, positive engagement can bring benefits.

20. The Committee welcomes the fact that there is a working group looking at the preparation of a Planning Advice Note on public engagement. The Committee hopes that this exercise will bring forward innovative suggestions as to how to increase awareness amongst those who have limited or no knowledge of the planning system and encourage and support engagement by as wide and representative a group as possible. It believes that there would be value in building on existing national standards and further examining the potential role of mediation in the planning system.

21. The Committee considers that the Planning Advice Note should specifically provide guidance on engaging effectively with equalities groups. Information should also be made available in a range of alternative languages and formats such as Braille, audio tape etc.

22. The Committee would welcome the opportunity to consider the contents of the draft Planning Advice Note before its publication.

23. The Committee considers that there is a requirement for basic information about the planning system to be made readily available, highlighting the various opportunities for participation and how to go about it; more detailed information on engaging at specific stages such as during the development plan process, pre-application consultations and neighbourhood agreements.

24. Information should be provided in an easily understood, jargon-free format. For example, information produced for a local plan consultation should include questions tailored specifically to encourage public participation.

³ Christine Grahame, Patrick Harvie and Tricia Marwick dissented.

25. It is also considered important that the public should have confidence that not only are they consulted and play a part in the process but also that their views are taken seriously. It is suggested, for example, that comments and objections submitted on development plan proposals and even on individual applications, where practicable, should be responded to by planning authorities with an explanation as to why they have either been accepted or rejected.

Third Party Right of Appeal

26. The Committee recognises the strength of feeling amongst certain groups and organisations representing the public that the current planning system has appeared unfairly balanced in favour of applicants and lacking in opportunity for effective community participation. It acknowledges that a limited third party right of appeal is viewed by many of those groups and organisations as a potential method of redressing the balance. A minority of the Committee⁴ supports the call for a third party right of appeal.

27. A majority of the Committee⁵ agrees with the view expressed by the Deputy Minister that the package of measures proposed in the Bill will more effectively address the frustrations felt by many of those who have considered the operation of the current planning system to be inequitable.

Planning Gain Supplement

28. Whilst the Committee notes the evidence on the HM Treasury's proposed planning gain supplement, it considers that it is an issue which is not directly related to the Bill. It therefore does not intend to comment on the proposal in this report. The Committee considers that this is an important issue and calls on the Executive to keep it informed of all developments in relation to the introduction of a planning gain supplement in Scotland.

National Planning Framework

29. The Committee welcomes the Executive's proposal to put the National Planning Framework on a statutory basis. It is of the view that it is vital that there should be a national document setting out a vision for development in Scotland.

30. The Committee acknowledges the Deputy Minister's explanation of the consultation that will take place before the proposed National Planning Framework is introduced to Parliament. However, the Committee is of the view that it is essential that the opportunity to participate in the consultation on such an important document should be available to as wide a range of participants as is practicable. It therefore calls on the Executive to be pro-active in its efforts to encourage interest and generate engagement, particularly by the public;

⁴ Christine Grahame, Patrick Harvie, Tricia Marwick.

⁵ Scott Barrie, Cathie Craigie, John Home Robertson, Dave Petrie, Euan Robson, Karen Whitefield.

and to ensure that the consultation process is inclusive, transparent and robust.

31. The Committee calls on the Scottish Executive to ensure that when the National Planning Framework is submitted to the Parliament for consideration, it is accompanied by a consultation statement. This document must demonstrate how the consultation process was conducted; include details of the mechanisms used to encourage participation; summarise the views of those who responded; and explain how the views of respondents were taken into account.

32. One member of the Committee⁶ considers that an opportunity should be provided for the National Planning Framework to be formally examined in public, on the basis that specific developments which have been included in the National Planning Framework may be less open to formal scrutiny through public inquiry when they reach the planning application stage. The member believes that consultation on the draft National Planning Framework should be an addition to existing scrutiny opportunities, rather than a substitute. However, the majority of the Committee is not in favour of a formal examination in public and is of the view that an extensive and thorough consultation, followed by consideration by the Scottish Parliament, as proposed in the Bill, would be sufficient.

33. The Committee members have differing views on the period of 40 days which is proposed in the Bill for Parliamentary consideration. The majority of the Committee⁷ considers that a 40-day period would limit the opportunity for the Parliament to make a proper assessment of the National Planning Framework, taking into account the practical considerations associated with the Parliamentary scrutiny process. It considers that a longer period is necessary to allow the Parliament greater flexibility to take evidence and apply an appropriate level of scrutiny to the document. The majority of the Committee therefore recommends that the Executive should bring forward an amendment at Stage 2 to extend the period for Parliamentary consideration to 60 days.

34. A minority of the Committee⁸ is of the view that there should be no specific period set on the face of the Bill for the consideration of the National Planning Framework. It considers that to set a time limit in this way is unwise given that the process is as yet untested and it is unclear what will be required in terms of the Parliament's consideration. Those members would prefer to see the scrutiny period determined through discussions and set by the Parliamentary Bureau, in a similar manner to the process followed when setting a deadline for Stage 1 consideration of a public bill.

⁶ Patrick Harvie

⁷ Karen Whitefield, Euan Robson, John Home Robertson, Cathie Craigie, Dave Petrie, Scott Barrie

⁸ Patrick Harvie, Christine Grahame, Tricia Marwick

35. The Committee notes the provision which requires Scottish Ministers to 'have regard' to any report of the Parliament or a Parliamentary Committee. The Committee supports this proposal, but calls on the Executive to ensure that the draft National Planning Framework is the subject of a debate in the Parliament on a substantive motion to allow a full exchange of views on its contents. It also considers that the Scottish Ministers should be required to respond formally to the report produced by the Parliament and recommends that the Executive should amend the Bill at Stage 2 to provide for this.

36. The Committee considers that it is appropriate for a duty to be included in the Bill requiring the National Planning Framework to have the objective of contributing to sustainable development and calls on the Executive to bring forward amendments to this effect at Stage 2.

37. The Committee notes that it is proposed that the next National Planning Framework will be published in 2008. It is of the view that this timetable presents a challenge for the Executive if it is to develop and take forward the comprehensive consultation process recommended by the Committee and still meet its publication target. The Committee therefore calls on the Executive to provide assurances that the consultation will be fully inclusive, open and transparent, despite the limited time available.

Sustainable Development

38. The Committee welcomes the introduction of a statutory duty for planning authorities to exercise their development plan functions with the objective of contributing to sustainable development and considers that this will make an important contribution to delivering the Scottish Executive's Sustainable Development Strategy over time.

39. Nevertheless, the Committee is of the view that the guidance to be developed by the Scottish Executive will be crucial to ensuring that planning authorities have a clear, uniform and detailed understanding of how this duty should be implemented to promote sustainable development through the vehicle of development plans. It therefore calls on the Executive to take into account the views expressed to the Committee in evidence in the development of the draft guidance with a view to developing a clear working definition of sustainable development for planning authorities to draw on for the purposes of development plans.

40. The guidance should be regularly updated to reflect any developments in the definition of sustainable development. In addition, the Committee also calls on the Scottish Executive to review systematically how planning authorities discharge this duty in order to ensure that they are making a genuine contribution to promoting sustainable development through the planning system in Scotland.

A plan-led system

41. The Committee welcomes the move to a limited number of strategic development plans, with local development plans covering all areas. It is of the view that the Executive has responded appropriately to the need to take a more strategic and up-to-date approach to the impact that the four key cities in Scotland have on their surrounding geographical areas. Strategic development plans and areas will be a more appropriate and effective means than the previous seventeen structure plans to deal with the economic and spatial dynamic exerted by the key Scottish cities.

42. Nevertheless, the Committee would like to see a clearer overview from the Scottish Executive on the timing of the preparation of up-to-date development plans throughout Scotland, especially on whether planning authorities will be expected to prepare local development plans following the coming into force of section 2 of the Act or whether new plans will be prepared only when existing local plans become out of date.

43. The Committee calls on the Scottish Executive to make information on the status of all strategic development plans and local development plans publicly available, ideally through a regularly updated web site with links to the relevant development plans. The site should also provide information on each planning authority's programme for the adoption of the next plan.

Strategic Development Planning

44. The Committee acknowledges that the Bill as drafted is unclear on the position of authorities such as Fife, which would be included within the overlapping boundaries of two strategic development plans. The Committee welcomes the statement by the Minister that the Executive is considering bringing forward amendments at Stage 2 to provide greater clarity on this issue.

45. The Committee notes that it will be for Scottish Ministers to designate a group of planning authorities which will form a strategic development planning authority. It is of the view, however, that situations could arise whereby a planning authority is not included in designation proposals but may wish to make a case to allow it to participate in a Strategic Development Plan Authority. The Committee therefore suggests that the Executive should consider how it might allow those planning authorities with a potential interest in participating in a SDPA to make representations to be included in the designated group and how to make the process as transparent as possible.

46. At the Committee's pre-legislative meeting with local authority planning conveners, the importance of an equal relationship within the designated group of planning authorities preparing a strategic development plan was stressed. The Committee calls on the Scottish Ministers to provide for equal rights among all Strategic Development Plan Authority members in any guidance issued under new section 4(6).

47. While the Committee accepts the Executive's reassurance that it does not intend to interfere in the employment policies of local authorities, it understands the concerns that COSLA has expressed in relation to the powers of Ministers on the basis of the current drafting of new subsection 4(3) of the Bill. The Committee therefore calls on the Executive to introduce amendments at Stage 2 which more clearly reflect their intentions and define the circumstances under which such powers will be used.

48. The Committee is of the view that whilst simpler and more streamlined strategic development plans may involve some initial changes to the way that planning authorities work, the changes proposed by the Executive should ultimately result in more accessible and readily comprehensible plans which is central to the process of making the planning system more accessible and transparent.

49. The Committee strongly commends the Executive for seeking to make development plans more strategic and focused documents. However, it considers that much work requires to be done to make plans clearer and more readily comprehensible by those outside the planning profession. The Committee therefore urges the Executive to give some priority to the development of guidance for planning authorities to assist this process.

Preparation of a Strategic Development Plan

50. The Committee considers that the approach adopted by the Executive for the adoption of strategic development plans will allow for a speedier process than that currently in place for structure plans and will contribute to the Executive's objective of having up-to-date plans in place and a strong plan-led system.

51. The Committee calls on the Scottish Executive to introduce amendments at Stage 2 which extend the circumstances under which a planning authority may decline to take the Reporter's recommendations into account in the modification of a development plan.

52. The Committee is of the view that the Scottish Executive Inquiry Reporters Unit will play an important role in the examination of strategic and local development plans. It concurs with the views of the Law Society of Scotland that the examination process should be as transparent as possible. It therefore encourages the Scottish Executive to bring forward amendments to the Bill that allow for all hearings to be held in public.

Local Development Plans

53. The Committee is of the view that the provisions contained in the Bill in relation to the preparation, form and content of local development plans should contribute significantly to the Executive's objective of making the planning system fit for purpose. The intention, stated in the White Paper, to produce model development plan policies should help to support the work of planning authorities in preparing local development

plans as well as ensuring that there is greater consistency in development plans across Scotland. By placing all documentation relating to the main issues report and the proposed development plan on local authorities' websites, the process should become more transparent.

Neighbour Notification of Development Plans

54. The Committee is of the view that the proposal to introduce procedures for the neighbour notification of key site specific proposals will play a significant part in ensuring that members of the public and communities are informed of planning proposals at an early stage and have the opportunity to engage in the consultation of development plans. Whilst little detail is available on proposed procedures at present, the Committee nevertheless welcomes the proposal, and also calls for the regulations to be introduced subject to the affirmative procedure.

Consultation on Development Plans

55. The Committee is of the view that effective early engagement by and with communities in the development plan process is crucial and fundamental to the acceptance of the 'plan-led' package of measures contained in the Bill by the public. Moreover, it also recognises the particular challenge in raising awareness levels in the wider community of the importance of the development plan process and encouraging involvement at the appropriate stages in the process.

56. The Committee strongly supports the provisions in the Bill which place a duty on planning authorities to consult in the preparation of development plans and the process as part of any examination of the development plan which will assess whether this consultation has taken place in accordance with the planning authority's consultation statement. It acknowledges the evidence from the Scottish Society of Directors of Planning which demonstrates that this early consultation on a development plan can help achieve greater consensus on and acceptance of a development plan.

57. However, the Committee recognises that much of the detail on who is to be consulted, and at what point of the process, will be left to secondary legislation and that a Planning Advice Note will include guidance on the procedures for consultation and publicity. The Committee therefore calls on the Scottish Executive to take into account a number of elements that have emerged from evidence on the Bill in the preparation of regulations and the Planning Advice Note.

58. The Committee is of the view that regulations should refer to the objective of providing opportunities for a more representative cross-section of the community to be consulted. Specific reference should be made to ensure that planning authorities take equalities issues into account, with specific reference on the need to consult - inter alia - minority ethnic groups, disabled people and young people. It also calls for the regulations under this section to be introduced subject to the

affirmative procedure and that this should be stated on the face of the Bill.

59. Whilst the Committee recognises that many of the methodologies used to promote public engagement may be dynamic and evolve over time, it strongly supports the adoption of the methodologies and principles contained in the National Standards for Community Engagement which could help to promote consistent good practice throughout Scotland.

60. The Committee concurs with the point made by the Scottish Mediation Network on the use of the term 'participation' and encourages the Scottish Executive to adopt this in its development of guidance on best practice within the Planning Advice Note on community engagement.

61. The Committee also considers that the Planning Advice Note on community engagement should include guidance on means for promoting sustainable community engagement, given the resource requirements of engaging in the development plan process. The Committee endorses the approach of the Executive to promote examples of best practice and innovative techniques on a regular basis.

62. The Committee recognises that whilst early community engagement may lead to greater consensus on development plans, there will remain areas where there may be divergent views. The Committee considers that its call for examinations of development plans to take place in public will be important for ensuring that there is transparency in the process of assessing whether a planning authority has satisfied its consultation statement and of considering any objections to development plans.

Development Plan Schemes and Action Programmes

63. The Committee commends the introduction of development plan schemes. It is of the view that these should help make the process for reviewing development plans clearer and more transparent.

64. The Committee is of the view that action plans will provide a useful management and implementation tool to support the delivery of development plans. The duty placed on key agencies to co-operate with this process, especially in light of the fact that action plans will be updated every two years, means that action plans will play an important role in ensuring that development takes place.

Supplementary Guidance

65. In principle, the Committee supports the proposals to give greater status to supplementary guidance as it should help to streamline development plans. However, the Committee concurs with COSLA that the requirement for planning authorities to submit supplementary planning guidance to the Scottish Ministers before it is adopted by the local authority could undermine the autonomy of local authorities. It

welcomes the statement by the Minister that the Executive is to consider this matter further and calls on it to introduce appropriate amendments at Stage 2 to address the concerns raised.

66. The Committee shares the concerns of witnesses that supplementary guidance should not deviate either from a development plan or national planning guidance and calls on the Executive to bring forward amendments at Stage 2 to require supplementary planning guidance to conform with development plans and national planning guidance.

Default Powers of the Scottish Ministers

67. The Committee strongly supports the proposals to make every effort to secure a five-yearly update of development plans by planning authorities. It is of the view that up-to-date plans are crucial for the planned system to work effectively.

68. The Committee recognises that there are currently many out-of-date structure and local plans in Scotland and suggests that the Executive should work with these authorities to establish a calendar to ensure the early preparation of development plans.

69. The Committee further considers that the Executive should clarify the status of a plan which has not been updated as required within five years. It also recommends that the Executive should be robust in requiring planning audits of authorities which do not comply with this timescale.

Key Agencies

70. The Committee shares the views of local authorities, business, developers and professional planners that the role of the key agencies in delivering infrastructure will be crucial to the planning system. The Committee is reassured by the evidence provided by Scottish Natural Heritage, the Scottish Environment Protection Agency and Scottish Enterprise which suggests that they are confident that they have the resources and commitment to co-operate constructively with planning authorities in the preparation and delivery of development plans. However, the Committee does have concerns about the resources of Scottish Water to deliver infrastructure which is clearly vital for delivering development, particularly of housing, in Scotland.

71. The Committee is of the view that the key agencies should be required to respond timeously in fulfilling their duty to co-operate with planning authorities in the preparation of main issues reports, proposed development plans and action programmes. The Committee calls on the Executive to bring forward amendments at Stage 2 to achieve this.

72. The Committee further calls on the Scottish Executive to consult planning authorities, at regular intervals after the commencement of Part 2 of the Act, on whether the duty placed on key agencies is effecting the culture change required and delivering infrastructure to support plan

objectives. Specific attention should be paid to the capacity of Scottish Water both to engage with planning authorities and to deliver infrastructure. In addition, there should also be a regular review to assess whether other bodies should be designated as key agencies.

Meaning of Development

73. The Committee is of the view that the inclusion of mezzanine floors within the meaning of development will help to ensure the sustainability of developments, notably out of town shopping centres, and that sufficient amenity is in place to accommodate the impact of such developments.

74. The Committee is content that the provisions of the Bill do not conflict with the rights of crofters and others under Udal law. The Executive has made clear to the Committee that the proposal to repeal certain provisions of the Zetland County Council Act 1974 is intended to remove an anomaly which would prevent the application of a consistent planning regime for offshore marine fish farming throughout Scotland. Whilst the Committee is supportive of this proposal, it nevertheless calls on the Executive to provide clarity to Shetland Islands Council on the extent of the provisions in order to address the concerns it expressed in evidence in relation to this matter.

Hierarchy of Development

75. The Committee supports the introduction of a hierarchy of development as a means of ensuring that resources are appropriately directed to where they are most needed in terms of processing applications for development. The Committee also welcomes the Executive's proposals to review the General Permitted Development Order.

76. The Committee is of the view that the categorisation of developments under the hierarchy by regulations is an area of key importance and one on which more detail would have been welcome with the Bill. However, it acknowledges the helpful information provided by the Minister on the indicative content of regulations. The Committee also welcomes the Executive's commitment to consult widely on the content of the regulations before these are laid before Parliament. The Committee calls on these regulations to be introduced subject to the affirmative procedure in line with the recommendation made by the Subordinate Legislation Committee.

77. New section 26 also provides for Scottish Ministers to direct that a development which is assigned to a particular category should be dealt with as if it were in another category. The Committee calls on the Executive to provide information on the circumstances in which this might occur.

78. The Committee considers that it is important to have a consistent set of definitions for types of development across Scotland so that

users of the system, as well as those affected by developments, have a ready understanding of each type of category of development.

79. The Committee shares the Executive's view that it is probable that any manipulation of the system under the hierarchy of developments is most likely to take place when developers try to ensure that a development qualifies as a major development and thus obtain benefits in terms of its handling by the planning authority. Nevertheless, the Committee calls on the Executive to review the functioning of the system at regular intervals to ensure that developers do not manipulate the system to gain advantage.

80. The Committee would welcome more detail on the process for dealing with national developments when an up-to-date development plan is not in place.

81. The Committee welcomes these provisions as providing greater clarity on the status of a development and providing the potential for more effective enforcement procedures in relation to developments where conditions are in place.

Initiation and Completion of Development

82. The Committee welcomes the provisions relating to the notification of initiation and completion of development as providing greater clarity on the status of a development and providing the potential for more effective enforcement procedures in relation to developments where conditions are in place.

Applications for Planning Permission and Certain Consents

83. The Committee commends the Executive for seeking to establish greater consistency in planning applications across Scotland. It concurs that this should better facilitate the system for the user and result in fewer incomplete applications, thus reducing delays.

Variation of Planning Applications

84. The Committee welcomes the initiative to make the planning process more transparent by including statutory provisions within the Bill in relation to variation. Nevertheless, given the uncertainties expressed in evidence as to how these provisions will work in practice, the Committee considers that significant work will be required to produce regulations that inform the definition of 'substantial change' in relation to the many types of change that could be introduced to a planning application. In this context, the Committee welcomes the Minister's intention to consult planning authorities to establish the boundaries for what would constitute a 'substantial change' in an application.

85. The Committee is concerned that there will be no opportunity for community groups and other parties with an interest in an application to provide input as to what constitutes 'substantial change' in relation to an application. The Committee also notes the view expressed in

evidence that there should be an obligation to notify all parties with an interest in an application of any proposed variation to it. It recommends that these issues should form part of the consultation on the regulations.

86. The Committee is also keen to ensure that a mechanism is found to allow variations of a positive character emanating, for example, from recommendations linked to an Environmental Impact Assessment, a requirement to protect an archaeological site or the suggestion of a representative of a community. The Committee therefore recommends that this issue is also addressed as part of the proposed consultation exercise.

87. Given the lack of detail currently available on the type of variation that would constitute a 'substantial change', the Committee considers that a further level of Parliamentary scrutiny would be preferable and therefore calls for the regulations relating to variations to be introduced subject to the affirmative procedure. It is further recommended that these regulations should be accompanied by appropriate guidance for planning authorities and developers.

Development Already Carried Out

88. The Committee commends the proposal to empower planning authorities to issue a notice requiring that planning permission be applied for for development already carried out. It is of the view that this should contribute to countering the sense of unfairness that may be felt by members of the public or a community in cases where there was no planning permission for a development. However, it calls on the Scottish Executive to consider the development of guidance to provide advice on the parameters to be applied so as to limit inconsistencies in the implementation of this provision.

Publicity for Applications

89. The Committee commends the Scottish Executive for taking the step to transfer responsibility for neighbour notification of planning applications to planning authorities. The Committee shares the view that the proposals will help to increase public confidence in the planning system by ensuring that neighbours are properly notified about planned developments and receive information at that point explaining the planning process to them.

90. Nevertheless, the Committee is concerned that there is not more information available at this stage on the processes that will be required under secondary legislation relating to neighbour notifications. The Committee considers this proposal to be an important part of the package of provisions designed to enhance public confidence in the system and therefore calls on the Scottish Executive to introduce any regulations under this section subject to the affirmative procedure to allow further Parliamentary scrutiny to take place.

91. The Committee looks forward to considering proposals brought forward by the Scottish Executive on the most appropriate way of funding planning authorities to carry out neighbour notification. It sees significant merit in COSLA's proposal that there should be some form of mechanism for planning fees to cover the direct administrative and other costs of neighbour notification.

Pre-application Consultation

92. The Committee welcomes the provisions in the Bill to introduce a requirement for pre-application consultation for certain categories of development. It is of the view that this is an important element of the Executive's proposals to 'front load' the system by providing early opportunities for consultation.

93. The Committee also notes that the pre-application consultation proposals have been welcomed by developers who gave evidence and hopes that it is viewed more widely by developers as an opportunity to genuinely engage with communities to bring forward improved development proposals which are more acceptable to those who are affected by them.

94. The Committee considers it to be important that pre-application consultation should be carried out with as broad a range of community interests as possible. In this regard, there must be a recognition that community councils are often not the only bodies which represent communities. It is therefore recommended that the Executive should encourage planning authorities to hold up-to-date lists of all representative bodies within their areas of responsibility which can be accessed by developers.

95. In common with other areas of the planning system, it is considered important that communities have the necessary skills and capacity to engage effectively with the pre-application process. The Committee therefore recommends that the proposed Planning Advice Note on public engagement should also cover means of supporting the public and community groups in their involvement with all aspects of the planning system.

96. The Committee recognises that the detail of these proposals relating to pre-application consultation will only become apparent when secondary legislation is introduced and that guidance will be vital in ensuring that pre-application is not seen by some developers merely as a means of speeding up a planning application but also as a means of responding to local concerns and improving a development proposal. The Committee requests that the Executive introduce regulations under this section subject to the affirmative procedure.

97. The Committee shares COSLA and the SSDP's view that it is important for the planning authority to have a role in facilitating pre-application consultations in certain cases to ensure that appropriate and accurate information is provided to consultees about such matters as to

how the proposed development relates to the local plan or technical planning issues.

98. The Committee therefore calls on the Executive to reconsider the need for planning authority involvement in the pre-application consultation process with a view to including provisions in secondary legislation or advice in guidance.

99. The Committee agrees with the Royal Town Planning Institute in Scotland that it is important that all parties have clear information on the interests of others involved in this process. It would be essential that planning authorities were to have a role in pre-application consultations if they were clearly identified as having no connection to the developer. The Committee considers that advice on managing this aspect of the process should be set out in guidance on the pre-application consultation process.

100. The Committee also recommends that the Executive should consider whether it would be reasonable to reduce the minimum period of 12 weeks which must elapse between the submission of a proposal of application notice and the submission of an application, with a view to providing more certainty for communities on the form of a development.

Public Availability of Information as to how Planning Applications Have Been Dealt With

101. The Committee strongly commends the Scottish Executive for introducing measures to allow the public greater access to information on how planning applications have been dealt with. These proposals should make a valuable contribution to improving the transparency of the planning system and also provide the public with the opportunity to scrutinise the way that planning authorities have taken decisions where this information is not already in the public domain.

Keeping and Publication of Lists of Applications

102. The Committee welcomes the provisions to extend the information available to the public on planning applications and pre-application consultation and to ensure that it is readily available in an updated format for members of the public.

103. The Committee questions whether the current requirements to place newspaper advertisements relating to certain planning matters are appropriate, particularly given the high costs of these to many local authorities. The legalistic format of certain of these adverts is not considered to be an effective way of informing those who may have an interest, particularly the public, as part of a modern planning process. The Committee therefore calls on the Executive to examine the role and format of newspaper advertisements and consider whether more modern, informative and cost-effective alternatives could be introduced.

104. The Committee also calls on the Executive to consider the introduction of other innovative methods, such as the display of suitable

billboards or notices on development sites and the further development of e-planning techniques, to increase public awareness of proposed developments both at the application and the development stage.

Pre-determination Hearings

105. The Committee considers that there may be a positive role for pre-determination hearings and agrees that a more standardised approach will be helpful to users of the planning system.

106. The Committee is concerned that the proposals for pre-determination hearings have been introduced in the Bill without research into the effectiveness of these hearings in the planning authorities that currently use them. The Committee therefore calls on the Scottish Executive to conduct research and consultation timeously on the existing models of pre-determination hearing to identify and supplement existing best practice before bringing forward more detailed proposals in secondary legislation.

Additional Grounds for Declining to Determine an Application for Planning Permission

107. The Committee commends the Executive for restricting repetitious applications but allowing for repeat applications which improve on a previous application. This should contribute to increased public confidence in the planning system.

Local Developments: Schemes of Delegation

108. The Committee is of the view that a statutory provision for formal schemes of delegation to be put in place in all planning authorities in Scotland will be effective in helping planning authorities to manage an ever-increasing number of applications.

109. The Committee recognises the concerns put forward by a number of bodies that a review being carried out by the same statutory body that took the initial decision may not comply with the requirements of Article 6 of the European Convention on Human Rights. The Committee calls on the Executive to note these concerns and to make every effort to ensure that this part of the process is seen to be as open, transparent and robust as possible.

110. The Committee notes COSLA's objection to a scheme of delegation being submitted to the Scottish Ministers for approval before it is adopted by the Council. It calls on the Executive to engage in further discussions with COSLA to determine whether its proposals in this area could be revised to allow the submission of a scheme to Ministers at a stage where the planning authority has approved its content.

111. The Committee calls on the Executive to bring forward regulations relating to the scheme of delegation subject to the affirmative procedure in line with the recommendation made by the Subordinate Legislation Committee.

Appeals

112. **The Committee considers that the proposals relating to the restriction of new material at appeals will help prevent cases where new material is introduced in order to promote the case of the appellant.**

113. **In principle, the Committee views the provisions relating to the early determination of appeals as acceptable.**

114. **A minority⁹ of the Committee is concerned at the proposal to give Scottish Ministers the power to decide the format of the appeal, given the concerns expressed by the Law Society and Scottish Environment LINK. In particular those members believe that removing the right of applicants and appellants to select the form of hearing will undermine their confidence in the system. Those members note the Law Society's suggestion that there should be a presumption in favour of the applicant's or appellant's choice of process, and considers that the Executive should reconsider this section.**

115. **The Committee notes the view of some witnesses that these provisions may be challenged on the basis that they are not compatible with the European Convention on Human Rights.**

116. **The Committee calls for all regulations relating to appeals to be introduced subject to the affirmative procedure in order to allow the Committee to give due consideration to whether the issues raised above have been addressed.**

Duration of Planning Permission and Listed Building Consent

117. **The Committee is of the view that a three year period should be sufficient to initiate a development and the reduction in the period of consent helps to provide certainty that a site will be developed within a given period.**

Planning Permission in Principle

118. **The Committee is of the view that the Bill strengthens the existing proposals for outline planning permission and should ensure that they are transparent and more robust.**

Planning Obligations

119. **The Committee commends the Executive's proposals to include planning obligations on the planning register as this should promote transparency by making the terms of the planning obligation available.**

120. **The Committee notes the concerns expressed in evidence by the Scottish Society of Directors of Planning that the introduction of unilateral planning obligations might weaken the negotiating power of planning authorities.¹⁰ It also notes their concern about the manner in which a developer can appeal under the system for modifying or**

⁹ Christine Grahame, Patrick Harvie and Euan Robson.

¹⁰ Patrick Harvie considered that provisions relating to unilateral obligations should be removed from the Bill

discharging planning obligations. It calls on the Scottish Executive to consider these concerns when preparing the relevant secondary legislation and guidance and to introduce the regulations subject to the affirmative procedure.

Good Neighbour Agreements

121. The Committee welcomes the introduction of Good Neighbour Agreements in principle and considers that they have the potential, in some cases to encourage positive and constructive liaison between communities and developers. However, the Committee is of the view that further work is required on the detailed provisions relating to Good Neighbour Agreements, particularly on their form and how they will be enforced to ensure that communities have confidence in them. The Committee therefore calls on the Executive to carry out full and comprehensive consultation before preparing any regulations under this section. It also calls for the regulations to be introduced subject to the affirmative procedure.

Enforcement

122. The Committee welcomes the introduction of the Temporary Stop Notice as a more effective means of taking immediate action against breaches of planning control. The Committee believes that this power should provide greater security to communities that planning authorities can respond to breaches of planning control and notes COSLA's support for the provision. The Committee also notes the concerns of the Law Society and the Faculty of Advocates in relation to the potential for two processes to be running simultaneously and suggests that the Executive consider these comments with a view to bringing forward improvements to the Bill's provisions at Stage 2.

123. The Committee is of the view that Enforcement Charters should promote better public understanding of the responsibilities of planning authorities in relation to enforcement, and of the policies of individual planning authorities for dealing with complaints about apparent breaches of planning control.

124. Much of the evidence to the Committee on enforcement testified to the importance of planning authorities having the resources to improve enforcement measures. The Committee recognises that the Deputy Minister is also of the view that enforcement needs to be properly resourced by local authorities. The Committee therefore calls on the Executive to promote the better resourcing of enforcement within planning authorities, and examine the potential for the use of staff other than trained planners to facilitate this.

125. The Committee recognises the problems that planning authorities face in dealing effectively with developers who consistently breach planning controls. The Committee calls on the Executive to bring forward amendments to the Bill at Stage 2 to give planning authorities the power to issue fixed penalty notices to developers who systematically breach planning controls.

Tree Preservation Orders

126. **The Committee considers that the provisions relating to Tree Preservation Orders will both simplify the process and promote the better preservation of trees in Scotland.**

Correction of Errors

127. **The Committee is content with Part 6 – Correction of Errors.**

Assessment

128. **The Committee welcomes the provisions in relation to the assessment of a planning authority's performance and decision making. It is of the view that such assessments will contribute to promoting better performance among planning authorities, as well as highlighting where issues – such as a lack of resources – were hampering the capacity of a planning authority to fulfil its obligations. It also considers that the focus on the service provided by planning authorities will help to promote a planning system that is fit for purpose and has the confidence of the public.**

129. **The Committee considers that any such assessments must take account of external factors that may affect a local authority's performance, especially when delays are caused by other partners or stakeholders in the process.**

130. **The Committee sees merit in the suggestion that reports of assessments should be made publicly available to improve the transparency of the process.**

Financial Provisions

131. **The Committee notes that the Financial Memorandum refers to additional costs falling only to those who submit applications for major developments. The Committee is of the view that the current fees for large applications often do not reflect the scale of the work involved in processing such applications and it therefore agrees that fees for major developments should increase. However, it also recognises that developers should benefit from a more efficient service to justify the increased costs.**

132. **The Committee is of the view that provisions which allow for the charging of fees for the performance by the planning authority of any part of its functions have the potential to alleviate some of the resource issues faced by planning authorities.**

133. **The Committee calls on the Scottish Executive to consider COSLA's suggestions that planning authorities could set fees within certain bandwidths and that the real costs of neighbour notification should be taken into account in the determination of individual fees.**

134. **The Committee is acutely aware of the complexities of the planning system, which will be increased in the short term due to the number of new provisions contained in the Bill. The Committee is also acutely**

aware that the Bill proposes increased community involvement at various stages in the planning process and if the public are to participate in an effective and meaningful way, they will have to possess the necessary skills and have access to advice and resources that will enable them to do so. The Committee is also aware of the valuable work carried out by Planning Aid for Scotland and welcomes the provision of more secure funding for it. The Committee has heard evidence testifying to the potential value of mediation in the planning system and welcomes the Executive's commitment to piloting a mediation project. It is also of the view that resources for communities will be vital as they take on a greater role in the planning system, notably in relation to development plans and pre-application consultation.

Business Improvement Districts

135. The Communities Committee notes the conclusion of the Local Government Committee that there is broad overall support for the proposals contained in Part 9 of the Bill, which provide for the establishment of Business Improvement Districts where they are proposed and approved by local businesses. The Communities Committee is of the view that BIDs could potentially contribute to the regeneration of town and city centres, as well as other urban areas and business districts. The majority¹¹ of the Communities Committee is therefore content with the provisions contained in Part 9 of the Bill.

Miscellaneous and General Provisions

136. The Committee is of the view that the provisions in section 49 will contribute to the regeneration and protection of designated conservation areas across Scotland.

Subordinate Legislation Committee Report

137. The Committee calls on the Executive to bring forward such amendments at Stage 2 that satisfy the concerns raised by the Subordinate Legislation Committee in its report.

Equal Opportunities

138. The Committee is concerned that there appears to be little awareness of the Royal Town Planning Institute's guidance on dealing with racist representations and would urge the Executive to identify the extent to which equality and diversity issues are included in both formal and workplace training for planners and whether there is a need for provision to be improved.

139. The Committee calls on the Executive to examine the potential for including a provision on the face of the Bill which would require local authorities to specifically address the provision of suitable Gypsy/Travellers sites when preparing development plans.

140. The Committee considers that an overarching provision in the Bill would ensure that the observance of equal opportunities is firmly

¹¹ Patrick Harvie dissented.

embedded in the planning system. The Committee therefore calls on the Executive to bring forward amendments at Stage 2 to ensure that equality issues are accorded the same degree of importance in this legislation as in the recent housing legislation.

Policy Memorandum

141. The Committee notes that certain measures are being introduced which the Executive acknowledges may not be compliant with the European Convention on Human Rights if viewed in isolation. A majority¹² of the Committee accepts the Executive's assertion that the Bill taken as a whole will be ECHR compliant and that this will cure any potential defects in individual parts of the process.

142. However, a minority¹³ of the Committee does not agree with the Executive's view that the compliance of the Bill when viewed holistically will cure these potential defects. Additionally the minority considers that this failure to comply not only with the letter but also with the spirit of ECHR principles will reinforce public distrust in the planning system and perceptions that communities will remain disadvantaged compared to planning authorities and developers. Neither do those members consider that final recourse to the Court of Session represents a viable option for the vast majority of communities or individuals due to the high costs of court action.

Finance Committee Report

143. The Communities Committee has heard concerns in evidence about the importance of sufficient resources for delivering the package of policy measures in the Bill. It is of the view that adequate financial and human resources must be available to planning authorities for the modernisation of the planning system to be effective.

144. The Communities Committee notes the points made by the Finance Committee on the Financial Memorandum. The Committee agrees that some of the figures contained in the Financial Memorandum are inadequate and that there are other costs that have not been included. The Committee looks forward to receiving the additional information that the Deputy Minister made a commitment to provide before the Stage 1 debate takes place.

Other Issues

145. The Committee welcomes the Executive's recognition that the relationship between planning and Houses in Multiple Occupation licensing requires clarification. The Committee looks forward to receiving further information on the outcome of the Executive's further discussions on this issue prior to the start of Stage 2 consideration.

¹² Karen Whitefield, Euan Robson, John Home Robertson, Cathie Craigie, Scott Barrie, Dave Petrie.

¹³ Christine Grahame and Patrick Harvie. Tricia Marwick abstained.

146. **The Committee considers it important that information on recognised and substantiated risks to human health which may potentially arise from proposed developments should be taken into account by planning authorities. It welcomes the Deputy Minister's statement that the issue of human health risks will be taken into account as part of any review of guidance on environmental impact assessments and requests that the Executive presents the draft revised guidance to the Committee or its successor for consideration.**

147. **The Committee notes the views expressed which suggest that planning guidance alone may be insufficient to encourage planning authorities to address the issue of affordable housing provision when preparing their development plans. The Committee therefore recommends that the Executive should consider whether appropriate amendments could be brought forward at Stage 2 to place a statutory requirement on planning authorities to address the issue of affordable housing properly when drawing up development plans.**

148. **The Committee also calls on the Executive to keep its planning guidance on affordable housing under review to reflect the difficulties being encountered by planning authorities in implementing affordable housing policies.**

HORIZONTAL ISSUES

The Bill as amending legislation

149. In evidence to the Committee, considerable reference was made to the complexity of the task of reading the Bill alongside the principal Act. The Committee noted that this problem was made even more challenging by the fact that the principal Act has subsequently been amended in a number of places by other legislation. The complexity of working with the Bill and the principal Act was viewed as only serving to highlight the challenge that the legislation would pose in the future, particularly to those without a legal background or a detailed knowledge of the planning system. The Sub-Committee of the Law Society of Scotland noted in written evidence that 'it is not particularly satisfactory that the Bill amends the principal Act, ... so that anyone wishing to establish the law, in particular lay persons, will require to look at both the new and the 1997 Act.'¹⁴

150. The Chief Planner indicated in a letter to the Committee that 'consolidated versions of the legislation will be produced by several legal publishers' after the Bill has been enacted. The Deputy Minister reiterated this in evidence to the Committee, but also expressed the Executive's intention to produce a consolidated version of parts of the Bill before the Stage 1 debate—

'In the longer term, as the chief planner has indicated, a consolidated version of the 1997 act will be available but, before the stage 1 debate in May, we hope to produce a consolidated version of the parts of the act

¹⁴ Written evidence submitted by the Planning Sub-Committee of the Law Society of Scotland.

that the bill amends substantially, and I hope that you will find that useful.¹⁵

151. The Committee welcomes the intention of the Executive to introduce a consolidated version of parts of the Town and Country Planning (Scotland) Act 1997 before the Stage 1 debate on the Bill. Nevertheless, it is of the view that a consolidated version of the 1997 Act, taking into account the amendments introduced both by the Bill - if passed - as well as any other associated pieces of legislation, would make a significant contribution to making planning legislation more accessible to all of those who use the system, and to the public in particular.

152. The Committee acknowledges that the Executive will have a great deal of implementation work, such as the preparation of a wide range of subordinate legislation, to carry out should the Bill be passed. However, it recommends that a consolidated planning Bill should be introduced as soon as is practicable after the Bill receives Royal Assent.

Subordinate Legislation

153. The Bill makes considerable provision for secondary legislation. This will include amendments to existing regulations and orders under planning legislation, but will also involve the laying of a number of new instruments. Similarly, guidance will be used to promote best practice in a number of areas.

154. In evidence to the Committee, many witnesses expressed a concern about the level of detail that would become apparent only with the introduction of secondary legislation. The Association of Scottish Community Councils indicated that many groups had commented to them on the lack of information on the provisions that would be in secondary legislation, arguing 'we are walking blindly into something about which we have no information.'¹⁶ A representative of Hillhead Community Council commented—

'I am extremely concerned about what might be included in secondary legislation. If provisions are not in the bill, we have no opportunity to object. Secondary legislation comes along later ... Planning advice notes and secondary legislation seem to inform the bill, but in effect they supply an opportunity for omissions, which are of serious concern. The bill will be highly imperfect unless some of the things that people are consigning to secondary legislation are considered much earlier in the process.'¹⁷

155. COSLA noted that it 'is the nature of such bills' that much of the detail will be left to secondary legislation, stating—

¹⁵ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3424.

¹⁶ Douglas Murray, Association of Scottish Community Councils, Communities Committee, Official Report, 8 March 2006, column 3221.

¹⁷ Jean Charsley, Hillhead Community Council, Communities Committee, Official Report, 8 March 2006, column 3224.

'We are content with the level of information that we have received on this part of the bill. We are concerned about certain upcoming matters but, as they always say, the devil will be in the detail. We realise that there will be a second stage to the process and that more detail will be forthcoming.'¹⁸

156. The Royal Town Planning Institute (RTPI) in Scotland believed that the 'success of the bill will depend heavily on secondary legislation'; noting that 'especially in areas of system innovation, the devil remains in the details which has yet to come.'¹⁹

157. In response to a request from the Committee, the Minister for Communities wrote a letter setting out the likely content of certain sets of regulations and development orders provided for by the Bill.²⁰ The Committee found this helpful in providing more information about what was intended in some of the secondary legislation.

158. In response to questioning from the Committee on the volume of secondary legislation provided for by the Bill, the Deputy Minister emphasised that the focus at Stage 1 should be on the general principles of the Bill—

'With any bill there is a need for secondary legislation; the bill establishes the framework for that. At this stage, we should be scrutinising the key principles of the bill. As we go through the parliamentary process, there will be a discussion about what is and is not in the bill. What people want is the reassurance that, as the secondary legislation goes through the Parliament, there will be appropriate scrutiny and consultation, and I am satisfied that that will be the case.'²¹

159. The Committee recognises that there is currently a considerable amount of secondary legislation which applies to the planning system and which will need to be amended. It also found the additional information provided by the Minister for Communities on likely secondary legislation to be useful. Nevertheless, it noted that on a number of occasions witnesses were unable to give a final view on the merits or otherwise of certain provisions introduced by the Bill, given that the detail of these provisions would be contained in secondary legislation.

160. The Committee considers that this absence of detail has meant that it has restricted its ability to scrutinise certain provisions contained in the Bill. The Committee therefore believes that much of the secondary legislation either introduced or amended by the Bill should be introduced subject to the affirmative procedure. Specific

¹⁸ Councillor Willie Dunn, COSLA, Communities Committee, Official Report,

¹⁹ Written evidence submitted by the Royal Town Planning Institute in Scotland,

²⁰ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006.

²¹ Johann Lamont, Deputy Minister for Communities, Communities Committee Official Report, 29 March 2006, column 3421.

recommendations in this regard are indicated in the relevant sections of the report below.

PRE-LEGISLATIVE SCRUTINY

161. The Communities Committee held a number of events before the introduction of the Bill on the Scottish Executives proposals to modernise the planning system. These included a one-day event in the Chamber of the Scottish Parliament on 29 October, which was attended by 118 individuals, community councils, community representatives and representatives of umbrella organisations from across Scotland. The Official Report produced a report of the event which is included at Annex C.

162. The Committee also held three half-day events for representatives from other key stakeholder groups. A meeting was held for business interests on 7 November 2005, one for planning professionals on 25 November 2005 and one for local authority planning conveners on 30 November 2005. Summaries of the issues raised in each of these meetings are available at Annex C.

163. The Communities Committee would like to thank all those who participated in these events for their commitment and valuable contributions. The pre-legislative events provided an early indication to the Committee of the key issues emerging from the proposed reform of the planning system from the perspective of the key stakeholder groups.

164. The Committee would like to thank the Scottish Society of Directors of Planning who took the Committee on a tour of development sites in West Lothian.

THE SCOTTISH EXECUTIVE CONSULTATION PROCESS

165. The Scottish Executive conducted a lengthy consultation process in preparation for the reforms to the planning system. This consultation was initiated in 1999 with the consultation paper *Land Use Planning under a Scottish Parliament*.

166. A consultation paper entitled *Review of Strategic Planning* was published in June 2001 and the findings from this were published in 2002.

167. The consultation paper, *Getting Involved in Planning*, was published in November 2001 in order to review the ways in which individuals could engage with the planning system. A White Paper, *Your Place Your Plan – A White Paper on Public Involvement in Planning* was published in March 2003 and set out the Scottish Executive's plans to improve public involvement in planning.

168. A consultation paper on *Modernising Public Local Inquiries* was published in 2003 and considered ways of changing the public local inquiry system, with the objective of making appeal inquiries more accessible and less intimidating.

169. Two further consultation papers were published in 2004: *Making Development Plans Deliver* and *Rights of Appeal in Planning*. The consultation *Rights of Appeal in Planning* was launched as a result of the Scottish Executive's Commitment in the Partnership Agreement to 'consult on new rights of appeal in planning cases where the local authority involved has an interest, where the application is contrary to the local plan, when planning officers have recommended rejection or where an Environmental Impact Assessment is needed'.

170. A consultation on *Tree Preservation Orders* proposed changes to the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975.

171. The Executive's White Paper, *Modernising the Planning System*, published in June 2005, set out the Executive's proposals to reform the planning system in Scotland.

172. The overwhelming response to the Scottish Executive's consultation from those that gave oral evidence to the Committee on the Planning etc. (Scotland) Bill was positive. In evidence, witnesses referred to how comprehensive the consultation process had been both in terms of the areas covered and the efforts of the Executive to involve all stakeholder groups. For example, Homes for Scotland stated, 'the Scottish Executive should be commended on the way in which it has engaged with stakeholders in this process, from the early consultation period up to the introduction of the bill.'²² Similarly, the Convention of Scottish Local Authorities noted that 'the consultation was very successful on this occasion.'²³

173. The only body to express any reservations was Scottish Environment LINK. In written evidence to the Committee, Scottish Environment LINK stated that 'despite our involvement in many Scottish Executive consultation exercises we were disappointed by the content, and omissions, of the Planning White Paper.'

174. The Committee notes that no consultation was carried out on the provisions at section 23 of the Bill to introduce Good Neighbour Agreements, which are discussed at paragraph 589 below. Whilst the introduction of these specific provisions were broadly welcomed in evidence, the Committee considers that it would have been good practice for the Executive consultation process to have sought views on this issue and for the proposals to have been included in the White Paper.

175. The Committee acknowledges the efforts of the Scottish Executive in carrying out such a detailed and thorough consultation process, although it is of the view that consultation on Good Neighbour Agreements would have helped to develop the proposals contained in

²² Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, column 3142.

²³ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3281.

the Bill. It was clear to the Committee from the evidence heard that almost all of the key stakeholders felt content with the way that the various elements of the consultation process had been carried out and the opportunities that they had to participate in it. Moreover, the Committee is also of the view that the efforts of the Executive have contributed to a widespread commitment among the majority of stakeholders to the modernisation of the planning system.

DELIVERING A MODERNISED PLANNING SYSTEM

Delivering a Modernised Planning System

176. The White Paper *Modernising the Planning System* explains the central role that the planning system has to play in promoting sustainable economic growth in Scotland and the importance of planning to society in general—

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

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

‘The way in which planning balances the various interests of development, the environment and social justice will determine how Scotland will look in the future. It is a key tool in creating the dynamic, forward-looking, confident and sustainable Scotland to which we all aspire.’²⁴

177. The provisions in the Planning etc. (Scotland) Bill take forward the proposals to modernise the planning system outlined in the White Paper. The Committee, therefore, sought the views of key stakeholders on whether the Bill and the associated secondary legislation and guidance would help to achieve these objectives. The first part of this report considers whether the Bill will contribute to delivering a modernised planning system that can promote sustainable economic development in Scotland.

178. In its pre-legislative meeting, the Committee heard reference to the frustrations that many in the development industry and business had experienced through their involvement with the planning system, and how these could act as a hindrance to economic development and growth.

²⁴ Scottish Executive White Paper *Modernising the Planning System*, Scottish Executive 2005, p.12.

179. There was a broad consensus in evidence that the proposed reforms to the planning system would improve the efficacy of the planning system, and that combined with a culture change among stakeholders and the allocation of more resources to planning authorities, a modernised planning system could provide the conditions for promoting development and sustainable economic growth in Scotland.

180. The Scottish Council for Development and Industry emphasised the central role that the planning system played in terms of economic development—

‘The planning system is vital to the successful development of Scotland’s economy and as the Scottish Executive’s top priority is promoting sustainable economic growth this must be the foremost purpose of the planning system ... Without modernisation of the system, our economy, and the businesses which operate within it, will be at a disadvantage from much of the competition. There has been an urgent need for the Scottish Executive to make the planning system a much greater political priority and the Bill does address many of the major issues.’²⁵

181. Similarly, COSLA highlighted the potential of the planning system to contribute to economic development—

‘Our nation’s planning system could be used to ensure that we get ahead in the game ... However, the burden for such development lies not just on local authorities, albeit that they co-ordinate matters. All the other partners also need to get their heads in the game so that we can drive Scotland’s economy forward. Otherwise, we will end up sitting in meetings in which we discuss a particular word in a development plan or a planning application while business develops elsewhere in the United Kingdom and Europe.’²⁶

182. In evidence to the Committee, CBI Scotland referred to a policy paper that it had produced three years ago, which estimated ‘that the difficulties and challenges that were facing the planning system were costing the Scottish economy £600 million a year.’²⁷ These losses resulted from a variety of costs, including ‘deferred infrastructure investment, higher housing costs, the impact on salaries of development difficulties and lower turnover as a result of delays in commercial investment.’²⁸ CBI Scotland also referred to a recent OECD Report which identified a need for the UK ‘to give greater weight to economic considerations in planning decisions’ in order to close the gap in productivity levels between the UK and other OECD countries.²⁹

²⁵ Written evidence submitted by the Scottish Council for Development and Industry.

²⁶ Councillor Willie Dunn, Communities Committee, Official Report, 22 March 2006, column 3300.

²⁷ David Lonsdale, CBI Scotland, Communities Committee, Official Report, 22 February 2006, column 3083

²⁸ *ibid.*

²⁹ Organisation for Economic Co-operation and Development, *Economic Policy Reform: Going for Growth*, OECD 2006, p.51.

183. This view was shared by other key business groups in Scotland. The Scottish Council for Development and Industry cited a survey of its membership, which indicated that 'the planning system has not been working to help sustainable economic development in Scotland and that it has particularly hindered economic growth.'³⁰ While it was recognised that 'the bill's proposals will improve the system and solve many of the problems that exist', it was also emphasised that 'simply altering the legislation will not bring about the changes in the system that many businesses want to see.'³¹ Other factors, particularly the need for a change in the culture of planning departments and the greater resourcing of planning authorities were also identified.

184. GVA Grimley LLP commented on the opportunity to try and promote a more positive attitude to development, stressing that—

'...closer examination could be made of the good effect that development can have on the economy, on growing the population and on achieving a smart, successful Scotland I do not say simply that all development should be allowed, but that we should consider more carefully a presumption that good development is good for the economy, the population and the country's social development.'³²

185. Homes for Scotland argued that the challenge for promoting development would lie in the way that the planning system was used, and a move away from development control to development management—

'If I had to summarise the current system, I would characterise it as being a system that is obsessed with regulating and controlling development. In contrast, the bill suggests that we need to adopt a system that encourages and facilitates development and which exploits development opportunities and ensures that their impacts are properly mitigated, so that communities gain wider benefits. The challenge for the planning system is in moving from a regime of regulation and control to one of targeting and facilitating investment. That is a challenge for the way in which the legislation is used rather than for the legislation itself.'³³

186. The Committee recognises the importance of an effective and modernised planning system for promoting sustainable economic development in Scotland. On the basis of the evidence heard, and the written evidence received, the Committee considers that the provisions proposed in the Bill have the potential to assist economic growth and development. However, it is of the view that the success of the Executive's proposals to modernise the planning system will rest on a

³⁰ Iain Duff, Scottish Council for Development and Industry, Communities Committee, Official Report, 22 February 2006, column 3082.

³¹ Susan Love, Federation of Small Businesses in Scotland, Communities Committee, Official Report, 22 February 2006, column 3083.

³² Richard Slipper, GVA Grimley LLP, Communities Committee, Official Report, 1 March 2006, column 3143.

³³ Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, columns 3142-3.

number of factors, including the resources and capacity of planning authorities to deliver a more efficient service, the development of more widespread and meaningful public participation in the planning system and a change in culture among the key stakeholders. These issues are each discussed in more detail later in this report.

Culture Change

187. A widespread need for a culture change among the key stakeholders in the planning system – including planning authorities, councillors, planning professionals, the Scottish Executive, developers and communities - was identified in the evidence heard and received by the Committee. Professor Greg Lloyd emphasised how widespread the need for culture change was in his evidence to the Committee: ‘effecting such a change is a challenge to everyone from members of the public in neighbourhoods and communities, to elected members, political activists, planning officers, local authorities and developers.’³⁴

188. The Scottish Society of Directors of Planning emphasised that the culture change needed to come from all stakeholders and that it was crucial for all concerned to reflect on their role within the planning system—

‘The society feels that such change is crucial to the success of the bill and to effective community engagement. It is interesting that when we first heard of and started debating the concept of culture change, all the planners thought that it was an issue for the developers and communities, whereas all the communities thought that it was an issue for the developers and the planners, and so on. In fact, all participants in the planning process need to stop and consider how they engage with other parties.’³⁵

189. COSLA did, however, emphasise that there had to be a culture change also within the Scottish Executive, commenting ‘we find that the slowness in the system often comes from the Scottish Executive inquiry reporters unit.’³⁶ Examples were also given of how other Executive departments could delay the process.

190. Professor Greg Lloyd acknowledged the challenge of delivering the required culture change, and the time that it would take—

‘It is an aspect of the modernisation agenda that we cannot bring in a new, modern planning system and use old institutions and mindsets to deliver it. We need a major change, so I suspect that there will be a transitional period as people adjust and take on new jobs. I suspect that the resource costs will be substantial, given that there is a shortage of

³⁴ Professor Greg Lloyd, University of Dundee, Communities Committee, Official Report, 18 January 2006, column 2841.

³⁵ Richard Hartland, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2888.

³⁶ Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3281.

professional planners in the public sector and that people must change. It is not an easy task.³⁷

191. Greenspace Scotland emphasised that there were different levels of culture change required among different stakeholders and that there might, therefore, be a number of stages to it—

‘It will be quicker to change the culture within the planning system than it will be to change the culture of distrust in the communities. It could well be the case that, in two or three years, the planning system will operate better, but it will take five or six years’ worth of seeing whether provisions that are in the bill come to fruition and whether it changes things before people start to believe that their input is real.’³⁸

192. It was apparent that culture change could not be achieved in a short period of time. Scottish Building commented that ‘stability is needed in order to implement cultural change’, and that ‘it will probably take a long while for the new system to bed in and to become second nature to people.’³⁹

193. While the need for a culture change was widely recognised, some questioned whether that could be brought about through legislation. The Scottish Society of Directors of Planning questioned whether the Bill could facilitate or enable a culture change, indicating that it had ‘reservations about whether it is possible to legislate for such a change, although it would be possible to encourage it.’⁴⁰

194. The Committee questioned key stakeholders on whether they were open to contributing to the culture change. Miller Developments testified to the role that developers had to play in effecting a culture change, and indicated that it was already beginning to taking place in the development industry—

‘It is important that developers be seen to be part of the process; there is an obligation on us to make our half of the system work. I have no doubt that a number of developers have in the past effectively played the system, so it is incumbent on us to help to make the proposals in the bill work. I have seen culture change happening already. Developers are now paying much more regard to the development plan-led system and to the concept of sustainability. I like to think that, going forward, we will be able to work in partnership with local authorities and the Scottish Executive to make the planning system much more transparent, efficient and successful in delivering good development.’⁴¹

³⁷ Professor Greg Lloyd, University of Dundee, Communities Committee, Official Report, 18 January 2006, column 2857.

³⁸ Deryck Irving, Greenspace Scotland, Communities Committee, Official Report, 8 March 2006, column 3238.

³⁹ Michael Levack, Scottish Building, Communities Committee, Official Report, 1 March 2006, column 3142.

⁴⁰ Steve Rodgers, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2890.

⁴¹ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, columns 3143-4.

195. COSLA also articulated the view that planning authorities were already contributing to a culture change—

‘Certainly, there is a change in local government culture; it has been going on now for a number of years. We welcome many of the provisions in the bill and embrace the need for the culture change that will drive forward our planning system. We will have to work in partnership with the private sector, including developers, to ensure that that change is a whole culture change and not one that happens only in local government.’⁴²

196. In evidence to the Committee, the Deputy Minister emphasised that the Bill would play a crucial part, but that all stakeholders had to address their attitudes and their approach to the planning system in order for the culture change to become a reality—

‘The bill is necessary for change to take place but is not all that is required to change the culture. It would be naive to think that we could change attitudes by legislation alone, although it is part of the process. I do not pretend that this is easy . . . People have entrenched views about planning, based on their experiences. Some of those entrenched views were expressed during the consultation on the bill. We must move beyond that.

‘We must work to restore many fractured relationships and to tackle difficult attitudes. For example, at a local level, local authorities must recognise the importance of transparency and involving local communities. Equally, communities must seek to engage and developers must play their role. The Scottish Executive also has a crucial role to play in how it does its business and relates to other parts of the planning system. The legislation is important, but other factors go with it. Some culture change will come about because people decide that they must take the legislation on trust and move forward.’⁴³

197. The Committee is highly aware of the need for a culture change and for a fresh approach to be taken by all participants in the planning system. It has been encouraged by the commitment made in evidence by key stakeholders to work towards effecting such a culture change and is of the view that this positive attitude should be harnessed to drive the process forward. The Committee also commends the Executive in this context for its engagement with the many stakeholders, not only during the consultation process, but also following the publication of the White Paper.

198. The Committee believes that for the package of reforms to work, there needs to be a real commitment from all stakeholders to examine their respective roles in the planning system and contribute towards a

⁴² Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3281.

⁴³ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3418.

culture change. It considers that there must be a greater emphasis on transparency and constructive dialogue at all stages in the process which, if successful, may serve to break down the feelings of distrust that currently exist between certain stakeholders. The public must have confidence that they can participate fully in the process that shapes their communities and are listened to; developers must have confidence that well-prepared, good quality applications will be considered quickly and efficiently; and planning authorities must demonstrate that their decisions are in the best interests of the area they serve. In this context the Committee considers that the Executive should prepare for its new role in the planning system and consider how to best commit and manage its resources to fulfil that role.

Resources

199. The issue of resources, both existing and future, was the subject of considerable discussion in evidence to the Committee. It was widely recognised that planning authorities were under resourced. Witnesses testified to the fact that the quantity of planning applications had been rising, quite dramatically in some of the city regions, and the complexity of applications has been increasing (especially where Environmental Impact Assessments needed to be carried out); that planning authorities' resources were stretched and the income generated through fees did not always reflect the real cost of processing an application; and that recruiting and retaining qualified planners was a major problem for many planning authorities, with planners choosing to find employment outside the profession. COSLA stated in written evidence that 'one of the most pressing issues is the current lack of resources available to many authorities to fund the recruitment and retention of professional planners to deliver the current planning system.'⁴⁴

200. Professor Greg Lloyd of The University of Dundee and Professor Alan Prior of Heriot-Watt University explained some of the issues around recruitment and retention in oral evidence to the Committee. It was pointed out that many graduates were going into other careers, partly due to the 'poor reputation of planning recently' but also because of 'the generic, core and specialist skills that make them attractive in the eyes of other professions.'⁴⁵ Professor Lloyd also commented that 'there is a need for greater dialogue between the planning school and the Executive on the future of planning education and the support that planning schools can give to the modernisations of planning',⁴⁶ while Professor Prior warned of the risk of a drift of graduates to England due to the availability of postgraduate planning scholarships there.

201. The reforms of the planning system, particularly those aimed at refocusing the system on the strategic level, were perceived as having a

⁴⁴ Written evidence submitted by COSLA.

⁴⁵ Professor Greg Lloyd, University of Dundee, Communities Committee, Official Report, 18 January 2006, column 2875.

⁴⁶ Professor Greg Lloyd, University of Dundee, Communities Committee, Official Report, 18 January 2006, column 2876.

potentially positive impact on attracting people into the profession in future. Professor Prior commented—

‘...one of the things that must be done—and the modernisation white paper is contributing towards it—is to say that planning is about spatial planning, vision and forward thinking, and that it is not principally about deciding whether a conservatory should get planning permission. Changing the minor end and taking that out of the system, changing who handles enforcement and concentrating scarce planning resources on big spatial development management issues is one way of getting back to why planning was introduced in the first place—to sort out and manage our land development pressures over long periods of time. That will help, but I think that students, including my students, will go into planning and take their planning skills into the private sector if they see that as more exciting, dynamic and rewarding. Rightly or wrongly, they tend to associate local government with bureaucracy, negativity, low morale and few career prospects, so we also need to address some of those issues.’⁴⁷

202. The RTPI in Scotland noted that a change was visible in terms of the ‘number of planners and the commitment of the profession is increasing in quantitative terms.’⁴⁸ However, it indicated doubts that change would come in sufficient time to ensure the full implementation of the proposals in the Bill—

‘There is a worrying scenario that is similar to that involving the transitional period for culture change and introducing the new system.... We are worried about the five-year period that it will perhaps take to resource up completely. We know that there is a significant shortfall in resources and perhaps we will have to consider significant measures.’⁴⁹

203. The Deputy Minister for Communities acknowledged that there was an issue around the retention of trained planners. However, she emphasised that ‘the changes that the legislation will make to the planning system will change the nature of their job and ... work on the planning development budget has taken into account professional education and training to allow planning staff to be more effective at their job and, indeed, to make the job better.’⁵⁰ She also indicated that ‘discussions are taking place with the Scottish planning schools, local authorities, employers and the Royal Town Planning Institute as the planning professional body on what needs to be done to attract more young people into the profession.’⁵¹

204. The debate around financial resources for planning authorities was focused on the balance between savings made by the simplification and

⁴⁷ Professor Alan Prior, Heriot-Watt University, Communities Committee, Official Report, 18 January 2006, column 2877.

⁴⁸ Graham U'ren, RTPI in Scotland, Communities Committee, Official Report, 25 January 2006, column 2947

⁴⁹ *ibid.*

⁵⁰ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3433.

⁵¹ *ibid.*

streamlining of some parts of the planning system and the greater resources that would be required in other areas. The Scottish Society of Directors of Planning stated—

‘The debate on resources has raised the issue of the new burdens for which local authorities will inevitably find themselves responsible. The question is: will local authorities be adequately resourced so that we can properly meet everybody’s expectations of the new system, or will the whole thing grind to a halt because of inadequate resources in the system?’⁵²

205. The Finance Committee’s report and the Financial Memorandum are also discussed below at paragraphs 690-703.

206. As COSLA pointed out, the question of the costs for planning authorities would ‘be difficult to answer until we see the secondary legislation and find out exactly how much will be required to make everything fit, ’but that it was unlikely that the proposals would be cost-neutral to local authorities.’⁵³

207. The Chief Planner commented that there would be significant resource savings from changes to the development plan system and the changes resulting from the review of permitted development. The Deputy Minister for Communities emphasised that efficiencies could also be identified, and that the Strategic Environmental Assessments were already part of the requirement for plans—

‘Planning authorities already have some responsibilities that will remain challenges regardless of whether the bill is passed. You mentioned strategic environmental assessment, but that is a requirement that applies to existing development plans, so such work should already be being done. That is not to gainsay the importance of meeting the financial challenges that the bill sets us, on which we are working with COSLA, as I have said. I do not accept that the bill brings only costs. Efficiencies can also be identified. We certainly have no intention of closing down the dialogue with COSLA and others on that.’⁵⁴

208. The Deputy Minister made a commitment to provide more information to the Committee before the Stage 1 debate on the resource requirements of planning authorities in the future—

‘...we would be happy to supplement the information that the financial memorandum provides with the assessment of planning authorities’ current and future requirements that the planning finance working party is conducting. We expect to be in a position to make the revised

⁵² Steve Rodgers, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2913.

⁵³ Richard Hartland, COSLA, Communities Committee, Official Report, 22 March 2006, column 3284.

⁵⁴ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3436.

estimates available before the stage 1 debate, in line with the requests that the Finance Committee made.⁵⁵

209. The Committee is of the view that the problems faced by planning authorities in recruiting and retaining professional planners in the public sector needs to be addressed as a priority if the proposed improvements to the system are to be delivered. It considers that this issue should be addressed not only by the provision of professional education and training for existing planners, but also by taking action to retain qualified staff and attract more planners in the short, medium and long-term. It was clear to the Committee that planning authorities are working with fewer staff than required and that additional trained planners will be needed for the reforms to be put into effect. The Committee calls on the Executive to seek to expand the number of graduates and post-graduates at the Scottish planning schools, and further consider how salary levels and career structures of planners who commit to work in the public sector could be improved.

210. The Committee also supports the view expressed in evidence that planning authorities could free up more planners to carry out strategic planning work by identifying tasks within the system which could appropriately be delegated to staff who are not qualified planners. The Committee is also of the view that resource savings could be delivered by a more widespread introduction of the e-planning systems referred to by some witnesses.

211. The financial resource issue is a complex one, especially as the Committee is aware that the planning finance working party is continuing to work on estimating the costs and that complete clarity will only be possible once the secondary legislation has been agreed. The Committee welcomes the Minister's commitment to provide a revised estimate of the resource implications from the Executive before the Stage 1 debate. However, it is concerned that this information was not available at an earlier stage to allow a final position to be taken by the Committee in this report on an issue which it considers to be of fundamental importance to the successful delivery of the measures proposed in the Bill.

Delivering a Modernised Planning System

212. Questions arose in evidence to the Committee concerning the period of time that would be required for the proposals in the Bill to be implemented. COSLA commented that while recognising the need for a transition period, they would welcome the changes as quickly as possible. The Planning Sub-Committee of the Law Society of Scotland expressed a concern about a possible hiatus until the second National Planning Framework had been approved—

⁵⁵ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3435.

‘...until the NPF is available, many authorities will have severe doubts about what constitutes their meaningful agenda. The development of plans is expensive, engaging with the strategic environmental assessment process is expensive and both require meaningful consultation. It would be reasonable—the law aside—for the directing officers of a local authority to decide to delay work on the plan-making process until they knew what they could meaningfully address.’⁵⁶

213. The Chief Planner confirmed that the Scottish Executive would ‘have an active programme for delivering planning reform across the board’⁵⁷ and the Deputy Minister provided some information on the indicative timescales involved—

‘...after the bill receives royal assent, we expect the process of drafting and consulting on regulations and guidance to take about two years. Thereafter, it will take several years for all planning authorities to produce the new development plans. Culture change will not happen overnight. We will have to keep a close eye on the legislation and test it to see whether it is effective.’⁵⁸

214. The Committee acknowledges that it will take some time for the provisions to be fully implemented and take effect. However, the Executive will have a key role in driving the process forward and providing momentum to the process of change. The Committee considers that it would be helpful if, as part of this process, the Executive could produce an indicative timetable setting out the key stages of implementation of the Bill, if passed, including the programme for consultation on and introduction of secondary legislation and the production of related guidance. The Committee calls on the Executive to provide this information before the Parliamentary consideration of the Bill is complete.

Public Participation

215. One of the four key objectives of the Executive’s proposals to modernise the planning system is to make it more inclusive. Later parts of this report consider the individual measures that the Executive has introduced in order to make the planning system fairer and more transparent. These measures include introducing new statutory requirements for pre-application consultations in certain cases; new procedures to ensure wide public participation in the formulation of development plans and procedures to test how local people have been consulted; transferring responsibility for neighbour notification from developers to planning authorities; and the introduction of pre-determination hearings for some applications. This has frequently been referred to as ‘front loading’ the system by providing individuals and communities with the opportunity of providing input earlier on

⁵⁶ Frances McChlery, Planning Sub-Committee, Law Society of Scotland, Communities Committee, Official Report, 1 February 2006, column 2961.

⁵⁷ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 29 March 2006, column 3430.

⁵⁸ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3429.

in the planning process. Although each individual proposal is the subject of comment later in the report, the Committee explored with witnesses the question of whether the package of opportunities to make the planning system more open would be sufficient to allay the concerns that many had about it being socially unjust.

216. It was pointed out to the Committee that, ideally, the planning land-use system should be about people engaging in a shared future vision of their community, as well as the country as a whole. However, the current system tended to be characterised by public alienation as people became engaged too late in the system to influence it. Professor Greg Lloyd commented—

Generally, people tend to be constrained in their relationship with the planning system; they tend to engage with it when it affects them or when circumstances change, so this is a negative aspect of the planning system. Part of the challenge for us is to assert the importance of the land use planning system to every community in Scotland and to open up that planning to political scrutiny at the national planning framework level. We must be able to demonstrate across the board the importance of the new development plans, the openness of the process and the opportunities for engagement by individuals. We must get communities looking forward rather than backward in reaction to proposals.⁵⁹

217. A similar point was made by Planning Aid for Scotland, which also highlighted the scale of the task of engaging people more broadly on planning issues—

‘...fundamentally, we must move away from the local and individual perspective of planning that stirs people. People say, "I'm only stirred if something happens right next door to me" and that is fine, but we need to see the wider picture—the public gain. Planning is about looking at the wider world and how Scotland overall will function. That is vital, and I think that you have a tremendous job on your hands.’⁶⁰

218. It was widely acknowledged by witnesses that the changes proposed by the Bill would provide greater opportunities for public involvement, but that considerable effort would be needed to promote public engagement. Greenspace Scotland indicated that it was ‘not sure that the bill will ensure greater public involvement but it will certainly facilitate such involvement, which is desirable.’ It further commented on the importance of using appropriate methods to engage people—

‘...the current system assumes in many ways that the only role for local residents is as objectors to a development that has been proposed. Early involvement will at least give people a chance to contribute more creatively. That is a hugely positive step. However, the bill will ensure greater involvement only if planning authorities use approaches that are

⁵⁹ Professor Greg Lloyd, University of Dundee, Communities Committee, Official Report, 18 January 2006, column 2858.

⁶⁰ Petra Biberbach, Planning Aid for Scotland, Communities Committee, Official Report, 8 March 2006, column 3329.

suitable to the relevant communities and interests. That raises a major capacity issue about not just how communities deal with planners and the planning system, but how planners deal with communities. The solution might be to upskill people within the planning system or to create greater contacts with people outwith the planning system who have the skills to assist in the planning process.’⁶¹

219. The challenge posed by the complexity of planning applications and processes was also pointed out in evidence. A representative of Hillhead Community Council highlighted the particular challenges posed by development plans—

‘First, the people concerned need to read the proposed development plan. However, people have considerable difficulties in doing that, so that is the stage at which they most need help. The second stage involves discussion with the local authorities. Before the local authority prints a final development plan or proposal, it needs to discuss with people how things might be improved from the perspective of the community. Glasgow was very good on that in relation to those communities that had been able to read the plan, but it was not so good in relation to those that had not.’⁶²

220. The Scottish Community Development Centre (SCDC) made reference in written evidence to the successful involvement of communities in Community Planning and the National Standards for Community Engagement that had been developed to achieve purposeful, effective, efficient and equitable engagement. The SCDC recommended—

‘...that in taking forward the provisions of the Planning Bill, consideration is given to the way in which planning officers, developers, communities and other stakeholders can best be encouraged and supported to work effectively with each other. Communities will not become involved unless they can see a genuine purpose to their involvement, and the prospect of concrete benefits in return for their investment of time and energy.’⁶³

221. One particular suggestion made when the Committee took evidence on public involvement in the planning system was that the term ‘participation’ should be used in the Bill in order to denote a more active process than the more passive ‘consultation’.⁶⁴ The Committee makes a recommendation in this respect at paragraph 367.

222. In evidence to the Committee, COSLA provided examples of how community consultation had been carried out successfully by some planning authorities with the use of workshops and presentations. Examples were also

⁶¹ Deryck Irving, Greenspace Scotland, Communities Committee, Official Report, 8 March 2006, columns 3231-2.

⁶² Jean Charsely, Hillhead Community Council, Communities Committee, Official Report, 8 March 2006, column 3231.

⁶³ Written evidence submitted by the Scottish Community Development Centre.

⁶⁴ Stuart Hashagan, Scottish Community Development Centre, Communities Committee, Official Report, 8 March 2006, column 3236.

given of planning authorities which sought to build up an ongoing relationship with community councils and the public on planning issues. COSLA also emphasised the value of making the planning authority decision-making process as transparent and accessible as possible for the public and community groups. It was emphasised by COSLA that 'local development plans could be incredibly important for the future of every area, but the way to achieve that is to ensure that there is buy-in from communities.'⁶⁵

223. In evidence to the Committee, the Deputy Minister for Communities emphasised the importance of the proposals to allow for early engagement with the public—

'There is a question of equity and equal access to the planning system, which is a different challenge for us. Environmental justice is a critical issue. Skills, expertise and confidence give communities the capacity to engage with a system that is difficult, obscure and hard to get a handle on. The proposals in the bill try to draw much clearer lines, to create more transparency and to facilitate early engagement by providing more information on development plans and so on at an earlier stage, so that people can know what the key proposals are.'⁶⁶

224. The Committee considers that the proposals to front load the consultation process, as presented in the White Paper and the Bill, are positive. A majority⁶⁷ of the Committee is of the view that they represent a genuine attempt by the Executive to encourage engagement by the public and ensure that they have a greater involvement in how their communities are affected by development. However, the Committee considers that it will be a significant challenge to overcome the often deep-rooted distrust that many members of the public and community organisations have of the current system. It is considered imperative, therefore, that every effort is made to ensure that the role that communities play in the system is seen to be valuable and constructive; and that early, positive engagement can bring benefits.

225. The Committee welcomes the fact that there is a working group looking at the preparation of a PAN on public engagement. The Committee hopes that this exercise will bring forward innovative suggestions as to how to increase awareness amongst those who have limited or no knowledge of the planning system and encourage and support engagement by as wide and representative a group as possible. It believes that there would be value in building on existing national standards and further examining the potential role of mediation in the planning system.

226. The Committee considers that the PAN should specifically provide guidance on engaging effectively with equalities groups. Information

⁶⁵ Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3294.

⁶⁶ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3439.

⁶⁷ Christine Grahame, Patrick Harvie and Tricia Marwick dissented.

should also be made available in a range of alternative languages and formats such as Braille, audio tape etc.

227. The Committee would welcome the opportunity to consider the contents of the draft PAN before its publication.

228. The Committee considers that there is a requirement for basic information about the planning system to be made readily available, highlighting the various opportunities for participation and how to go about it; more detailed information on engaging at specific stages such as during the development plan process, pre-application consultations and neighbourhood agreements.

229. Information should be provided in an easily understood, jargon-free format. For example, information produced for a local plan consultation should include questions tailored specifically to encourage public participation.

230. It is also considered important that the public should have confidence that not only are they consulted and play a part in the process but also that their views are taken seriously. It is suggested, for example, that comments and objections submitted on development plan proposals and even on individual applications, where practicable, should be responded to by planning authorities with an explanation as to why they have either been accepted or rejected.

Third Party Right of Appeal

231. The arguments in favour of the introduction of a third party right of appeal against a decision to approve a development proposal were the subject of considerable discussion during the consultation process that led to the introduction of the Bill. The Committee notes that many individual respondents to the Executive's consultation paper *Getting Involved in Planning* were in favour of a third party right of appeal.

232. During the course of taking evidence on the Bill, the Committee received a petition referred to it by the Petitions Committee. The petition came from the Association of Scottish Community Councils and Scottish Environment Link. The petition called on the Scottish Parliament 'to seek to secure real rights for all in the planning system by ensuring that, rather than introducing more opportunities to express opinions, the Planning etc. (Scotland) Bill establishes real and effective rights for people to have their views on planning decisions and conditions taken into account through the introduction of a limited third-party right of appeal in the planning system.' It also called on the Parliament to ensure that all strategic planning decisions that are taken by Government at the national level, including on the National Planning Framework, are open to challenge and public inquiry.

233. The issue of a limited third party right of appeal was raised in discussion with witnesses at a number of the meetings where the Committee was considering the Bill, most notably in the Round Table on Public Involvement and the meeting at which Scottish Environment LINK gave evidence. The

issue of a third party right of appeal was also raised at the pre-legislative meeting held by the Committee for representatives of community groups and members of the public, with many indicating their support for such a right of appeal.⁶⁸

234. In the evidence heard and received by the Committee, a range of arguments were made for a form of a third party appeal. The main case for a limited third party right of appeal was made by Scottish Environment LINK in oral evidence to the Committee. Scottish Environment LINK did not contend 'that a front-loaded system is a bad idea' but argued that 'to make the front loading work, we need something at the end of the process to ensure that the engagement is meaningful.'⁶⁹ Scottish Environment LINK expressed the view that 'developers will have to work harder in engaging with communities through the process.'⁷⁰ A limited third-party right of appeal – in its view – would help to deliver social justice.

235. Scottish Environment LINK explained the form of appeal that it sought—

'We are asking for a limited right of appeal and only in specific circumstances. It will not be a free-for-all. We want to target the most controversial cases, so there will be some overlap with cases that should be called in by ministers.

'We are not asking for a massive change. However, when things go wrong, communities must have a right of appeal. They should be able to have a decision reviewed by a third party in the form of a reporter. Even if they do not get the result that they want, they will at least have seen the issues being explored and will have understood the arguments.'⁷¹

236. The call for a limited third party right of appeal was also made in some of the written evidence received by the Committee. In particular, the Committee received 81 written submissions in support of a limited third party right of appeal that had been inspired by an internet campaign initiated by some members of Scottish Environment LINK.

237. In evidence to the Committee, many of the other key stakeholders in the planning system – including business and development interests, the majority of planning authorities, planning professionals and legal bodies – either showed no positive support for or rejected calls for a third party right of appeal. Various arguments were advanced against such a right of appeal, such as the rights of the landowner to develop land, the effect that such a right might have on economic development and the possibility that such a right would slow down the planning system. The point was also made that there

⁶⁸ Report of the Communities Committee Event – Modernising the Planning System: The Community Perspective, 29 October 2005, annex c.

⁶⁹ Anne McCall, Scottish Environment LINK, Communities Committee, Official Report, 8 February 2006, column 3069.

⁷⁰ Stuart Hay, Scottish Environment LINK, Communities Committee, Official Report, 8 February 2006, column 3069.

⁷¹ Stuart Hay, Scottish Environment LINK, Communities Committee, Official Report, 8 February 2006, column 3067.

was a potential for a third party right of appeal to be used by developers for competitive advantage.

238. The Deputy Minister explained the reasons why the Scottish Executive had rejected calls for some form of third party right of appeal—

‘We recognise that some people who have come to the end point of the planning system feel that they want a third-party right of appeal that can address some of their concerns. The thrust of our argument concerns the impact of a development plan-led system, because we want a planning system that results in better-quality and up-to-date development plans and applications and which fully engages local people and environmental interests at the outset and throughout the process. We are seeking to restore fairness and balance to the system and to drive out the frustrations and dissatisfaction that people feel, thereby reducing the need for appeals to be submitted at the end of the decision-making process.

‘We have taken the view that a third-party right of appeal would not address the key difficulties that people experience and would not be the solution. As I have said, the solution is in the package of early engagement, early involvement and the serious responsibility on developers and others to work with communities earlier.’⁷²

239. The Committee recognises the strength of feeling amongst certain groups and organisations representing the public that the current planning system has appeared unfairly balanced in favour of applicants and lacking in opportunity for effective community participation. It acknowledges that a limited third party right of appeal is viewed by many of those groups and organisations as a potential method of redressing the balance. A minority of the Committee⁷³ supports the call for a third party right of appeal.

240. A majority of the Committee⁷⁴ agrees with the view expressed by the Deputy Minister that the package of measures proposed in the Bill will more effectively address the frustrations felt by many of those who have considered the operation of the current planning system to be inequitable.

Planning Gain Supplement

241. In evidence to the Committee, a number of witnesses - including developers and COSLA - raised the issue of the Treasury’s consultation on a planning gain supplement in terms of its implications for planning agreements and development in Scotland.

⁷² Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3447.

⁷³ Christine Grahame, Patrick Harvie, Tricia Marwick.

⁷⁴ Scott Barrie, Cathie Craigie, John Home Robertson, Dave Petrie, Euan Robson, Karen Whitefield.

242. Miller Developments summed up the concerns of developers in relation to the planning gain supplement proposal—

‘One of the details that concerns us is that a national tax would be imposed. The consultation paper talks about a compensatory amendment to section 106 agreements, which is fine for England, but is not particularly helpful for Scotland. We do not want to have a regime whereby a tax is imposed by Westminster, but the Scottish Parliament or various local authorities take a different view of how the section 75 contributions should be scaled back in Scotland. Our purely rational fear is that the money that is collected nationally might not be returned in full—or in significant part—to Scotland. We in Scotland would not want to be hit by a double whammy through the imposition of a PGS and a lesser reduction in section 75 requirements. That is one of the fundamental issues that we have with the PGS as it is currently proposed.’⁷⁵

243. COSLA expressed serious reservations about the planning gain supplement, stating that, ‘the proposed system would kill the whole process of what we have been trying to achieve.’⁷⁶ For COSLA, the main issue was the way that funds received under the planning gain supplement would be redistributed in Scotland. COSLA emphasised that the local connection was crucial and that ‘although the proposal is that the money might come back to the region, there is no definition of what the region is.’⁷⁷ This issue was explained in more detail—

‘As far as I can ascertain, under the proposed system the developer would pay a tax to the Treasury. We would be faced with a planning application that may require X amount to be spent on schools. To get that money, we would have to make a bid to the central fund. We would not know whether we would get the money, so we could not pass the application. That would slow down the whole planning process and go against what we are trying to do. Moreover, what would happen if we did not get the money from the Treasury? How would we fund those projects? Would we be left with 4,000 houses and no money to build any infrastructure for them?’⁷⁸

244. In response to questioning by the Committee, the Deputy Minister stated that—

‘Officials have had a lot of contact and I understand that the Cabinet is developing its own approach to planning gain. For the purpose of the bill, we needed to be clear about the impact of the planning gain supplement

⁷⁵ Colin Graham, Miller Developments, Communities Committee Official Report, 1 March 2006, column 3174-5.

⁷⁶ Councillor Willie Dunn, Communities Committee, Official Report, 22 March 2006, column 3333.

⁷⁷ Councillor McDonald, Communities Committee, Official Report, 22 March 2006, column 3335

⁷⁸ Councillor Willie Dunn, Communities Committee, Official Report, 22 March 2006, column 3334.

proposals and the interface between the proposals, the consultation and the bill. As I said, we do not believe that the proposals jeopardise the bill in any way. We still recognise the importance of the potential for section 75 agreements locally.⁷⁹

245. The Scottish Executive also clarified a technical point that had emerged from discussion with officials from the Treasury and the Office of the Deputy Prime Minister—

‘In Scotland, liability for planning gain supplement will not be calculated until after section 75 agreements have been taken into account. That was perhaps not evident from the consultation paper, although it is mentioned in the paper. In response to the question about whether local authorities will have a negotiating hand, any section 75 agreements will be accounted for first, so one could use up one’s entire liability for planning gain supplement through a section 75 agreement. Section 75 agreements are protected under the proposals on planning gain supplement.’⁸⁰

246. Whilst the Committee notes the evidence on the proposed planning gain supplement, it considers that it is an issue which is not directly related to the Bill. It therefore does not intend to comment on the proposal in this report. The Committee considers that this is an important issue and calls on the Executive to keep it informed of all developments in relation to the introduction of a planning gain supplement in Scotland.

PART 1 – NATIONAL PLANNING FRAMEWORK

247. Section 1 of the Bill inserts new Part 1A into the principal Act. New section 3A makes statutory provision for a spatial plan for Scotland to be known as the ‘National Planning Framework (NPF)’. The NPF is to set out, in broad terms, how the Scottish Ministers consider that the development and use of land could and should occur. It must contain a strategy for Scotland’s spatial development and a consideration of the priorities for that development.

248. The National Planning Framework will contain an account of matters that may affect the use of land, and describe and designate ‘national developments’. The NPF is to be regularly reviewed and republished after each revision. The Scottish Ministers are to consult such persons or bodies as they consider appropriate in preparing or revising the NPF.

249. The Executive’s stated that its objective was to build on the success of the first NPF, published in April 2004, by ‘enhancing its role and status to make it a more powerful instrument for securing delivery of national policies and programmes’⁸¹ were broadly welcomed in evidence. The Royal Town

⁷⁹ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3247.

⁸⁰ Tim Barraclough, Scottish Executive, Communities Committee, Official Report, 29 March 2006, column 3427.

⁸¹ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 18.

Planning Institute in Scotland commented that ‘we are strongly in favour of the principle of having a National Planning Framework and delighted that the bill puts a duty on ministers to prepare one.’⁸²

250. Professor Greg Lloyd commented on the importance of the proposal to put the NPF on a statutory basis—

‘The national planning framework was long awaited. When it was first published in 2004, it was a welcome addition to the land use planning system in Scotland, because it pointed out the need for overall strategic thinking on the Scottish economy in order to pull things together. The intention of the white paper and of the Planning etc (Scotland) Bill is to make the framework stronger and more central to the planning system. That is not only welcome; it is absolutely necessary. We have difficult choices and decisions to make—in all our interests—about how we provide infrastructure and how we control patterns of development. I certainly welcome the framework.’⁸³

251. COSLA welcomed the proposals in relation to the NPF, but commented on that ‘the framework must constantly be kept up to date and relevant to particular areas.’⁸⁴ COSLA also emphasised the importance of coordination between the NPF and other policies—

‘The framework will have to be aligned with the investment plans of the various infrastructure agencies, such as the transport and water agencies—or rather, their investment plans will have to be aligned with the framework. If there is a mismatch, the framework will be useless. However, we welcome the framework; it will bring a great deal of clarity. It is absolutely right that decisions should be taken here in Parliament by ministers at national democratic level. I do not think that any of us have any difficulty with that.’⁸⁵

252. The Committee welcomes the Executive’s proposal to put the National Planning Framework on a statutory basis. It is of the view that it is vital that there should be a national document setting out a vision for development in Scotland.

253. New section 3B sets out the procedure for parliamentary consideration of the NPF. After consulting such persons or bodies as they consider appropriate, the Scottish Ministers are to lay the NPF before the Scottish Parliament. The Scottish Ministers cannot complete their preparation or revision of the NPF until the period for Parliamentary consideration has expired. The period for Parliamentary consideration is 40 days, although this

⁸² Graham U’ren, RTPi in Scotland, Communities Committee, Official Report, 25 January 2006, column 2889.

⁸³ Professor Greg Lloyd, University of Dundee, Communities Committee, Official Report, 18 January 2006, column 2838.

⁸⁴ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3295.

⁸⁵ Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3295.

should not include any period when the Parliament is dissolved or in recess for more than 4 days. In preparing or revising the NPF following the period for Parliamentary consideration, the Scottish Ministers are to 'have regard' to any resolution or report of the Scottish Parliament, or of any committee of it.

254. The Deputy Minister gave a clarification to the Committee of the meaning of the requirement for the Executive to 'have regard' to any resolution or report—

'It means the same as any requirement on the Executive to have regard to what the Parliament says on a range of issues. Obviously, it depends on what recommendations are made on the draft NPF and on the resolution. The Scottish ministers will respond to those recommendations as they respond, for example, to a stage 1 report.'⁸⁶

255. In evidence to the Committee, a number of witnesses questioned whether the 40 day period would be sufficient for Parliamentary consideration, although others expressed the view that it was not their role to comment on the Parliamentary process. The Planning Sub-Committee of the Law Society of Scotland commented—

'The more time there is for scrutiny, the better. I have seen what the Executive has said about the length of time for which the NPF is to be before Parliament. That document is crucial to the future of spatial planning in Scotland, but there are also other pressing issues before Parliament.'⁸⁷

256. A number of comments were made in evidence concerning the period of 40 days for Parliamentary consideration. CBI Scotland indicated 'we and other interested groups would like to get in there beforehand to discuss what the priorities should be before the document is published.'⁸⁸ The Federation of Small Businesses in Scotland emphasised its position as a representative organisation, pointing out that 'if we had to respond to a committee – or whatever other procedure the Parliament had in place – the process that we would have to go through could not be done in 40 days.'⁸⁹ Scottish Enterprise, while reluctant to comment on the adequacy of 40 days as a period for Parliamentary consideration, emphasised the importance of a consultation process which would allow 'the full and robust debate that is needed before the framework is agreed to.'⁹⁰

257. Miller Developments commented on the importance of the NPF consultation process to the development industry—

⁸⁶ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3454.

⁸⁷ Frances McChlery, Planning Sub-Committee, Communities Committee, Official Report, 1 March 2006, column 2962.

⁸⁸ David Lonsdale, CBI Scotland, Communities Committee, Official Report, 22 February 2006, columns 3091-3092.

⁸⁹ Susan Love, Federation of Small Businesses in Scotland, Communities Committee, Official Report, 22 February 2006, column 3092.

⁹⁰ Paul Lewis, Scottish Enterprise, Communities Committee, Official Report, 1 February 2006, column 3006.

'The development industry would like certainty that once the NPF has been finalised it will be delivered. That means front loading as much of the consultation as possible. We do not want to skimp on the consultation, discussion and assessment as the NPF is prepared, only to find that we have problems further down the line in delivering major schemes. I would endorse as wide and as long a consultation process as will be necessary to ensure that what goes into the NPF is not delayed when we get to the point of planning applications.'⁹¹

258. COSLA also indicated that the adequacy of the period for parliamentary consideration would depend on how the process was used—

'It will depend on the expertise that parliamentarians bring to their part of the process, and it will depend on whether, during the consultation period, ministers engage properly with local authorities, agencies, voluntary organisations and all the others with whom they will have to engage. If all that is done well, and if a sense of ownership develops, the process will work. Of course, the process could also be skimmed through, in which case people would end up being dissatisfied.'⁹²

259. Scottish Environment LINK also noted that 'the critical question will be how much information Parliament has to start with, before it starts scrutinising the document.' It elaborated—

'If Parliament starts with a national planning framework that has gone through some level of consultation and is then delivered as a completed document, it will essentially be starting from scratch. If it starts having had an inquiry, teased out the key issues, had the evidence explained and received recommendations from a professional, it will be substantially further on in the process of scrutinising the document. The committee system offers an opportunity for a reasonably robust testing of what is in particular documents ... Simply to see the national framework as a statutory instrument, when in fact it is a policy document that establishes what will happen in Scotland over the next 20 years, seems to indicate a very modest role for Parliament. We would like the democratically elected representatives of the Scottish people to have an opportunity to scrutinise closely a document that will establish what will happen in our country for the next 20 years.'⁹³

260. A number of witnesses, including local authorities, key agencies and developers emphasised the importance of their early involvement in the development of the National Planning Framework as a means of contributing to the alignment of policies. For example, SEPA stressed the need to 'align the national waste plan with some kind of spatial dimension through the national planning framework,' a point that was also made by the Scottish

⁹¹ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3148-9.

⁹² Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3296.

⁹³ Anne McCall, Scottish Environment LINK, Communities Committee, 8 February 2006, columns 3041-2.

Environmental Services Association as crucial to delivering on European environmental commitments.⁹⁴

261. Planning Aid for Scotland stressed the importance of community involvement in the preparation of the NPF, commenting: 'the national planning framework will be a crucial overarching theme, so it is important that people are brought into the process as early as possible.'⁹⁵ A representative of Greengairs Environmental Forum emphasised the challenge of ensuring public involvement on the NPF, 'I see the benefits of the national planning framework, but it will be extremely difficult to achieve public interest at that level and to get people to understand how important it is that they get involved.'⁹⁶

262. The Deputy Minister explained the logic behind the setting of this period of time: 'we considered that the period that is required for considering affirmative regulations is a reasonable comparator for deciding the final period of the NPF's consideration.'⁹⁷

263. The Deputy Minister also emphasised that there would be a considerable consultation exercise before the proposed NPF was laid before Parliament—

'It is certainly not in the interests of the Scottish Executive for the NPF not to be scrutinised and we would not want to do anything that would prevent scrutiny. There is a suggestion that everything has to be done in 40 days and that no work can be done before that period starts, but there will be a long process of preparing the national planning framework and that will involve stakeholders, the public and parliamentarians, who will all be given the opportunity to participate in the debate.

'The process would involve an initial consultation on the scope and content of the NPF, the issuing of a draft for public consultation, revision in the light of reaction to the draft and the scrutiny of a final draft in Parliament. There would be rounds of regional and thematic seminars and parliamentarians would have the opportunity to offer views on the scope and content of the framework prior to the publication of the consultative draft.'⁹⁸

264. Scottish Environment LINK argued that the National Planning Framework should be subject to a public inquiry—

⁹⁴ Written evidence submitted by the Scottish Environmental Services Association.

⁹⁵ Petra Biberbach, Planning Aid for Scotland, Communities Committee, Official Report, 8 March 2006, column 3220.

⁹⁶ Ann Coleman, Greengairs Environmental Forum, Greengairs Community Council, Communities Committee, Official Report, 8 March 2006, column 3220.

⁹⁷ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3452.

⁹⁸ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3452.

'The core issue from our perspective is that there will be no opportunity for the national planning framework to be examined publicly in the way that the Greater London Authority spatial strategy and the Northern Ireland development strategy were examined, or the regional development agencies' strategies and regional spatial strategies throughout England are examined. Those examinations are called examinations in public and they last for only five to seven weeks. They offer an opportunity for a trained professional who is appointed by ministers, such as someone from the inquiry reporters unit or an academic, clearly and robustly to examine everything that is in the national planning framework and to present—in this case, to Parliament—the evidence that they have gathered. Scottish ministers will find themselves in much the same situation when they consider the strategic development plans, following an examination in public. We are really just asking for parity.'⁹⁹

265. In response to questioning from the Committee, the Chief Planner acknowledged that such an approach had been suggested to the Executive, but that it had not adopted it on the basis that the Scottish situation differed from those where public inquiries were used—

'The examples that people have raised with us include the regional spatial strategies for some of the English regions, the greater London strategy and the Northern Ireland regional development strategy. We thought about those options. The national planning framework for Scotland will be a different document, however, and it will not allocate land for housing. We are not saying, for instance, that development should take place to the south or east of Glasgow, or that it should take place in Haddington instead of North Berwick. The framework for Scotland will not be that sort of document; it will articulate a strategy to be taken into account by local authorities in their strategic and local development plans, and will outline priorities for infrastructure investment to support that strategy.'¹⁰⁰

266. The Committee acknowledges the Deputy Minister's explanation of the consultation that will take place before the proposed National Planning Framework is introduced to Parliament. However, the Committee is of the view that it is essential that the opportunity to participate in the consultation on such an important document should be available to as wide a range of participants as is practicable. It therefore calls on the Executive to be pro-active in its efforts to encourage interest and generate engagement, particularly by the public; and to ensure that the consultation process is inclusive, transparent and robust.

⁹⁹ Anne McCall, Scottish Environment LINK, Communities Committee, 8 February 2006, column 3041.

¹⁰⁰ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 11 January 2006, column 2754.

267. The Committee calls on the Scottish Executive to ensure that when the National Planning Framework is submitted to the Parliament for consideration, it is accompanied by a consultation statement. This document must demonstrate how the consultation process was conducted; include details of the mechanisms used to encourage participation; summarise the views of those who responded; and explain how the views of respondents were taken into account.

268. One member of the Committee¹⁰¹ considers that an opportunity should be provided for the National Planning Framework to be formally examined in public, on the basis that specific developments which have been included in the National Planning Framework may be less open to formal scrutiny through public inquiry when they reach the planning application stage. The member believes that consultation on the draft National Planning Framework should be an addition to existing scrutiny opportunities, rather than a substitute. However, the majority of the Committee is not in favour of a formal examination in public and is of the view that an extensive and thorough consultation, followed by consideration by the Scottish Parliament, as proposed in the Bill, would be sufficient.

269. The Committee members have differing views on the period of 40 days which is proposed in the Bill for Parliamentary consideration. The majority of the Committee¹⁰² considers that a 40 day period would limit the opportunity for the Parliament to make a proper assessment of the National Planning Framework, taking into account the practical considerations associated with the Parliamentary scrutiny process. It considers that a longer period is necessary to allow the Parliament greater flexibility to take evidence and apply an appropriate level of scrutiny to the document. The majority of the Committee therefore recommends that the Executive should bring forward an amendment at Stage 2 to extend the period for Parliamentary consideration to 60 days.

270. A minority of the Committee¹⁰³ is of the view that there should be no specific period set on the face of the Bill for the consideration of the National Planning Framework. It considers that to set a time limit in this way is unwise given that the process is as yet untested and it is unclear what will be required in terms of the Parliament's consideration. Those members would prefer to see the scrutiny period determined through discussions and set by the Parliamentary Bureau, in a similar manner to the process followed when setting a deadline for Stage 1 consideration of a public bill.

271. The Committee notes the provision which requires Scottish Ministers to 'have regard' to any report of the Parliament or a Parliamentary Committee. The Committee supports this proposal, but

¹⁰¹ Patrick Harvie

¹⁰² Karen Whitefield, Euan Robson, John Home Robertson, Cathie Craigie, Dave Petrie, Scott Barrie

¹⁰³ Patrick Harvie, Christine Grahame, Tricia Marwick

calls on the Executive to ensure that the draft National Planning Framework is the subject of a debate in the Parliament on a substantive motion to allow a full exchange of views on its contents. It also considers that the Scottish Ministers should be required to respond formally to the report produced by the Parliament and recommends that the Executive should amend the Bill at Stage 2 to provide for this.

272. The Committee also heard evidence from a number of witnesses proposing that a sustainable development duty should also be applied to the National Planning Framework. SEPA outlined two key arguments in support of this—

‘First, proposed new section 25 states that decisions will be made in accordance with the development plan or, if they are national developments, in accordance with the national planning framework. Given that all the decisions that will be taken will be based on those two strategic documents, it does not make much sense for the higher level document not to include the duty to work towards sustainable development that is included in the lower level document.

‘Secondly, planning has a significant role to play in the delivery of sustainable development. It can bring together many strategic-level policy priorities, particularly the climate change programme and the sustainable development strategy. It is important that they have a spatial element to them. We can try to ensure that by ensuring that the national planning framework also has a duty to contribute to sustainable development.’¹⁰⁴

273. The Deputy Minister responded that—

‘The promotion of sustainable development was one of the three key aims of the first NPF. The second NPF will fully reflect the Executive’s commitment to sustainable development. As the committee will be aware, it will be subject to strategic environmental assessment to ensure that it addresses sustainability and environmental protection explicitly. We will give further consideration to whether the bill should attach to the framework a specific duty to contribute to sustainable development.’¹⁰⁵

274. In evidence, one witness expressed a concern about whether the NPF would be ready in 2008—

‘When I read the proposals, my concern was that it is stated that there will be more emphasis on implementation in the second NPF than in the first one but, equally, there are notes regarding extensive consultation. My concern would be how we can accommodate both. The timescale may be unrealistic to have the second NPF published on time. I do not know whether it has already been prepared as we speak, but bearing in

¹⁰⁴ Neil Deasley, SEPA, Communities Committee, Official Report, 1 February, columns 3006-07

¹⁰⁵ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3459.

mind some of the tough decisions and consultation that will be required, I would hope that it has been started.¹⁰⁶

275. In response to questioning by the Committee, the Chief Planner indicated that, 'if the Planning etc (Scotland) Bill gets royal assent with substantially similar provisions to those that it contains now, we would want to start work very early after that to progress to a 2008 publication of NPF 2, with provision for strategic environmental assessment and a consultative draft, as well as a sustained and intensive programme of engagement.'¹⁰⁷

276. The need to ensure that the National Planning Framework was coordinated with other policies, particularly transport policy, was also stressed in evidence. COSLA commented on this—

'The national transport strategy is in a different document from the national planning framework, which is foolish. They need to be one and they need to be made one through the same process of development, but they are not ... The issue needs to be dealt with firmly in the next national planning framework; otherwise, the difference will become ingrained, which would be to Scotland's detriment.'¹⁰⁸

277. A similar point was made by the Scottish Society of Directors of Planning—

'It seems to me—and this has been proved—that there is a gap between the national planning framework and the current structure plan, which may become the strategic development plan, into which will fit developments that many people think are national, as I think they are, but some people do not. I refer to motorway junctions, for example. The expansion of communities sometimes begs for motorway intersections, which have not been included in the process. Where do they fit in? Where does substantial infrastructure provision fit in the relationship between the national planning framework and the strategic development plan?'¹⁰⁹

278. In evidence to the Committee, the Minister emphasised that 'the national planning framework seeks to assist the process of joined-up government rather than be a challenge to it.'¹¹⁰

279. The Committee considers that it is appropriate for a duty to be included in the Bill requiring the NPF to have the objective of

¹⁰⁶ Michael Levack, Scottish Building, Communities Committee, Official Report, 1 March 2006, column 3149.

¹⁰⁷ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 29 March 2006, column 3460.

¹⁰⁸ Councillor Trevor Davies, COSLA, Communities Committee, 22 March 2006, column 3298.

¹⁰⁹ Richard Hartland, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2893.

¹¹⁰ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3461.

contributing to sustainable development and calls on the Executive to bring forward amendments to this effect at Stage 2.

280. The Committee notes that it is proposed that the next National Planning Framework will be published in 2008. It is of the view that this timetable presents a challenge for the Executive if it is to develop and take forward the comprehensive consultation process recommended at paragraph 122 above and still meet its publication target. The Committee therefore calls on the Executive to provide assurances that the consultation will be fully inclusive, open and transparent, despite the limited time available.

PART 2 – DEVELOPMENT PLANS

General

281. Part 2 of the Bill is composed of one section which replaces the whole of Part 2 of principal Act. All of the provisions in this part relate to development plans. The provisions reinforce the plan-led system and introduce strategic development plans for the four main city regions of Scotland, and a single tier local development plan covering all areas of Scotland. The Royal Town Planning Institute in Scotland commented that it strongly supported ‘the key theme of a stronger plan-led system as a means of reconciling the often conflicting objectives of better public engagement with a more efficient system for delivering sustainable development.’¹¹¹

Sustainable development

282. The Bill places a duty on planning authorities to exercise their functions in relation to development plans with the objective of contributing to sustainable development. Under new section 3D(3), the Bill gives Scottish Ministers the power to issue guidance to planning authorities on sustainable development and places a duty on planning authorities to have regard to this guidance. This sustainable development provision gives effect to the commitment in the Scottish Executive’s White Paper *Modernising the Planning System* to make sustainable development one of the four key principles of a modernised planning system.

283. This new duty was universally welcomed by witnesses giving evidence to the Committee and in the written evidence received by the Committee. For example, the Scottish Environment Protection Agency (SEPA) strongly supported the inclusion of this duty, emphasising that, ‘planning has a crucial role to play in assisting the delivery of sustainable development and in implementing the Sustainable Development Strategy – therefore it is vital that it has a statutory duty to meet these obligations.’¹¹² Rural Housing Scotland indicated that this could have a positive effect in rural areas where planning had the potential to lead and manage sustainable rural development.¹¹³

¹¹¹ Written evidence submitted by the Royal Town Planning Institute in Scotland.

¹¹² Written evidence submitted by the Scottish Environment Protection Agency.

¹¹³ Written evidence submitted by Rural Housing Scotland.

284. Nevertheless, questions were raised in evidence about how a working definition of sustainable development would be developed. In addition, diverse opinion was evident among witnesses as to whether the duty should also be extended to the development management process.

285. Aberdeenshire Council fully supported the requirement to contribute to sustainable development, but indicated that the definition should be clear, as well as robust and testable.¹¹⁴ The Planning Law Sub-Committee of the Law Society of Scotland argued—

‘The Sub-Committee cautions the Executive that such a nebulous concept may present difficulty if it is, in law, an essential requirement of a planning document. The Sub-Committee notes that the intention is that guidance will be provided on the meaning of “sustainable development” and is aware of previous definitions utilised in government policy. That makes it clear that it is a highly debatable phrase and may not be susceptible to judicial interpretation. In essence, the Sub-Committee doubts that if the obligation as presently worded will be capable of enforcement ... When the guidance is issued the Sub-Committee suggests that it is important that this is particularly clear, and that there is appropriate guidance in defining the relationship between the relevant elements (economic, social and environmental) in the plan making process.’¹¹⁵

286. SEPA called for the sustainable development duty to be extended to supplementary guidance and parts of the development management process. Scottish Natural Heritage also noted that there might be a case for the extension of this duty to development management to ensure that the objective was effectively translated into decisions on individual planning applications. Similarly, Scottish Environment LINK argued that ‘it is unclear how the overall purpose of development plans can be to contribute to sustainable development of individual decisions taken in accordance with it cannot be shown to be sustainable in a meaningful way’,¹¹⁶ and warned that ‘if each individual decision under the development management system does not deliver developments that are predominantly sustainable in nature, the net outcome will be that a majority of developments will not be sustainable.’¹¹⁷

287. In evidence to the Committee, a COSLA representative welcomed the sustainable development duty, but stated—

¹¹⁴ Written evidence submitted Aberdeenshire Council.

¹¹⁵ Written evidence submitted by the Planning Law Sub-Committee of the Law Society of Scotland.

¹¹⁶ Written evidence submitted by Scottish Environment LINK.

¹¹⁷ Anne McCall, Scottish Environment LINK, Communities Committee, Official Report 8 February 2006, column 3043.

'I do not think that that definition should be in the bill. Our understandings will move and change over time, so the definition should be expressed in policy rather than legislation.'¹¹⁸

288. The Deputy Minister for Communities, Johann Lamont, explained the Executive's position when giving evidence to the Committee. She argued that a 'statutory definition should place a legal straightjacket around a complex, broad-ranging and developing concept.'¹¹⁹ Furthermore, she warned that—

'The potential for legal challenge would be considerable if the sustainable development duty were to be applied to individual developments. There are approximately 50,000 planning applications in Scotland every year. We believe the application of the duty to individual developments would affect the efficiency of the system.'¹²⁰

289. The Chief Planner explained that the Scottish Executive aimed to consult on and produce guidance on sustainable development by the end of 2006. The aim of this guidance is to set out how the Scottish Executive expects planning authorities to carry out the sustainable development duty in preparing development plans.

290. The Committee welcomes the introduction of a statutory duty for planning authorities to exercise their development plan functions with the objective of contributing to sustainable development and considers that this will make an important contribution to delivering the Scottish Executive's Sustainable Development Strategy over time.

291. Nevertheless, the Committee is of the view that the guidance to be developed by the Scottish Executive will be crucial to ensuring that planning authorities have a clear, uniform and detailed understanding of how this duty should be implemented to promote sustainable development through the vehicle of development plans. It therefore calls on the Executive to take into account the views expressed to the Committee in evidence in the development of the draft guidance with a view to developing a clear working definition of sustainable development for planning authorities to draw on for the purposes of development plans.

292. The guidance should be regularly updated to reflect any developments in the definition of sustainable development. In addition, the Committee also calls on the Scottish Executive to review systematically how planning authorities discharge this duty in order to ensure that they are making a genuine contribution to promoting sustainable development through the planning system in Scotland.

¹¹⁸ Councillor Trevor Davies, Communities Committee, Official Report 22 March 2006, column 3307-8.

¹¹⁹ Johann Lamont, Communities Committee Official Report 28 March 2006, column 3358.

¹²⁰ Johann Lamont, Communities Committee, Official Report, 28 March 2006, column 3359.

A plan-led system

293. The Scottish Executive's proposals to streamline the development planning system through the introduction of strategic development plans for the four key city regions and local development plans elsewhere, were broadly welcomed in evidence. Professor Alan Prior of Heriot-Watt University commended this approach—

'The aim is partly to cut down on the amount of work that is done on preparing strategic plans and, more fundamentally, to put in place plans that may be less comprehensive, ambitious and detailed, but that will be more focused, visionary and concentrated on what matters. That more limited but clearly focused agenda should assist planning authorities in the speedier preparation of plans and in keeping them up to date.'¹²¹

294. The overall approach to strategic development plans was welcomed. The Royal Town Planning Institute in Scotland stated—

'We strongly support the aim that strategic development plans should be slimmer, that they should be appropriate to the concept of city regions and that, beyond that, decision making should be subsidiarised to local planning and to the local authority in the first instance.'¹²²

295. A representative of a major developer indicated that the approach would provide greater simplicity and clarity to developers—

'We welcome the proposal to have a development plan system that is kept up to date, is regularly reviewed and is consistent across Scotland. ... The simplification of the system is welcomed, as is the removal of large sections of detailed policy into supplementary planning guidance. Anything that makes things simpler for us developers to understand is always gratefully received.'¹²³

296. It became clear to the Committee that many stakeholders were concerned either by a hiatus in the provisions of the Bill coming into effect or delays in preparing development plans due to links with NPF 2 (as outlined in paragraphs 212-214 above). The North East Strategic Planning Committee also expressed concerns about the anticipated speed at which the reforms would be brought forward and disappointment that it would be required to undertake a major structure plan review under the existing legislation rather than proceeding with the work of the Strategic Development Plan.¹²⁴ However, the Chief Planner indicated that 'the authorities are progressing

¹²¹ Professor Alan Prior, Heriot-Watt University, Communities Committee, Official Report, 18 January 2006, column 2844.

¹²² Graham U'ren, RTPI in Scotland, Communities Committee, Official Report, 25 January 2006, column 2899.

¹²³ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3153.

¹²⁴ Written evidence submitted by North East Strategic Planning Committee.

development plans at the moment, and we do not want the reforms to act as a deterrent to or constraint on that.¹²⁵

297. Although new section 16 places a duty on planning authorities to prepare local development plans 'as soon as practicable after the coming into force of section 2 of the Planning etc. (Scotland) Act', the Deputy Minister emphasised that—

'Different local authorities are at different stages. We are not starting at a base from which we could reasonable expect all plans to be rolled out by a certain date. The process will be important for local authorities as they develop their plans, and they will not do that at the same pace.'¹²⁶

298. The Committee welcomes the move to a limited number of strategic development plans, with local development plans covering all areas. It is of the view that the Executive has responded appropriately to the need to take a more strategic and up-to-date approach to the impact that the four key cities in Scotland have on their surrounding geographical areas. Strategic development plans and areas will be a more appropriate and effective means than the previous seventeen structure plans to deal with the economic and spatial dynamic exerted by the key Scottish cities.

299. Nevertheless, the Committee would like to see a clearer overview from the Scottish Executive on the timing of the preparation of up-to-date development plans throughout Scotland, especially on whether planning authorities will be expected to prepare local development plans following the coming into force of section 2 of the Act or whether new plans will be prepared only when existing local plans become out of date.

300. The Committee calls on the Scottish Executive to make information on the status of all strategic development plans and local development plans publicly available, ideally through a regularly updated web site with links to the relevant development plans. The site should also provide information on each planning authority's programme for the adoption of the next plan.

Strategic development planning

301. The provisions of the Bill abolish the current system of structure plans and introduce strategic development plans. The Scottish Executive's White Paper *Modernising the Planning System* indicated that strategic development plans would be prepared for the four largest city regions: Aberdeen, Dundee, Edinburgh and Glasgow. In response to the Committee's request for further information and detail on the contents of secondary legislation, the Executive

¹²⁵ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3343.

¹²⁶ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006.

indicated which authorities it envisaged would be jointly required to prepare strategic development plans under new section 4(1).¹²⁷

302. New section 4 of the Bill gives Scottish Ministers the power to make an order which designates a group of planning authorities as a Strategic Development Planning Authority (SDPA), with the obligation of jointly preparing a strategic development plan. In accordance with new section 5 of the Bill, the SDPA has three months to submit the proposed boundary to the Scottish Ministers for approval. The Scottish Ministers may then approve the boundary, approve it subject to modifications or approve any other boundary that they see fit. This determination is final and conclusive. New section 6 does, however, allow for a SDPA to propose a change to the boundary where there has been a material change of circumstances.

303. A number of issues emerged in evidence concerning the designation process of strategic development areas and the drawing of boundaries. One particular issue concerned the possibility that one geographical area could be covered by two different Strategic Development Plans.

304. The Committee sought specific clarification from the Deputy Minister on how an equal partnership would be ensured for Fife, which would be covered by two different strategic development plans. The Deputy Minister explained that this had been necessitated by the fact that 'Fife Council will make an important contribution to the city region plans for Dundee and Edinburgh.' She recognised that there were anxieties about the proposal but emphasised, 'we are keen to stress that the process is about co-operation and developing a strategy that is in the interests of all the authorities, rather than about one authority imposing its will on others.' The participation of Fife Council in two strategic development plan areas would allow it to 'be at the table arguing on the challenging issues.' The Minister also indicated that the Executive was 'considering introducing helpful wording in the bill that avoids the perception that we are splitting Fife in two.'¹²⁸ Additionally, the Chief Planner emphasised that 'it will be up to those authorities to decide what the appropriate boundaries should be.'¹²⁹

305. In written evidence, some additional concerns were expressed in relation to strategic development plan areas. West Lothian Council noted in written evidence that the grouping of Councils for the Edinburgh City Region would be different from that for the South East Scotland Transport Partnership.¹³⁰ Stewart Milne called for a full consultation to be carried out in respect of the

¹²⁷ Letter from Malcolm Chisholm, Minister for Communities, to the Communities Committee, 23 March 2006. The letter indicates that it is envisaged that the following groups of authorities will prepare strategic development plans: Aberdeen City Region (Aberdeen City and Aberdeenshire Councils); Dundee City Region (Angus, Dundee City, Fife and Perth and Kinross Councils); Edinburgh City Region (Fife, Midlothian, West Lothian, East Lothian and Scottish Borders Councils); and Glasgow City Region (West Dunbartonshire, East Dunbartonshire, North Lanarkshire, South Lanarkshire, Glasgow City, East Renfrewshire, Renfrewshire and Inverclyde Councils).

¹²⁸ *ibid.*

¹²⁹ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3349.

¹³⁰ Written evidence submitted by West Lothian Council.

boundaries of Strategic Development Plan areas and that this should be referred to in statute.¹³¹

306. The Committee acknowledges that the Bill as drafted is unclear on the position of authorities such as Fife, which would be included within the overlapping boundaries of two strategic development plans. The Committee welcomes the statement by the Minister that the Executive is considering bringing forward amendments at Stage 2 to provide greater clarity on this issue.

307. The Committee notes that it will be for Scottish Ministers to designate a group of planning authorities which will form a strategic development planning authority. It is of the view, however, that situations could arise whereby a planning authority is not included in designation proposals but may wish to make a case to allow it to participate in a Strategic Development Plan Authority. The Committee therefore suggests that the Executive should consider how it might allow those planning authorities with a potential interest in participating in a Strategic Development Plan Authority to make representations to be included in the designated group and how to make the process as transparent as possible.

308. At the Committee's pre-legislative meeting with local authority planning conveners, the importance of an equal relationship within the designated group of planning authorities preparing a strategic development plan was stressed. The Committee calls on the Scottish Ministers to provide for equal rights among all Strategic Development Plan Authority members in any guidance issued under new section 4(6).

309. New section 4(3) gives the Scottish Ministers the power to direct 'that an employee of a constituent authority of the designated group is to be assigned to manage the process of preparing and reviewing the strategic development plan, and that other employees of constituent authorities are to be assigned to assist in that process.' COSLA expressed reservations about this power and criticised the wording of the bill, which in its view 'allows ministers to intervene in the way in which we employ people and to name a person who is employed by a local authority to do a specific job.'¹³² COSLA argued that the power to intervene should only be used when a local authority was failing in its duty, but that that power was already enshrined in the Local Government (Scotland) Act 2003.

310. The Chief Planner refuted any charge that the Scottish Executive's intention was to become involved in planning authority employment decisions: 'I make it absolutely clear that the bill will not give ministers the power to transfer staff or appoint people to specific posts.'¹³³

¹³¹ Written evidence submitted by Stewart Milne.

¹³² Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3304.

¹³³ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3348.

311. In evidence to the Committee, the Deputy Minister provided reassurance that this power was not designed to allow Ministers to enter into the detailed employment arrangements that would be required by joint working arrangements for the planning authorities on strategic development plans, but rather to ensure 'that the plans are developed in the way that has been suggested.'¹³⁴ She confirmed that 'the power is not to identify individuals and tell them to do a particular job; we want to ensure that the arrangements for joint working are effective and that management issues do not break the process.'¹³⁵

312. While the Committee accepts the Executive's reassurance that it does not intend to interfere in the employment policies of local authorities, it understands the concerns that COSLA has expressed in relation to the powers of Ministers on the basis of the current drafting of new subsection 4(3) of the Bill. The Committee therefore calls on the Executive to introduce amendments at Stage 2 which more clearly reflect their intentions and define the circumstances under which such powers will be used.

313. New section 7 of the Bill defines the form and content of strategic development plans. The Policy Memorandum indicates that the future focus of strategic development plans will be on providing an 'overview of genuinely strategic issues which cross council boundaries', with the development plan representing a 'short, accessible narrative, expressed simply in words and images.'¹³⁶ A Strategic Development Plan will consist of a vision statement setting out baseline information on the character and development of the plan area, a spatial strategy for the development and use of land, an analysis of the relationship between the vision statement, the spatial strategy and other land use development proposals, and any other matters that may be set out in regulations or that the SDPA considers appropriate.

314. The Minister for Communities provided more detail on the content of regulations, indicating that they 'will update the provisions in the 1983 Regulations on form and content, which include: the provision of proper titles for documentation; the justification for policies and proposals; and the inclusion of diagrams to explain the strategy, policies and proposals.'¹³⁷ The Minister also indicated that the Executive envisages further prescription on the inclusion of a list of any supplementary guidance linked to the plan and on the form of maps attached to the plans.

315. The Committee heard evidence supporting the Executive's objective to make strategic development plans 'brief, clear and more focused than structure plans'.¹³⁸ Professor Alan Prior endorsed the need to 'move away from that search for spurious comprehensiveness, which leads to documents

¹³⁴ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3348.

¹³⁵ *ibid.*

¹³⁶ Planning etc. (Scotland) Bill, Policy Memorandum, paragraphs 31 and 34.

¹³⁷ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006.

¹³⁸ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 33.

of ... length and detail.¹³⁹ It was pointed out, however, that the new approach – which is replicated for local plans - may provide a significant challenge to planning authorities—

‘The bill and the white paper that lies behind it indicate that the new plans are not simply local plans and structure plans by another name, but are meant to be entirely different types of plans. In order for that to be the case, there will have to be a raft of planning guidance and good practice advice. Further, people who have spent their professional careers preparing plans in a particular way will have to be retrained.’¹⁴⁰

316. Evidence from community groups indicated that current structure plans and local plans can be extremely technical and therefore pose difficulties to local communities and members of the public.

317. The Committee is therefore of the view that whilst simpler and more streamlined strategic development plans may involve some initial changes to the way that planning authorities work, the changes proposed by the Executive should ultimately result in more accessible and readily comprehensible plans which is central to the process of making the planning system more accessible and transparent.

318. The Committee therefore strongly commends the Executive for seeking to make development plans more strategic and focused documents. However, it considers that much work requires to be done to make plans clearer and more readily comprehensible by those outside the planning profession. The Committee therefore urges the Executive to give some priority to the development of guidance for planning authorities to assist this process.

Preparation of a strategic development plan

319. New sections 8, 9 and 10 make provision for the preparation of the strategic development plan. A SDPA is to compile and publish a main issues report which sets out in a manner that can generally be understood the general proposals for development in the strategic development plan area and where the development should be carried out. In compiling the main issues report, the planning authority is to have regard to any view expressed by the key agencies, contiguous planning authorities and such persons as may be prescribed. Any person may make a representation to the authority as respects the report.

320. Under new section 10, a planning authority publishes a draft strategic development plan after having regard to any timeous representations made to it in respect of the main issues report. Following a minimum period of six weeks, a planning authority may modify the plan before submitting it to the Scottish Ministers. It is submitted to the Scottish Ministers with a note of representations made to the planning authority and whether they were taken

¹³⁹ Professor Alan Prior, Heriot-Watt University, Communities Committee, 18 January 2006, column 2845.

¹⁴⁰ Professor Alan Prior, Heriot-Watt University, Communities Committee, 18 January 2006, column 2846.

into account and a report as to the extent to which the process has conformed with the authority's current consultation statement.

321. The Committee considers that the approach adopted by the Executive for the adoption of strategic development plans will allow for a speedier process than that currently in place for structure plans and will contribute to the Executive's objective of having up-to-date plans in place and a strong plan-led system.

Examination of proposed strategic development plan

322. New sections 12 and 12A set out the Bill's provisions in relation to the examination of a proposed strategic development plan. Where there are outstanding objections to a proposed Strategic Development Plan, it will be subject to a mandatory public examination. The examination will be carried out by a person appointed by the Scottish Ministers, namely a Reporter from the Scottish Executive Inquiry Reporters Unit. The role of the Reporter will be to examine the report on the consultation, outstanding objections and the sections of the plan to which these relate. The Reporter has the discretion to decide the format of the examination, that is, whether it will take the form of a public inquiry or be conducted through written submissions. Where there has been a public examination, new section 13 provides for the Scottish Ministers to approve the plan (in whole or part) without modification, approve the plan (in whole or part) subject to modification or reject the plan.

323. Where there has been no public examination of a Strategic Development Plan, the Scottish Ministers will examine the adequacy of the consultation undertaken by the SDPA in drafting the plan. They will then approve the plan (in whole or part) without modification, approve the plan (in whole or part) subject to modification or reject the plan. Where Ministers propose to modify the plan, they must consult with the SDPA, individual authorities and anyone else that they consider appropriate prior to taking their final decision.

324. As outlined at paragraph 342, Local Development Plans will also be subject to a mandatory examination where there are outstanding objections to the plan. In the case of a Local Development Plan, the Reporter will publish his or her findings and submit them to the planning authority, which must modify the plan in light of the Reporter's recommendations. The planning authority will have limited grounds on which it can decline to accept the Reporter's recommendations.

325. COSLA expressed a grave concern about the role of reporters in relation to the examination of development plans. COSLA argued not only that the final authority given to a report on a development plan undermined the consultation process, but that the final decision on a development plan should not be taken by a person with no democratic accountability. Instead, COSLA argued that there should be a requirement on local authorities to take the Reporter's view into account—

'The provisions on the role of the reporter are probably the only ones with which we have a real problem ... After the public inquiry and all that engagement with the public, it is proposed that the reporter will be able

... to produce a report that is completely contrary to the views that people have expressed throughout the process. If the reporter's say is to be final, why bother with all that consultation and with going through the process of trying to engage the public? We might as well give the whole thing to the reporter in the first instance if the reporter is to have the final say and is not to be accountable to anyone.¹⁴¹

326. An opposing argument to this emerged in written evidence. One developer noted that the requirement to accept the Reporter's recommendations should instil greater confidence in the system, as the developer considered that under the current system authorities regularly refuse to adopt the Reporter's recommendations.¹⁴²

327. In response to questioning by the Committee on COSLA's position, the Deputy Minister emphasised a need for a balance in the process—

'We acknowledge the critical role of local authorities in delivering development plans and bringing about change in local communities, and we acknowledge that local authorities are democratically accountable. However, there is a tension. On balance, we judged that we wanted a broader - from the stakeholder's point of view - fairer and more independent process. That is especially the case if a local authority has interests in sites covered by the development plan.'¹⁴³

328. Nevertheless, the Deputy Minister, in acknowledging the point raised by COSLA, did indicate that the Executive was 'considering the wording of the bill to see whether we can ease those concerns.'¹⁴⁴

329. The Committee calls on the Scottish Executive to introduce such amendments at Stage 2 which extend the circumstances under which a planning authority may decline to take the Reporter's recommendations into account in the modification of a development plan.

330. The examination process for a Strategic Development Plan or a Local Development Plan was explained by the Chief Reporter in oral evidence to the Committee—

'Under the development plan system, the reporter will examine the council's statement on community engagement to determine that it has done what it said it would do in the process. If it has, the reporter will move on to consider objections to the development plan. In future, the word "examination" will be used in development planning rather than the word "inquiry". That is intentional. Reporters have been experimenting with changes in culture in the past few years and the policy signals that those changes will become normal practice. There will be greater use of

¹⁴¹ Councillor Willie Dunn, COSLA, Communities Committee Official Report, 22 March 2006, columns 3001-2.

¹⁴² Written evidence submitted by Mactaggart and Mickel.

¹⁴³ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3346.

¹⁴⁴ *ibid.*

hearings—informal discussions that are led by a reporter and are usually held around a table—and a reduction in the use of adversarial inquiry processes that involve formal cross-examination. Formal processes will be used in the few cases in which such an approach is needed to get to the bottom of difficult and complex issues.¹⁴⁵

331. The Chief Planner pointed out that it was a significant step ‘that the bill creates a mandatory duty to have a public inquiry on and examination of strategic development plans. That is very different from the current situation. For 20 years, we have not had examination of structure plans, which set the long-term context for growth and regeneration.’¹⁴⁶ Persimmon Homes East Scotland welcomed the mandatory examination for strategic development plans and local development plans, where objections are not resolved, on the basis that it should make the process more transparent and allow for a planning authority’s position to be questioned.¹⁴⁷

332. The Planning Sub-Committee of the Law Society of Scotland stated in written evidence that—

‘...in the interests of openness and transparency, any hearings into the merits of the plans and objections to them should be held in public and, in turn, the proposals to allow the Scottish Ministers to consider whether an examination should be held in public should be deleted.’¹⁴⁸

333. Both the Planning Sub-Committee of the Law Society of Scotland and the Faculty of Advocates raised questions about the power of the Reporter to decide the most appropriate procedure to be followed in terms of an examination. The Law Society of Scotland argued that ‘there will be losses in the sense that opportunities are present in the current system that will not be available to communities, either as individual citizens or as groups, to prompt examinations in public of aspects of the local plan.’¹⁴⁹ Similarly, the Faculty of Advocates commented—

‘In the context of the inquiry into the strategic development plan or the local development plan, it is particularly surprising to find that the reporter, or the person appointed, is free to make his or her own decision about the procedure to be adopted. Under current legislation, any objector has the right to require an inquiry into a local plan—that applies even to an individual who objects on a very straightforward basis. No formality is required. That local interest can bring about a local inquiry into an objection. If one is trying to encourage earlier participation and

¹⁴⁵ Jim McCulloch, Chief Reporter, SEIRU, Communities Committee, Official Report, 8 February 2006, column 3022.

¹⁴⁶ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, columns 3362-3.

¹⁴⁷ Written evidence submitted by Persimmon Homes East Scotland.

¹⁴⁸ Written evidence submitted by the Planning Sub-Committee of the Law Society of Scotland.

¹⁴⁹ Frances McChlery, Planning Sub-Committee of the Law Society of Scotland, Communities Committee Official Report, 1 February 2006, column 2976.

earlier resolution of issues, it seems a little odd that that procedure is being taken away.¹⁵⁰

334. The Deputy Minister for Communities clarified the reasoning behind the provisions in the Bill in relation to the examination of development plans—

‘The bill makes it clear that if objections are not withdrawn, there must be an examination. We do not seek to cut people out of the process. However, we want to manage the examination process more effectively, using a range of techniques, depending on the issues that are considered. We will all be aware that formal inquiries can sometimes be lengthy and complex and are not the best place for people to feel comfortable in making their case. They are only really necessary when the reporter needs to get further information from objectors. In most cases, hearings or even written submissions provide an effective way of understanding the arguments.’¹⁵¹

335. The Minister for Communities provided more detail on the way that the 1983 Regulations would be revised to reflect the proposal for a mandatory examination and the procedures for examinations.¹⁵² The Chief Planner also indicated that guidance and advice would be issued to ensure that a consistent approach was taken in terms of the examination of development plans, stating ‘we intend to update the codes of conduct on public inquiries to ensure that we have a code of practice on the conduct of local plan inquiries and on examinations in public of strategic development plans.’¹⁵³

336. The Committee is of the view that the Scottish Executive Inquiry Reporters Unit will play an important role in the examination of strategic and local development plans. It concurs with the views of the Law Society of Scotland that the examination process should be as transparent as possible. It therefore encourages the Scottish Executive to bring forward amendments to the Bill that allow for all hearings to be held in public.

Local development plans

337. New section 15 defines the form and content of a local development plan. Where a local development plan is not within a strategic development plan area, a local development plan must include a vision statement setting out the planning authority’s broad views on the development of land covered by the plan and factors that may effect that development. The essential elements of a local development plan are a spatial strategy which provides a statement of the planning authority’s policies and proposals as to the development and use of land in the area covered by the plan, any other

¹⁵⁰ Roy Martin QC, Faculty of Advocates, Communities Committee, Official Report, 1 February 2006, columns 2996-7.

¹⁵¹ Johann Lamont, Deputy Minister for Communities, Official Report, 28 March 2006, column 3362.

¹⁵² Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006

¹⁵³ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3363.

matters that may be prescribed by the Scottish Ministers and any other matter that the planning authority considers appropriate.

338. New section 16 of the Bill places a duty on planning authorities to prepare a local development plan for all parts of their district and to keep local development plans under review. A planning authority is to prepare a plan as 'soon as practicable after the coming into force of section 2 of the Planning etc. (Scotland) Act' and thereafter whenever required to do so by the Scottish Ministers or at intervals of no more than five years.

339. New section 17 provides for the preparation and publication of a main issues report. This must set out the general proposals for development by the authority for development in their district and particular proposals as to where that development should take place. It should also include alternative proposals. The information in the main issues report should be readily understood by those who may make a representation to the authority with respect to the report and allow any representations to be meaningful. In compiling the main issues report the planning authority must seek, and have regard to, the views of key agencies and such persons as may be prescribed. The planning authority must publish the main issues report with a date by which time any representations are to be made.

340. New section 18 provides for the local authority to prepare and publish a proposed local development plan after having taken into account any representations made on the main issues report. The planning authority must then consult the key agencies and any such persons as may be prescribed and allow a minimum period of six weeks for representations on the proposed local development plan. Following the modification of the proposed local development plan to take account of representations, any matters arising in consultation and any minor drafting or technical details, the planning authority is to submit the plan to the Scottish Ministers. The plan must be accompanied by a report on the consultation process and how it conformed to the planning authority's current consultation statement and a copy of the proposed action programme for the plan.

341. The Committee is of the view that the provisions contained in the Bill in relation to the preparation, form and content of local development plans should contribute significantly to the Executive's objective of making the planning system fit for purpose. The intention, stated in the White Paper, to produce model development plan policies should help to support the work of planning authorities in preparing local development plans as well as ensuring that there is greater consistency in development plans across Scotland. By placing all documentation relating to the main issues report and the proposed development plan on local authorities' websites, the process should become more transparent.

342. Under new section 19, where there is an outstanding objection to a local development plan, the planning authority is to request that the Scottish Ministers appoint a person (i.e. a Reporter) to carry out an examination. The Reporter will examine the report on the consultation on the local development

plan, the extent to which the plan conforms with national policies and – where appropriate – the strategic development plan. The Reporter will then consider any outstanding objections. The format for the examination is for the Reporter to decide. Once the examination has been concluded, the Reporter will publish his or her findings and submit them to the planning authority, which must modify the plan in light of the Reporter's recommendations. The planning authority will have limited scope to decline to accept recommendation made by a reporter on the basis of grounds that will be set out by the Scottish Ministers.¹⁵⁴ The Chief Planner commented that it was a 'significant step ... that local authorities will no longer appoint reporters to local development plan inquiries; reporters will be independently appointed by the Scottish ministers.'¹⁵⁵

Neighbour notification of development plans

343. The Scottish Executive has indicated that secondary legislation 'will also set out the new procedures for neighbour notification of key site specific proposals in the development plan.'¹⁵⁶ The likely procedures for neighbour notification in development planning and development management will be set out in a report which is currently being finalised by the Neighbour Notification Working Group, which includes representatives of the Scottish Executive and local authorities.

344. Glasgow City Council expressed reservations in written evidence about how neighbour notification of development plans would be carried out, due to the lack of information on this requirement in the Bill, and Aberdeenshire Council indicated that the proposals had the potential to slow down the development plan system and to increase the resources required. However, the Scottish Society of Directors of Planning gave their support to the principle—

'Neighbour notification of development plans will have the purpose of getting people engaged in the development planning process. The key is to get people engaged at a much earlier stage. Neighbour notification will do that. In many instances, it is too late to become involved once a planning application has been made. There needs to be an emphasis on earlier engagement. Neighbour notification of development plans will help to achieve that.'¹⁵⁷

¹⁵⁴ The White Paper *Modernising the Planning System* states that planning authorities will be able to depart from a recommendation where that recommendation is not supported by the Strategic Environmental Assessment; where it is not in accordance with the National Planning framework or any National Policy or strategic development plan; or where it is based on 'flawed reasoning', which could include a failure to take proper account of the planning authority's position. Scottish Executive White Paper *Modernising the Planning System*, Scottish Executive 2005, page 29-30.

¹⁵⁵ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3363.

¹⁵⁶ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006.

¹⁵⁷ Steve Rodgers, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2915.

345. The Committee is of the view that the proposal to introduce procedures for the neighbour notification of key site specific proposals will play a significant part in ensuring that members of the public and communities are informed of planning proposals at an early stage and have the opportunity to engage in the consultation of development plans. Whilst little detail is available on proposed procedures at present, the Committee nevertheless welcomes the proposal, and also calls for the regulations to be introduced subject to the affirmative procedure.

Consultation on development plans

346. One of the key proposals in relation to both strategic development plans and local development plans is the Executive's commitment to providing greater opportunities for public involvement in the preparation of development plans as part of its objective to 'front load' the planning system and make it more inclusive.

347. The Scottish Executive White Paper *Modernising the Planning System* states that local authorities will prepare a consultation statement as part of the Development Plan Scheme, and the Bill provides for public engagement in line with this consultation statement. The Executive has indicated that it will consult on a draft Planning Advice Note on community engagement in the course of 2006. This will 'provide further guidance on the procedures for consultation and publicity, for example, best practice on who should be involved at each stage and different approaches to suit different audiences.'¹⁵⁸

348. The Minister for Communities expressed the intention to set out requirements in secondary legislation 'for publishing certain documents during the process of preparing the plan and advertising that this has been done so that people may comment on what has been published'¹⁵⁹

349. In evidence to the Committee, the Deputy Minister for Communities emphasised the importance that the Scottish Executive attached to early engagement on development plans—

'There is a critical need for early engagement with communities, which we have striven hard to establish. As has been identified, it will be important to involve communities early not only in the development plan but in specific proposals, which will need to be highlighted to neighbours who might be affected. We are doing a lot of work—I do not say this lightly—around community engagement and involvement. As well as publishing a planning advice note on the matter, we are ensuring that development plans and planning applications will include statements about what consultation has taken place.

'I am keen to lock into the system an expectation that authorities will consult and that they will be judged on the quality of their consultation. The bill and its supporting secondary legislation will give substance to

¹⁵⁸ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006.

¹⁵⁹ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006

that expectation, but I am not sure that including on the face of the bill a phrase about consulting communities would deal with the depth of what is expected. I know that some people have argued that the lack of such a phrase in the bill implies that we do not want to require consultation, but that suggestion flies in the face of all that we have said and everything that is locked into the different stages. I do not know whether we could perhaps require that a summary be provided of the different suggestions that have been made at each stage to show that consultation has taken place. However, we really are working on community engagement.¹⁶⁰

350. In general, the provisions to promote greater opportunities for public engagement in development planning were welcomed by witnesses. However, a number of reservations were expressed about how the proposals would translate into an effective and meaningful process. For example, Scottish Environment LINK commented—

‘The best parts of the proposals are the provisions on strengthening the plan-led system and on pinning down the consultation that comes with that to ensure that it is done properly. The planning system has obviously struggled with that for years now, so it would be a fundamental jump forward if the bill could crack it. However, there is no guarantee that that will happen. We worry that there is no backstop for communities. If they go through the process and see that their views are ignored and that decisions are made that are not compliant with the development plan that they helped to draft, what can they do?’¹⁶¹

351. The potential for individuals or communities to remain dissatisfied with either the process or the results was a theme pursued by many in evidence. Professor Alan Prior commented on the potential for this to create a tension—

‘...if we want to involve more people in the process, to make it more inclusive and participative and to give people more chance to shape the plan, we must be prepared for the fact that they may not agree with the planners’ or politicians’ views. The challenge for us is to resolve such issues throughout the process of plan making.’¹⁶²

352. The Faculty of Advocates also expressed reservations about the extent to which divergent views could be tackled, arguing that—

‘However much one encourages agreement at the beginning and throughout the process, there will be competing points of view in some situations and those positions have to be resolved in a way that is

¹⁶⁰ Johann Lamont, Deputy Minister for Communities, Communities Committee Official Report, 28 March 2006, column 3349.

¹⁶¹ Stuart Hay, Scottish Environment Link, Communities Committee, Official Report, 8 February 2006, column 3047

¹⁶² Professor Alan Prior, Heriot-Watt University, Communities Committee, Official Report, 18 January 2006, column 2848.

satisfactory both to the people who are involved and to the members of the public who are looking on.’¹⁶³

353. The Scottish Society of Directors of Planning provided evidence indicating that early public involvement was a successful means of promoting consensus on development within an area—

‘The secret is to consult the community and engage it in the formulation of the local plan. Therefore, by the time that the community sees that the plan has some meat on its bones, it is not perceived as an end product. That has been done successfully in some areas in Scotland. Communities have been approached not necessarily with a blank sheet of paper but with what the requirements and options might be. Those communities are then engaged in selecting those options. The end product is formed from a consensus. That makes it much easier to go through the public inquiry process, adopt the plans and then make the decisions on the resulting applications.’¹⁶⁴

354. The Equalities Co-ordinating Group emphasised the importance of ensuring a widespread involvement and suggested a duty to have regard to equal opportunities—

‘Obviously, the point about the involvement of minority groups is important from an equalities perspective. The critical point is the extent to which that involvement is considered at the beginning of the process rather than later on. Local authorities have certain duties in relation to disability and race issues and they have to develop schemes to consult people, but it would be helpful if, beyond that, planning authorities had a duty to have regard to equal opportunities at the beginning of the process. That could apply to issues such as community safety, which impacts across a range of interests.’¹⁶⁵

355. The challenge of ensuring significant and representative community engagement and involvement was also a theme that emerged in evidence. The potential for members of the public to suffer from ‘consultation fatigue’, the resource problems faced by community bodies and the technical character of planning documents were all perceived as potential hurdles to achieving sustainable public engagement on development plans. The particular problem of encouraging people to engage at the development plan stage was emphasised by Scottish Environment LINK—

‘Our experience is that it is very difficult to get people to engage with the process of plan preparation, however much we all—you, the Executive and us—would like to do that. We welcome many of the mechanisms in the bill to encourage such engagement, but it will still be difficult to make

¹⁶³ Roy Martin QC, Faculty of Advocates, Communities Committee, Official Report, 1 February 2006, column 2993.

¹⁶⁴ Richard Hartland, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2910.

¹⁶⁵ Adam Gaines, Equalities Co-ordinating Group, Communities Committee, Official Report, 8 March 2006, column 3241.

people engage with something that they feel is relatively abstract and does not affect them personally.

‘People engage when something is proposed to happen next door to where they stay; that is the point at which we all receive frustrating phone calls, e-mails and letters that say, "This dreadful development is proposed for next door to me. Please will you help me?" When we check and find that such development is in the local plan, we do not have the heart to tell those people that they should have engaged with the local plan five, six or seven years ago.

‘The bill proposes that people will be notified if the local development plan is to contain a proposal for land that they neighbour, which is another provision that we welcome. However, it will continue to be difficult to persuade people to engage at that abstract point in the process. Inevitably, they will mostly continue to want to engage further down the line when a proposal directly affects them.’¹⁶⁶

356. It was suggested in evidence that there should be a reference on the face of the Bill to the consultation of communities. Colinton Amenity Association, Currie Community Council and Balerno Community Council called for ‘community councils or locally representative groups’ to be included in new section 10(1).¹⁶⁷

357. In response to questioning by the Committee on how consultations could go beyond a small group of people who were not representative of the wider community, the Chief Planner made reference to the existence of ‘various techniques, such as citizen juries, whereby we can detect the views of a wider cross-section of the community.’¹⁶⁸ The Chief Planner emphasised that the Executive wanted ‘to move from the current approach to consultation, which is perceived to be fairly mechanical, to genuinely contemporary and high-quality engagement that helps to promote public trust and confidence in planning.’¹⁶⁹

358. Witnesses also discussed whether the proposals in the Bill provided for meaningful participation. Greenspace Scotland were not convinced that the Bill did allow for ‘real consultation’—

‘There is a danger that that will involve the planning authority saying, "Here's our checklist—tell us whether you agree or disagree." It will be possible to use the narrowest of approaches to consultation and people will be given exactly what they think is already happening—that is, they will think that the decision has been made already and that they are being asked simply to rubber-stamp it. We need more than consultation

¹⁶⁶ John Mayhew, Scottish Environment Link, Communities Committee, Official Report, 8 February 2006, column 3050-51

¹⁶⁷ Written evidence submitted by Colinton Amenity Association, Currie Community Council and Balerno Community Council.

¹⁶⁸ Jim Mackinnon, Chief Planner, Communities Committee Official Report, 28 March 2006, column 3354.

¹⁶⁹ Jim Mackinnon, Chief Planner, Communities Committee Official Report, 28 March 2006, column 3350.

statements. The system has to be about engagement and participation and there has to be a dialogue. The planning authority should say, "These are some of the issues that we think are important. How should we take them forward? What have we missed?" That should be the starting point.¹⁷⁰

359. Specific points were raised by the Scottish Mediation Network in relation to terminology and the adoption of existing National Standards for Community Engagement for use also in the planning system—

'In the terminology that is being developed, there is too much mention of consultation and not enough mention of participation, community engagement and consensus building. Rather than taking over the role of local authorities, the bill is a way of ensuring that local authorities work more effectively with communities. It is also a way of increasing their accountability.

'It would be wrong to be too prescriptive about the methods and techniques that we use. We need to take a more philosophical approach, rather than just say, "This is the latest whizz-bang technique that some consultant has come up with." It is important that there is reference to a set of principles. The document by Communities Scotland on national standards for community engagement is a good starting point. It is a little complex, but never mind; the principles are there. We are talking about how the agenda is set and what input communities have. We are talking about inclusiveness, representation, openness and involvement. We are talking about the openness and availability of the information and about making sure that people have access to it.'¹⁷¹

360. The Deputy Minister for Communities indicated that she was receptive to learning from 'important crossover work that has already been done on community engagement.' She stated, 'we have national standards for community engagement and we are currently developing a planning advice note, which must be shaped by something beyond the planning process.'¹⁷²

361. In response to questioning on whether consideration had been given to including a requirement on the face of the Bill to consulting communities, the Minister stated: 'I know that some people have argued that the lack of such a phrase in the bill implies that we do not want to require consultation, but that suggestion flies in the face of all that we have said and everything that is locked into the different stages.'¹⁷³

¹⁷⁰ Deryck Irving, Greenspace Scotland, Communities Committee, Official Report, 8 March 2006, column 3242.

¹⁷¹ Roger Sidaway, Scottish Mediation Network, Communities Committee, Official Report, 8 March 2006, columns 3242-3

¹⁷² Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3351.

¹⁷³ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3349.

362. The Committee is of the view that effective early engagement by and with communities in the development plan process is crucial and fundamental to the acceptance of the 'plan-led' package of measures contained in the Bill by the public. Moreover, it also recognises the particular challenge in raising awareness levels in the wider community of the importance of the development plan process and encouraging involvement at the appropriate stages in the process.

363. The Committee strongly supports the provisions in the Bill which place a duty on planning authorities to consult in the preparation of development plans and the process as part of any examination of the development plan which will assess whether this consultation has taken place in accordance with the planning authority's consultation statement. It acknowledges the evidence from the Scottish Society of Directors of Planning which demonstrates that this early consultation on a development plan can help achieve greater consensus on and acceptance of a development plan.

364. However, the Committee recognises that much of the detail on who is to be consulted, and at what point of the process, will be left to secondary legislation and that a Planning Advice Note will include guidance on the procedures for consultation and publicity. The Committee therefore calls on the Scottish Executive to take into account a number of elements that have emerged from evidence on the Bill in the preparation of regulations and the Planning Advice Note.

365. The Committee is of the view that regulations should refer to the objective of providing opportunities for a more representative cross-section of the community to be consulted. Specific reference should be made to ensure that planning authorities take equalities issues into account, with specific reference on the need to consult – inter alia - minority ethnic groups, disabled people and young people. It also calls for the regulations under this section to be introduced subject to the affirmative procedure and that this should be stated on the face of the Bill.

366. Whilst the Committee recognises that many of the methodologies used to promote public engagement may be dynamic and evolve over time, it strongly supports the adoption of the methodologies and principles contained in the National Standards for Community Engagement which could help to promote consistent good practice throughout Scotland.

367. The Committee concurs with the point made by the Scottish Mediation Network on the use of the term 'participation' and encourages the Scottish Executive to adopt this in its development of guidance on best practice within the Planning Advice Note on community engagement.

368. The Committee also considers that the Planning Advice Note on community engagement should include guidance on means for

promoting sustainable community engagement, given the resource requirements of engaging in the development plan process. The Committee endorses the approach of the Executive to promote examples of best practice and innovative techniques on a regular basis.

369. The Committee recognises that whilst early community engagement may lead to greater consensus on development plans, there will remain areas where there may be divergent views. The Committee considers that its call for examinations of development plans to take place in public, made at paragraph 336 above, will be important for ensuring that there is transparency in the process of assessing whether a planning authority has satisfied its consultation statement and of considering any objections to development plans.

Development Plan Schemes and Action Programmes

370. New section 20B places a new duty on strategic development planning authorities and planning authorities to prepare a development plan scheme whenever required to do so by the Scottish Ministers and whenever the planning authority considers it appropriate to do so but at least once a year. A development plan scheme sets out the authority's programme for preparing and reviewing the local development plans. It should contain proposed timetabling, details of what will be involved at each stage of preparation and a consultation statement indicating the form of that consultation, when it is likely to take place and with whom. Regulations may make provision as to the form and content of a development plan scheme, as well as the procedure for preparing and adopting it.

371. Fife Council welcomed development plan schemes as a means of promoting awareness and transparency, although a concern was expressed about the clarity of section 20B(2)(b).¹⁷⁴

372. Under new section 21 a new requirement is introduced for strategic development planning authorities and planning authorities to prepare an action programme for the development plan, which should be published at the same time as the proposed plan. The action programme should set out how the authority intends to implement the plan. In preparing the action programme, the authority is to seek the view of key agencies and such persons as may be prescribed. Regulations may make provision as to the form and content of an action programme, as well as the procedure for preparing and adopting it. The planning authority must keep the action programme under review and update it whenever required to do so by the Scottish Ministers, and whenever they think it appropriate to do so, but at least within two years after last publishing.

373. The response to the provisions relating to action plans was broadly positive. For example, Professor Greg Lloyd of The University of Dundee stated that—

¹⁷⁴ Written evidence submitted by Fife Council.

'The action plans are an important step forward. Development plans tend to be all things to all people and tend not to focus on where change is expected or, indeed, needed... The action plans allow for attention, resources and energy to be devoted to where that change is expected, to manage it and to ensure that it is delivered.'¹⁷⁵

374. The Scottish Society of Directors of Planning perceived action plans as a key tool for delivering development plans—

'The concept of action plans is welcomed by most of us who are engaged in the process. One of the main benefits of action plans is that they will focus the attention on the delivery of key elements of the plans, instead of plans being seen as policy documents that are put on the shelf and used simply as a basis for making decisions on planning applications.'¹⁷⁶

375. The Committee commends the introduction of development plan schemes. It is of the view that these should help make the process for reviewing development plans clearer and more transparent.

376. The Committee is of the view that action plans will provide a useful management and implementation tool to support the delivery of development plans. The duty placed on key agencies to co-operate with this process, especially in light of the fact that action plans will be updated every two years, means that action plans will play an important role in ensuring that development takes place.

Supplementary Guidance

377. The White Paper *Modernising the Planning System* proposes that the status of supplementary planning guidance should be enhanced. Currently, statutory guidance prepared by planning authorities is non-statutory but may be treated as a material consideration in determining a planning application. More extensive supplementary planning guidance should allow development plans to be more focused.

378. New section 22 provides for planning authorities to adopt and issue guidance in connection with a development plan. It provides for regulations which may make provision as to consultation and the procedure for adopting supplementary guidance.

379. East Ayrshire Council welcomed the increased status given to supplementary guidance as it should enable detailed development management policies to be considered separately from the development plan, thereby helping to reduce the size and complexity of the latter. It also noted

¹⁷⁵ Professor Greg Lloyd, University of Dundee, Communities Committee, Official Report, 18 January 2006, column 2847.

¹⁷⁶ Steve Rodgers, Scottish Society of Directors of Planning, Communities Committee, 25 January 2006, column 2906.

that this would help planning authorities to keep development plans up to date.¹⁷⁷

380. COSLA raised a point with the Committee concerning the requirement for a planning authority to refer supplementary guidance to the Scottish Executive prior to it being agreed by a local authority. While COSLA concurred that supplementary guidance would be 'deeply flawed'¹⁷⁸ if it contradicted any national planning guidance or the authority's development plan, it commented that there was no need for Ministers 'to take the power to vet and agree to every piece of supplementary planning guidance that every local authority issues.'¹⁷⁹ COSLA further elaborated—

'The question of supplementary planning guidance can be particular to a particular local authority area. There is not necessarily a role for the Executive in that. The Executive should see what councils are producing – some best-practice gains could arise from that – but, generally speaking, that would seem to be an unnecessary imposition on councils and the Executive on something that councils are perfectly able to do as professionally as they do most things.'¹⁸⁰

381. The Deputy Minister explained to the Committee in oral evidence that the Executive's powers in relation to supplementary planning guidance reflected a need for consistency and indicated that 'interventions would not be made lightly and we would expect them not to happen terribly often.'¹⁸¹ She also provided further explanation of the supplementary guidance provisions—

'Supplementary planning guidance that has been prepared with an appropriate level of consultation will be given a higher status in the planning system, so it is important to get it right. An important component of the proposals is to streamline development plans to make them quicker to prepare. Supplementary planning guidance can be used to set out the detailed implementation of a policy, for example on affordable housing or the contribution with respect to education. Because the guidance is important, there is an issue of consistency. It must be subject to the proper scrutiny, which is why the power of intervention is there.'¹⁸²

¹⁷⁷ Written evidence submitted by East Ayrshire Council.

¹⁷⁸ Richard Hartland, COSLA, Communities Committee, Official Report, 22 March 2006, column 3310.

¹⁷⁹ Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3310.

¹⁸⁰ Councillor Eddie Phillips, COSLA, Communities Committee, Official Report, 22 March 2006, column 3311.

¹⁸¹ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3361.

¹⁸² *ibid.*

382. The Minister for Communities also indicated that the 'Executive is currently considering the balance between planning authority discretion and Ministerial intervention' in new section 22.¹⁸³

383. In principle, the Committee supports the proposals to give greater status to supplementary guidance as it should help to streamline development plans. However, the Committee concurs with COSLA that the requirement for planning authorities to submit supplementary planning guidance to the Scottish Ministers before it is adopted by the local authority could undermine the autonomy of local authorities. It welcomes the statement by the Minister that the Executive is to consider this matter further and calls on it to introduce appropriate amendments at Stage 2 to address the concerns raised.

384. Other witnesses commented on the role of supplementary planning guidance. Homes for Scotland, for example, argued that it was important that supplementary planning guidance should not be used to 'alter the local plan or to deal with a matter that is not covered in the local plan' and that that 'the system for testing that guidance will need to be every bit as rigorous as the system for testing the development plan.'¹⁸⁴

385. Another witness referred to existing cases in which local authorities have adopted supplementary guidance which departed from a development plan and commented that 'what is not clear is what would happen were it to depart from a development plan or from national guidance.'¹⁸⁵ The point was made that it would be useful for 'the legislation to say that any supplementary planning guidance must adhere to national planning guidance.'¹⁸⁶

386. The Committee shares the concerns of witnesses that supplementary guidance should not deviate either from a development plan or national planning guidance and calls on the Executive to bring forward amendments at Stage 2 to require supplementary planning guidance to conform with development plans and national planning guidance.

Default powers of the Scottish Ministers

387. Fundamental to a successful plan-led system are up-to-date development plans which ensure that all planning decisions are taken in accordance with development plans. The Policy Memorandum states that 'the Bill makes provisions designed to ensure more rigorous management of the plan-making process, so all development plans are kept under review, and updated at least every five years or whenever required by the Scottish

¹⁸³ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006

¹⁸⁴ Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, column 3155.

¹⁸⁵ Maf Smith, Scottish Renewables, Communities Committee, Official Report, 1 March 2006, column 3198.

¹⁸⁶ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3164.

Ministers.¹⁸⁷ One of the key issues identified by stakeholders was the need to keep development plans up to date and whether the duty on planning authorities to keep plans up to date would be sufficient.

388. New section 23B sets out the default powers of the Scottish Ministers in relation to strategic development plans or local development plans. Where a planning authority has not prepared a plan, a main issues report, submitted a plan to the Scottish Ministers or needs to take steps to adopt a local development plan, Scottish Ministers may direct the authority in question to carry out its functions as well as providing direction on factors to be taken into account in so doing. The Scottish Ministers may also prepare a strategic development plan or a local development plan or authorise one of the planning authorities of the defaulting strategic development plan authority to take the required action. A defaulting planning authority should repay expenses either incurred by the Scottish Ministers or expenses incurred by a planning authority and certified by the Scottish Ministers.

389. The Planning Sub-Committee of the Law Society of Scotland pointed out to the Committee in evidence that there were powers in existing legislation to ensure that planning authorities kept plans up to date and that delays were linked to other factors—

‘We should bear in mind two lessons from history. The first is that there was originally a stipulated timetable for development plans, which was not really adhered to. The second is that, under the principal Act and its predecessors, powers have always been available to the Secretary of State for Scotland and then to the Scottish ministers to instruct a local authority to make its plan, but those powers have never been exercised. Therefore, there must be something about planning work that means that it keeps getting pushed down the agenda, with resources diverted from it into matters that are considered to be—and might well be—more commanding priorities. If a regular, five-year cycle is to be a key component of the new system, we must make it possible for councils to do their spatial planning within that timescale without unnecessary default and to commit willingly and enthusiastically to that.’¹⁸⁸

390. Similarly, reference was made to the expectation that plans would be kept up to date when the plan-led system was first introduced—

‘If you talk to some of my senior colleagues in the industry who remember the introduction of the plan-led system, they will tell you that, when they supported that, they never considered the concept of plans being out of date. If you have a plan-led system, it is fundamentally important that plans be kept up to date. The committee needs to ask whether the proposals will encourage authorities to keep them up to date. In our written submission, we say that the wording of the bill could be tightened up in that regard. We have presented a worst-case

¹⁸⁷ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 32.

¹⁸⁸ Frances McChlery, Planning Sub-Committee of the Law Society of Scotland, Communities Committee, Official Report, 1 February 2006, columns 2968-9.

scenario in which, under the current wording, some plans might not be produced until 2011. That would hardly seem to be a smart, successful system for producing up-to-date plans.¹⁸⁹

391. Stakeholders were unanimous in their support for regularly updated development plans, but remained concerned as to whether this could be delivered. For example, the Royal Incorporation of Architects in Scotland stated—

‘It will be quite difficult to keep the plans up to date. ... Doing so every five years would be ideal but, unless there is a substantial increase in the resources that are available, I do not see how local authorities will achieve that. In the notes that I have submitted, I express scepticism but do not suggest that the aspiration is not achievable.’¹⁹⁰

392. There was also a suggestion that a five-year period could be too long for local development plans—

‘There is a great need to keep the plans up to date and to review them regularly. From our perspective, the five-year review period for local development plans is perhaps too long given the way in which the economy changes. A three-year review period might be more suitable, although I do not know whether that would be deliverable in practice. However, we would welcome the introduction of stricter penalties for local authorities that do not keep the plans up to date.’¹⁹¹

393. COSLA was questioned by the Committee on the capacity of planning authorities to keep development plans up to date. COSLA indicated that five-year plans were possible, but that delivering regularly updated plans was also dependent on the other parties involved and the number of steps in the process—

‘I think that the five-year plan is deliverable. We will not rewrite everything; amendments will come through. The plan will need resources, more skills and culture change, which we spoke about previously. To emphasise what Councillor Dunn said, we are not the only players in the system. We started writing the south-east Edinburgh local plan in 1999 and finished writing it in 2000. It got final approval only at the end of last year because of the process that we had to go through. There were two stages of reporting and all the rest of it. It is in that area rather than in the writing of the plan in the local authority that the plan is held up. It is good that the bill will cut down the number of stages. A plan will go from draft form to final form without a middle stage, which will help a lot. There are many other players in the game apart from the local

¹⁸⁹ Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, column 3154.

¹⁹⁰ Hugh Crawford, Royal Incorporation of Architects in Scotland, Communities Committee Official Report, 1 March 2006, column 3154.

¹⁹¹ Colin Graham, Miller Development, Communities Committee Official Report, 1 March 2006, column 3154.

authorities and they all have their part to play. The trunk roads authority, SEPA and others need to know that they must be part of the system.¹⁹²

394. Some witnesses suggested that there was a need either for incentives for planning authorities to update plans regularly or for some form of sanction or redress. For example, Homes for Scotland stated—

‘We have suggested that, if a plan is out of date, there should be a presumption in favour of planning permission—deemed consent, in other words. I rather suspect that the threat of that might be sufficient to make planning authorities ensure that their plans are not out of date. We would welcome that, although I would expect that such a sanction would never be used.’¹⁹³

395. COSLA agreed that it was important for planning authorities to fulfil their responsibilities, but also emphasised that other stakeholders in the planning system must fulfil their duties—

‘If a local authority fails to discharge its duty wholly because of its own problems, I agree that it should be brought to task. However, if developers, the Scottish Executive or whoever else fails to discharge their duties to help us to deliver our five-year local plan, that, too, should be brought into the fray.’¹⁹⁴

396. The Deputy Minister acknowledged that local authorities have been ‘extremely positive’ about co-operating with the new process. She also argued that opportunities for local communities to become involved at the early stages of the preparation of a development plan would help ‘local authorities to manage their business.’ However, she stated that—

‘If there is a pattern in a local authority of its development plan not being up to date, being out of kilter with everybody else and all the support mechanisms and training have not effected a change, ultimately the Scottish Executive can ask for a planning audit from which there will be recommendations that can be pursued.’¹⁹⁵

397. The Committee strongly supports the proposals to make every effort to secure a five-yearly update of development plans by planning authorities. It is of the view that up-to-date plans are crucial for the planned system to work effectively.

398. The Committee recognises that there are currently many out-of-date structure and local plans in Scotland and suggests that the

¹⁹² Councillor Trevor Davies, Communities Committee, Official Report, 22 March 2006, columns 3329-30.

¹⁹³ Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, column 3154.

¹⁹⁴ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, Column 3329.

¹⁹⁵ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3344.

Executive should work with these authorities to establish a calendar to ensure the early preparation of development plans.

399. The Committee further considers that the Executive should clarify the status of a plan which has not been updated as required within five years. It also recommends that the Executive should be robust in requiring planning audits of authorities which do not comply with this timescale.

Key Agencies

400. New section 23D gives the meaning of a key agency as ‘a body which the Scottish Ministers specify as such’ for the purposes of Part 2 of the Bill. The White Paper *Modernising the Planning System* indicates that the key agencies would include Scottish Natural Heritage, the Scottish Environment Protection Agency, Local Enterprise Companies and Scottish Water. Other bodies, such as the Regional Transport Partnerships, would also be added to the list.

401. A number of duties are placed on key agencies to co-operate in the preparation and implementation of both strategic development plans and local development plans. A planning authority must seek the views of the key agencies in the preparation of a main issues report and have regard to any views expressed by them. A duty is also placed on key agencies to co-operate with the planning authority in the compilation of the authority’s main issues report. It is then the duty of a key agency to co-operate with the planning authority in the preparation of the proposed development plan. The key agencies also have a duty to co-operate in the preparation of action programmes, which set out the process for the implementation of development plans.

402. The Committee heard considerable evidence in its pre-legislative meeting with business interests and local authority planning conveners on the delays to development caused by problems associated with securing the necessary infrastructure, and on the difficulties that local authorities faced in trying to engage infrastructure providers in the preparation of plans.

403. The Scottish Executive explained in evidence that these problems had prompted the provisions in the Bill—

‘We have recognised that the planning reform is not just for the planning authorities to deliver. There are key agencies involved, which are critical to making the plans work. We propose that, under the bill, key agencies will be designated on which there will be a duty to co-operate.’¹⁹⁶

¹⁹⁶ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 11 January 2006, column 2765.

404. It was also pointed out by the Scottish Executive that planning authorities had a role to play: 'the obligation rests on both sides: it rests on the planning authority to consult, and on the agency to respond.'¹⁹⁷

405. The Scottish Society of Directors of Planning commented on the importance of these provisions—

'This is critical, and part and parcel of it will be the culture change. Of course our service and infrastructure providers must be party to the dynamics and objectives of a strategic development plan, but it must be about comprehensive participation at an early stage....The service providers must be brought on board at an early stage and there must be engagement with the public.'¹⁹⁸

406. Two key issues emerged in evidence on the provisions to place a duty on key agencies to co-operate in the development plan process. Questions were raised as to the capacity and resources of the key agencies to co-operate and deliver the infrastructure required, and whether the duty to co-operate would be sufficient or whether a further duty or remedy might be necessary.

407. COSLA stated in evidence that the delivery of plans could depend on the contribution of infrastructure providers—

'It is Scottish Water that is delivering our development plans at the moment, because there are large areas of Scotland where local authorities cannot do development because of Scottish Water, whether it is in the development plan or not. It is incumbent on Scottish Water to work more closely with us and with the Executive on those issues. We all seem to pick on Scottish Water—it is a good example—but there are also problems in other areas. In my area, there are issues to do with Scottish Power and the upgrading of cabling to allow development to go ahead. ...It is important that there is strong encouragement for the key agencies to engage in the process. ... My view is that those agencies, if they fail to deliver in a reasonable timescale, should be penalised equally.'¹⁹⁹

408. The problem of infrastructure was also a critical one for developers, with the potential to undermine the delivery of development—

'I do not want to pick on individual consultees, but some of them are very important for the provision of water or other infrastructure. The debate is already running—raging even—perhaps not with them and possibly against them, but my reading of the situation is that the issue has been flagged sufficiently. Further action is required. The legislation and

¹⁹⁷ Michaela Sullivan, Deputy Chief Planner, Communities Committee, Official Report, 11 January 2006, column 2765.

¹⁹⁸ Richard Hartland, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2902.

¹⁹⁹ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3307.

supplementary guidance must make consultees commit themselves to what they can provide in a geographical area by a given date. If such action is not enough, the Executive and Parliament will hear about that from local communities or development interests and perhaps more resources will have to be committed. Prevarication, lack of certainty and long delays in infrastructure development are hopeless in meeting the planning system's aim of delivering development.'²⁰⁰

409. The Planning Sub-Committee of the Law Society of Scotland commented that—

'The issue is much more to do with infrastructure providers' difficulties with investment programmes and investment gaps. In the past, dialogue has continued, but only up to a point, beyond which difficulties arise with commitment. We know that, if we want to move forward, we must pass that impasse, begin to commit resources and draw matters together such that infrastructure can meet the needs of development.'²⁰¹

410. In evidence to the Committee, Scottish Water acknowledged that it was constrained by its four-year investment programme and its inability to commit funding outside that period. Nevertheless, Scottish Water did assure the Committee of its commitment and indicated that 'if there is clarity about where we need to be involved – at structure plan or local plan level – we can commit to such involvement.'²⁰² Scottish Water explained that many problems had been related to funding, but that greater resources in the next investment programme would help to alleviate this—

'...our legislative environment has not allowed us to give customers what they want. We simply have not had the funding to provide capacity for individuals or developers who want to connect to our network, not through any desire on our part to be unhelpful but because of the framework within which we work. From April 2006, funding has been made available to relieve some of the constraints that have led to the frustration, or the perception of non-cooperation, that you have described, and there will be a way through it.'²⁰³

411. Other representatives of the key agencies, including Scottish Natural Heritage, the Scottish Environment Protection Agency, and Local Enterprise Companies indicated that they would be able to commit the necessary resources to co-operating in the preparation and implementation of development plans. Scottish Natural Heritage commented—

²⁰⁰ Richard Slipper, GVA Grimley LLP, Communities Committee, Official Report, 1 March 2006, column 3152.

²⁰¹ Frances McChlery, Planning Sub-Committee of the Law Society of Scotland, Communities Committee, Official Report, 1 February 2006, column 2870.

²⁰² Cheryl Black, Scottish Water, Communities Committee, Official Report, 1 February 2006, column 3013.

²⁰³ Cheryl Black, Scottish Water, Communities Committee, Official Report, 1 February 2006, column 3008.

'SNH actively engages in the development plan process, which has been a priority since SNH's establishment. The changes are not a major challenge for us, other than in the broad sense that our resources are under increasing pressure from several different directions. Therefore, although we welcome the strategic environmental assessment process very much, it makes another call on resources, and there is always competition for resources within the organisation. Nevertheless, we are pretty well geared up to make the inputs to the planning process that are sought.'²⁰⁴

412. Similarly, Scottish Enterprise indicated that it had procedures in place and that they 'already engage in the development planning process across Scotland.'²⁰⁵ SEPA stated that—

'SEPA is embracing the culture change in how it deals with the process...over the past several years we have begun to put resources into the engagement process. Resources have been increased and certain parts of the planning process have been prioritised within the agency, in a way that local authorities will find useful....I admit that there is a way to go, but we are actively pursuing change.'²⁰⁶

413. The Royal Town Planning Institute in Scotland suggested to the Committee that placing a duty on 'key agencies to take into account the development plan in exercising their functions' similar to that imposed by the Transport (Scotland) Act on local authorities to take into account the regional transport strategy when exercising their function could be a statutory means of strengthening the obligation on key agencies.²⁰⁷

414. In relation to key agencies, the Deputy Minister for Communities stressed that 'it is crucial that they engage actively and that they regard that engagement not just as a right but a responsibility.'²⁰⁸ In response to a specific question on the role of Scottish Water, the Minister emphasised that 'Scottish Water has confirmed that it has sufficient resources to fulfil the requirements that the Water Industry Commission for Scotland has specified.'²⁰⁹ The Minister also pointed there was a need to coordinate Scottish Water's priorities with local priorities, 'which cannot be done unless there is engagement and discussion at the development planning stage.'²¹⁰ The Minister rejected the idea of any form of sanction to be placed on a key agency if it failed to deliver—

²⁰⁴ John Thomson, Scottish Natural Heritage, Communities Committee, Official Report, 1 February 2006, column 3010.

²⁰⁵ Allan Rae, Scottish Enterprise, Communities Committee, Official Report, 1 February 2006, column 3010.

²⁰⁶ Neil Deasley, SEPA, Communities Committee, Official Report, 1 February 2006, column 3010.

²⁰⁷ Anne Faulds, RTPI in Scotland, Communities Committee, Official Report, 25 January 2006, column 2905.

²⁰⁸ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3356.

²⁰⁹ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3357.

²¹⁰ *ibid.*

'There are questions about how we manage disengagement. There has to be pressure to change the culture in the key agencies so that they appreciate the benefits of development plans that acknowledge what they are doing and what they aspire to. They should not have to be dragged to the table. The change is a positive thing for them. We have explored the possibility of legal sanctions, but we do not believe that they would be practical or effective. There must be protocols between key agencies and planning authorities on what will be expected. We argue that such protocols will be effective. We must not underestimate the importance of the active engagement of key agencies in development plans.'²¹¹

415. The Minister for Communities indicated in correspondence that key agencies and statutory consultees would be defined in secondary legislation. Information was also given on the guidance and advice which the Executive intends to provide for key agencies on how they will be expected to engage in the development plan process.²¹² In response to questioning on whether additional bodies might be designated as key agencies, the Deputy Minister stated that 'if a case can be made for particular organisations to be included, they will be considered.'²¹³

416. The Committee shares the views of local authorities, business, developers and professional planners that the role of the key agencies in delivering infrastructure will be crucial to the planning system. The Committee is reassured by the evidence provided by Scottish Natural Heritage, the Scottish Environment Protection Agency and Scottish Enterprise which suggests that they are confident that they have the resources and commitment to co-operate constructively with planning authorities in the preparation and delivery of development plans. However, the Committee does have concerns about the resources of Scottish Water to deliver infrastructure which is clearly vital for delivering development, particularly of housing, in Scotland.

417. The Committee is of the view that the key agencies should be required to respond timeously in fulfilling their duty to co-operate with planning authorities in the preparation of main issues reports, proposed development plans and action programmes. The Committee calls on the Executive to bring forward amendments at Stage 2 to achieve this.

418. The Committee further calls on the Scottish Executive to consult planning authorities, at regular intervals after the commencement of Part 2 of the Act, on whether the duty placed on key agencies is effecting the culture change required and delivering infrastructure to support plan objectives. Specific attention should be paid to the capacity of Scottish Water both to engage with planning authorities and to deliver

²¹¹ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3357.

²¹² Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006.

²¹³ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3414.

infrastructure. In addition, there should also be a regular review to assess whether other bodies should be designated as key agencies.

PART 3 – DEVELOPMENT MANAGEMENT

Meaning of Development

419. Section 3 of the Bill introduces provisions into section 26 of the principal Act on the meaning of development. The provisions relate to the installation of mezzanine floors in buildings and expands the definition of development to include offshore fish farming to a distance of 12 nautical miles, clarifying that planning functions relating to those waters extend to National Park Authorities.

420. The provisions in relation to mezzanine floors effectively close a loophole whereby the gross floor space of a building could be expanded by the installation of a mezzanine floor without planning permission. The provisions in the Bill ensure that any such developments in future will come within the meaning of development and therefore within the development management system.

421. The Committee is of the view that the inclusion of mezzanine floors within the meaning of development will help to ensure the sustainability of developments, notably out of town shopping centres, and that sufficient amenity is in place to accommodate the impact of such developments.

422. The Bill extends planning controls over marine fish farming in marine waters from the low water mark to a 12 nautical mile territorial sea limit. The Committee pursued the impact of these proposals with the Executive both in relation to the Zetland County Council Act 1974, which gives Shetland Islands Council the power to grant works licences for offshore developments, and whether the proposals conflicted with Udal law.

423. In written evidence, Shetland Islands Council raised questions about apparent inconsistencies in the extension of planning controls to marine fish farms only, and not to other offshore developments, such as offshore renewable energy developments. Shetland Islands Council also commented on its existing powers in relation to offshore development—

‘The Council is concerned that, in the drafting of the Bill, no account appears to have been taken of the impact of the Bill on provisions contained within the Zetland County Council Act that empower the Council to regulate these and other developments.’²¹⁴

424. The Scottish Executive provided clarification on the provisions in relation to offshore marine fish farms, explaining that provisions had previously been made to transfer marine fish farms into the planning regime under the Water Environment and Water Services (Scotland) Act 2003:

²¹⁴ Written evidence submitted by Shetland Islands Council.

'The Planning etc (Scotland) Bill recognises that in Shetland—and only in Shetland, I think—the works licensing regime extends beyond the 3-mile limit to the 12-mile limit, so the bill will remove the potential anomaly whereby implementation of the provisions in the 2003 act would mean that there were planning controls only up to the 3-mile limit and the works licensing regime would apply between the 3-mile limit and the 12-mile limit All the provisions that relate to the matter, including the repeal of provisions in the Zetland County Council Act 1974, can be implemented through regulations under the 2003 act, rather than through the bill.'²¹⁵

425. In response to a concern raised by the Committee on the impact of the Bill's provisions on Udal law, under which land as far as the low water mark is owned by crofters and others, the Deputy Minister confirmed that 'the changes in respect of marine fish farming will not affect anyone's rights under Udal law.'²¹⁶

426. The Committee is content that the provisions of the Bill do not conflict with the rights of crofters and others under Udal law. The Executive has made clear to the Committee that the proposal to repeal certain provisions of the Zetland County Council Act 1974 is intended to remove an anomaly which would prevent the application of a consistent planning regime for offshore marine fish farming throughout Scotland. Whilst the Committee is supportive of this proposal, it nevertheless calls on the Executive to provide clarity to Shetland Islands Council on the extent of the provisions in order to address the concerns it expressed in evidence in relation to this matter.

Hierarchy of Development

427. Section 4 introduces new section 26A into the principal Act. It gives the Scottish Ministers the power to designate different types of development as coming within the category of national, major or local developments. The Policy Memorandum states that the 'aim is to allow for a more proportionate approach by focusing engagement and scrutiny on the more complex development management issues, while at the same time seeking to streamline and speed up those processes, where possible.'²¹⁷ Subordinate legislation will define the major and local development categories for development management purposes. National developments will be identified by Ministers within the context of the National Planning Framework.

428. The Executive is currently conducting research into the provisions of the General Permitted Development Order in preparation for a review of permitted development.

429. A considerable number of comments were made in both written and oral evidence about the difficulty of commenting on the proposals, given the lack of

²¹⁵ Tim Barraclough, Scottish Executive, Communities Committee Official Report, 28 March 2006, column 3365.

²¹⁶ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3464.

²¹⁷ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 93.

detail in the Bill and the accompanying documents on the proposed hierarchy of development and the types of development that would fall within each category. There were therefore a considerable number of calls for the secondary legislation on the hierarchy of developments to be introduced as quickly as possible.

430. In correspondence to the Committee, the Minister for Communities provided more detail on the definition of major developments. He indicated that—

‘Major developments ... are those of significant size, which are therefore complex to process, as they are likely to raise a large number of issues, some of which will be of more than local significance, involve a range of agencies, and are likely to require the negotiation of section 75 agreements. It is the size of the development and therefore the complexity of the planning application that is the defining characteristic of a ‘major’ application, it is not intended to signify the proportional impact on the place where the development is proposed.’²¹⁸

431. The Minister also included a table in his letter providing indicative thresholds for major applications. All other developments – with the exception of national developments and permitted developments – will be classed as local developments. The Minister emphasised that it ‘is important to note that national and major applications will be exceptional, and that the majority of development proposals will be subject to the robust procedure proposed for processing ‘local’ development.’²¹⁹

432. The general principle behind the hierarchy of developments was welcomed. Professor Greg Lloyd stated—

‘I welcome the hierarchy, because it demonstrates sensitivity to the types of development that arise. It will also allow much more sensible allocation of resource within planning authorities, so that major developments may be accorded greater effort and attention, because their impacts could be more significant or more controversial or might have to be explained more substantially. At the minor end we could relieve pressures on the development authority, so that it is able to dedicate its attention elsewhere.’²²⁰

433. In evidence to the Committee, issues were raised about the need for flexibility in definitions to take into account geographical factors, but also for certainty across the country of what constituted a major and what constituted a local development. COSLA commented that ‘in Orkney, 100 houses would

²¹⁸ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006

²¹⁹ *ibid.*

²²⁰ Professor Greg Lloyd, University of Dundee, Communities Committee Official Report, 18 January 2006, column 2852.

be a major development but 100 houses in Leith would not be a major development for the City of Edinburgh.²²¹

434. GVA Grimley LLP suggested that there needed to be some discretion and flexibility—

‘Major developments might only ever occur in the major urban areas, where a higher quantitative threshold will be reached. That is not to say that another development in a smaller town will not be of such significance that the director of planning will suggest that a pre-application processing agreement and a special form of pre-application consultation are relevant. There has to be discretion. In all the studies of national relevance that we have done, we have had to respect the fact that there are not only major urban issues but equally important rural town issues. They are never of the same size, but they could be of great relative importance locally.’²²²

435. However, the argument was also made for a degree of consistency across Scotland in order that those involved with the planning system would have a clear understanding of the definitions of major and local developments. Scottish Environment LINK commented—

‘A level of consistency and predictability would be welcomed by organisations that operate throughout Scotland. A development that is considered to be a major development in the central belt should also be considered to be a major development in the Highlands. Such consistency and predictability would make life considerably easier for those who are trying to engage with the system.’²²³

436. The Deputy Minister acknowledged that developments would have different impacts depending on their location, but argued that local development plans would be ‘well tuned into how things are experienced at local level.’²²⁴

437. The issue of whether developers would adapt the size of a proposed development in order to benefit from the procedures linked to one particular category was discussed. Miller Developments expressed the need to monitor the system in order to make sure that it was not being manipulated—

‘The harsh reality is that people will try to play any system, but that is not a sustainable approach for developers with long-term strategies. If people regularly try to play a system, they will be seen to be doing so and the local authorities will pick up on that or the legislation will be

²²¹ Councillor Willie Dunn, COSLA, Communities Committee Official Report, 22 March 2006, column 3310.

²²² Richard Slipper, GVA Grimley LLP, Communities Committee, Official Report, 1 March 2006, column 3159.

²²³ Anne McCall, Scottish Environment LINK, Communities Committee, Official Report, 8 February 2006, column 305.

²²⁴ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3373.

amended accordingly to stop them doing so.... Limits must be set throughout the country when things such as affordable housing thresholds are being considered—we cannot get away from that—and people will always try to manipulate systems to fall above or below limits, depending on their aims. I do not see an easy way round that. We must proceed, monitor and, if necessary, review the legislation accordingly.²²⁵

438. Homes for Scotland confirmed that it had examined the Executive's suggestion that the threshold for a major housing development would be 300 units and agreed that this was appropriate. Homes for Scotland also indicated that it 'would not envisage people trying to avoid developments becoming major developments' as a 'major development should provide a measure of certainty with regard to timescales.'²²⁶

439. The Scottish Executive acknowledged that 'pressure for certain applications to be categorised as major developments will come from developers who see the benefits of having a processing agreement' but emphasised that 'we want to provide some fairly consistent standards under the bill.'²²⁷ The Scottish Executive also indicated that a planning authority would have the discretion to 'treat a planning application in a different way from a normal application', thus allowing for a more flexible approach in certain cases.²²⁸

440. COSLA also raised a concern about what would be defined as a national development, questioning whether developments such as Edinburgh's waterfront development would be defined as a national development.

441. Concern was expressed in evidence about the procedure for dealing with a national development in a local context. For example, Professor Rowan Robinson noted that it would only be possible for local people to question the design and location of a development but not the need for it.²²⁹ Similarly, Scottish Environment LINK highlighted the lack of information on the process for national developments, indicating that they were—

'...concerned about the amount of scrutiny that national developments will receive in the process of approving the national planning framework. If we can have a full inquiry to tease out all the issues and if people are able to lodge objections or see that their concerns are being addressed, that will be fine and good. At the moment, we are seriously concerned that those matters will be decided without that kind of formal process.'²³⁰

²²⁵ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3157.

²²⁶ Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, column 3158.

²²⁷ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3375.

²²⁸ *ibid.*

²²⁹ Written evidence submitted by Professor Rowan Robinson.

²³⁰ Stuart Hay, Scottish Environment LINK, Communities Committee, Official Report, 8 February 2006, column 3055.

442. In response to questioning by the Committee on how a national development would be defined, the Deputy Minister stated—

‘The national development category, which you flagged up, covers a small number of developments, which would be identified as national developments within the national planning framework. Such developments are those that Scottish ministers consider to be of national strategic importance. Local development plans will be able to reflect what is in the national development plan. The essential test will be whether the development is of strategic importance to Scotland's spatial development. Fortunately, we will have people who have a great deal more expertise than I do to support us in making such decisions. We are talking primarily about major strategic transport, water and drainage and waste management infrastructure projects. Those issues can be explored in the consultation on the scope and context of the next NPF.’²³¹

443. The Deputy Minister also confirmed that national developments ‘will of course be subject to all sorts of consultation.’ The Chief Planner explained that although the NPF would identify national developments, their exact location would be determined by the development plan process, which would involve consultation.

444. G.L. Hearn, while welcoming the general principle behind the proposed hierarchy of development raised a concern about section 26A(3), stated that it raised uncertainty by establishing that the Scottish Ministers may direct that a development is to be dealt with in one of the three classes of development.²³²

445. In written evidence, Sheena Stark questioned whether a number of similar local developments in one area, or similar major developments in different parts of the country might amount to a development of national importance and argued that the existing proposals are too rigid from this point of view.²³³ A similar point was raised by the Mobile Operators Association. It pointed out that mobile telecommunications networks do not fit within the proposed hierarchy of developments. It argued that telecommunications developments are local developments but form part of a national network which is important for economic growth.²³⁴

446. The Committee supports the introduction of a hierarchy of developments as a means of ensuring that resources are appropriately directed to where they are most needed in terms of processing applications for development. The Committee also welcomes the Executive's proposals to review the General Permitted Development Order.

²³¹ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3372.

²³² Written evidence submitted by G.L. Hearn.

²³³ Written evidence submitted by Sheena Stark.

²³⁴ Written evidence submitted by the Mobile Operators Association.

447. **The Committee is of the view that the categorisation of developments under the hierarchy by regulations is an area of key importance and one on which more detail would have been welcome with the Bill. However, it acknowledges the helpful information provided by the Minister on the indicative content of regulations. The Committee also welcomes the Executive's commitment to consult widely on the content of the regulations before these are laid before Parliament. The Committee calls on these regulations to be introduced subject to the affirmative procedure in line with the recommendation made by the Subordinate Legislation Committee noted at paragraph 514.**

448. **New section 26 also provides for Scottish Ministers to direct that a development which is assigned to a particular category should be dealt with as if it were in another category. The Committee calls on the Executive to provide information on the circumstances in which this might occur.**

449. **The Committee considers that it is important to have a consistent set of definitions for types of development across Scotland so that users of the system, as well as those affected by developments, have a ready understanding of each type of category of development.**

450. **The Committee shares the Executive's view that it is probable that any manipulation of the system is most likely to take place when developers try to ensure that a development qualifies as a major development and thus obtain benefits in terms of its handling by the planning authority. Nevertheless, the Committee calls on the Executive to review the functioning of the system at regular intervals to ensure that developers do not manipulate the system to gain advantage.**

451. **The Committee would welcome more detail on the process for dealing with national developments when an up-to-date development plan is not in place.**

Initiation and Completion of Development

452. Section 5 of the Bill inserts new sections 27A and 27B into the principal Act. These concern the notification of initiation and the notification of completion of a development. The policy objective is to require developers to inform the planning authority when they intend to start a development and when a development has been completed to facilitate monitoring of compliance with planning conditions and to identify and address any breach at an early stage.

453. In written correspondence, the Scottish Executive indicated that it intends to bring forward amendments at Stage 2 requiring a Notification of Initiation of Development Notice to also include a requirement for the developer to disclose whether he or she has previously been the subject of planning enforcement action.²³⁵ The objective of this is to help the planning

²³⁵ Letter from Jim McKinnon, Chief Planner, to the Karen Whitefield MSP, 17 February 2006.

authority to take an informed decision on the level of monitoring that is likely to be required.

454. COSLA welcomed these proposals, pointing out that—

‘At the moment, things do not need to be completed, which means that conditions cannot be imposed. Completion notices allow one to enforce the conditions.’²³⁶

455. The RTPi in Scotland also gave support to the proposals on initiation and completion on the basis that they would contribute to more ‘effective planning enforcement.’

456. The Committee welcomes these provisions as providing greater clarity on the status of a development and providing the potential for more effective enforcement procedures in relation to developments where conditions are in place.

Applications for Planning Permission and Certain Consents

457. Section 6 substitutes section 32 of the principal Act. It provides for regulations or a development Order to make provisions for planning permission applications. The objective is to give the Scottish Ministers powers to prescribe a wide range of application forms, including forms for advertisement consent, listed building consent and consent under a tree preservation order. This should help users, especially developers or architects who work with a number of different planning authorities, by ensuring consistency in application forms across Scotland. The Executive argues that it will also speed up the application process by reducing the number of incomplete applications over time.

458. The Committee commends the Executive for seeking to establish greater consistency in planning applications across Scotland. It concurs that this should better facilitate the system for the user and result in fewer incomplete applications, thus reducing delays.

Variation of Planning Applications

459. Section 7 of the Bill introduces new sections 32A and 32B into the principal Act. New section 32A allows for a planning authority to agree to a variation where it does not consider the variation to constitute a ‘substantial change’ in the description of the development for which planning permission was sought. Similarly, new section 32B allows variation in an application that has been referred to the Scottish Ministers except in case where the Scottish Ministers consider the variations to be such that there is a ‘substantial change’. The objective of these provisions is to place variation on a statutory footing by requiring the agreement of the planning authority to the variation. This will also ensure that there is clarity on which is the ‘final’ version of an application. Where there is a ‘substantial change’ a new planning application must be submitted. Subordinate legislation will define the circumstances in

²³⁶ Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3331.

which a planning authority may refuse to accept a variation and require a new application and determine the circumstances under which neighbour renotification will be necessary.

460. The Minister for Communities provided more information on the likely content of secondary legislation on the variation of planning applications, both in relation to the process and the criteria to be used when there is a request to vary an application—

‘There will be a need to establish a form of protocol whereby a planning authority accepts a variation to an application,... Additionally it will be likely that there will need to be a range of criteria that have to be established against which the planning authority will determine where a change is sufficiently substantial to require a new application. It will be necessary to consult with planning authorities in order to establish what the appropriate boundaries may be. These are likely to involve assessment of the order of magnitude, and/or the Use Class within which the proposed development falls.’²³⁷

461. The Deputy Minister emphasised the significance of the provision in promoting transparency in the system—

‘The measure regarding the variation of application enhances the transparency of planning decision making. It will ensure that any changes to planning applications are made public and that substantial changes will not go through without the submission of a new application. ... The bill requires planning authorities to place information relating to any variation that is made to an application in the register of applications, to ensure that each party is clear about which development proposal a decision is being made on. As a result of the provisions, it will be clear to all participants which set of drawings a decision has been made on.’²³⁸

462. There was considerable comment on this provision in evidence to the Committee, much of it focusing on the definition of a ‘substantial change’. COSLA stressed the importance of understanding the particular challenge posed by variation after planning consent had been granted—

‘There is variation that takes place before an application is determined and variation that takes place after it. Those are two very different things. When variation takes place before an application is determined, it is often part of the negotiation process and usually it is an improvement. Variations that happen after an application has been determined are much more problematic. How do we judge what is minor, what is an

²³⁷ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006

²³⁸ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3393.

improvement and what might be detrimental and, therefore, ought to be looked at through some kind of process?’²³⁹

463. In written evidence, Colinton Amenity Association, Currie Community Council and Balerno Community Council observed that ‘substantial change’ was likely to obscure small changes of detail that might be of importance and should be the object of consultation.²⁴⁰

464. The Scottish Executive gave some examples of the types of changes which would require a new application to be submitted—

‘It will have to be defined but, for example, a change of use class could be an obvious trigger. If someone submitted a mixed-use application for a retail unit and flats, and a subsequent change included a pub and restaurant in one of the retail units, that would be an obvious trigger for a new application to be made. A pub and restaurant would belong to a different use class from that which had originally been applied for. It will be possible to establish some fairly obvious triggers around changes from one use class to another.’²⁴¹

465. Particular examples were made in relation to variation resulting from an Environmental Impact Assessment, which is carried out following the submission of an application. Evidence from energy providers, in particular, highlighted the fact that there can be positive variation following the submission of an application—

‘Because of the nature, scale and location in which wind farms tend to be built, we have an ecological and an archaeological clerk of works on site. They work with us and with the local authority to ensure, for example, that if an access track has to be moved to avoid a particular feature found on the site, it can be moved with the authority’s consent, using the variation powers. Those powers are important and they work effectively.’²⁴²

466. It was pointed out that variation could be valuable in taking on board late community responses to consultation—

‘At the moment, we try our best to implement full community consultation at the scoping stage of a project and when the application is in for determination. I am afraid that you would be amazed how many people come to us even after consent is issued and say that they did not know anything about the application regardless of whether we have advertised in papers, done leaflet drops or held exhibitions. The opportunity to

²³⁹ Councillor Willie Dunn, COSLA, Communities Committee Official Report, 22 March 2006, column 3232.

²⁴⁰ Written evidence submitted by Colinton Amenity Association, Currie Community Council and Balerno Community Council.

²⁴¹ Michaela Sullivan, Deputy Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3394.

²⁴² Alasdair Macleod, Airtricity, Communities Committee, Official Report, 1 March 2006, column 3199.

resubmit an application—either a variation of an existing application or a slightly amended scheme—to accord with feedback that we have had throughout the process is welcome.²⁴³

467. The Mobile Operators Association welcomed the proposals as allowing operators and planning authorities the chance to take into account constructive community consultation throughout the planning application process and as providing a degree of flexibility that could accommodate minor alterations to proposals.

468. The Committee welcomes the initiative to make the planning process more transparent by including statutory provisions within the Bill in relation to variation. Nevertheless, given the uncertainties expressed in evidence as to how these provisions will work in practice, the Committee considers that significant work will be required to produce regulations that inform the definition of ‘substantial change’ in relation to the many types of change that could be introduced to a planning application. In this context, the Committee welcomes the Minister’s intention to consult planning authorities to establish the boundaries for what would constitute a ‘substantial change’ in an application.

469. However, the Committee is concerned that there will be no opportunity for community groups and other parties with an interest in an application to provide input as to what constitutes ‘substantial change’ in relation to an application. The Committee also notes the view expressed in evidence that there should be an obligation to notify all parties with an interest in an application of any proposed variation to it. It recommends that these issues should form part of the consultation on the regulations.

470. The Committee is also keen to ensure that a mechanism is found to allow variations of a positive character emanating, for example, from recommendations linked to an Environmental Impact Assessment, a requirement to protect an archaeological site or the suggestion of a representative of a community. The Committee therefore recommends that this issue is also addressed as part of the proposed consultation exercise.

471. Given the lack of detail currently available on the type of variation that would constitute a ‘substantial change’, the Committee considers that a further level of Parliamentary scrutiny would be preferable and therefore calls for the regulations relating to variations to be introduced subject to the affirmative procedure. It is further recommended that these regulations should be accompanied by appropriate guidance for planning authorities and developers.

²⁴³ Debbie Harper, Scottish Power, Communities Committee, Official Report, 1 March 2006, column 3202.

Development already carried out

472. Section 8 inserts new section 33A into the principal Act. This gives a planning authority the power to issue a notice requiring the owner of land, where development has been carried out, to make an application to them for planning permission for that development. The issuing of such a notice is also included as an enforcement measure under section 123(2) of the principal Act, and the use of such a notice will therefore constitute enforcement action. This provision closes the loophole whereby a development without planning permission is immune from enforcement action after a period of four years.

473. The Committee commends the proposal to empower planning authorities to issue a notice requiring that planning permission be applied for development already carried out. It is of the view that this should contribute to countering the sense of unfairness that may be felt by members of the public or a community in cases where there was no planning permission for a development. However, it calls on the Scottish Executive to consider the development of guidance to provide advice on the parameters to be applied so as to limit inconsistencies in the implementation of this provision.

Publicity for applications

474. Section 9 substitutes section 34 of the principal Act. It allows for the transfer of the responsibility for neighbour notification to planning authorities. It provides for regulations or a development order prescribing the persons or categories of persons that the planning authority must give notice to, the manner and number of occasions for so doing and the period within which this must be done by the planning authority. Neighbour notification must be carried out for applications for planning permission, for an approval required under a development order and for a consent, agreement or approval required by a condition imposed on a grant of planning permission and for an agreement under section 75A(2).

475. By transferring the responsibility from developers to planning authorities, the Scottish Executive aims to 'strengthen public confidence in the planning system and encourage more effective public participation.'²⁴⁴ The objective is also to provide more information on the planning proposal and the planning system through the neighbour notification system.

476. The transfer of the responsibility for neighbour notification to planning authorities was broadly welcomed in evidence to the Committee as a means of increasing public confidence and triggering public involvement at an early stage. Professor Alan Prior emphasised that it would reduce the risks of people not being notified, but that there could still be some difficulties in ensuring that it was fully comprehensive—

'By putting the responsibility for serving notice on the authority, there would be less risk that people who should be notified are not being notified. There are still in the system risks to the authority when it comes

²⁴⁴ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 113.

to people potentially being missed off the notification list; for example, because there might not be an up-to-date valuation register.’²⁴⁵

477. The Scottish Society for Directors of Planning gave their support to the proposals as a means of creating greater public confidence in development proposals—

‘We cautiously welcome the transfer of responsibility for neighbour notification to local authorities, particularly those that are associated with planning applications. There is substantial evidence that significant problems were caused in the past as a result of the failure to notify or the submission of misleading certificates. The bill gives local authorities the opportunity to take control of the process and, in so doing, remove the doubts in the minds of the public on the veracity of the process.’²⁴⁶

478. COSLA confirmed ‘that local authorities having responsibility for that task will give people more confidence’, but expressed some reservations as to the resource implications of this responsibility. As the detailed responsibilities of planning authorities will be set out in regulations, COSLA indicated that individual planning authorities remained unclear as to the exact implications of the provisions and what the costs would be. In written evidence, COSLA raised issues concerning the significant variations that there could be in the requirement for neighbour notification according to the size of the development and the geographical location—

‘This is an issue for urban authorities with a volume of high-density housing, where notification might be required. It is also an issue for rural authorities in terms of the need for on-site assessment of the neighbourhood to which the application applies, as well as the costs of mailing notification to all who are deemed to be neighbours within the prescribed parameters. Actual identification of land ownership may also create a cost burden. Early pilot exercises suggest a not insignificant cost involved per application, though circumstances and costs will vary according to the council area and the neighbourhood concerned.’²⁴⁷

479. While COSLA did not perceive a necessity for trained planners to carry out neighbour notification tasks, they remained concerned by the way that the costs for neighbourhood notification would be covered and the capacity for the true costs to be reflected in fees for planning applications—

‘It is probably right that the resource will come through the planning fee. However, the costs involved in a development in my ward that might affect 300 people would be different from the costs involved in a development in Orkney How are the planning fees to vary to reflect such circumstances?’

²⁴⁵ Professor Alan Prior, Heriot-Watt University, Communities Committee, Official Report, 18 January 2006, column 2856.

²⁴⁶ Steve Rodgers, Scottish Society of Directors of Planning, Communities Committee, Official Report 25 January 2006, column 2924

²⁴⁷ Written evidence submitted by COSLA.

'The fees that we receive are a rare example of fees that are fixed, to the penny, by the Parliament... It would be better if local authorities could fix planning fees according to their local circumstances, within broad statutory guidance; that would parallel the approach that applies to other local authority fee charging.'²⁴⁸

480. The Deputy Minister acknowledged these concerns and indicated that work was underway to establish the implications for planning authorities—

'COSLA and others have flagged up the implications for the local authority not just in managing the simple neighbour notifications—there might be diverse challenges for authorities in issuing notices—but in dealing with people who object to the fact that they did not receive a notification. We want to make the system work, but we acknowledge the challenges that local authorities will face. The neighbour notification working group and the planning finance working party have considered the issue. We want to flesh out the cost implications for local authorities. We are talking about an important measure for improving community consultation and involvement.'²⁴⁹

481. The Committee commends the Scottish Executive for taking the step to transfer responsibility for neighbour notification of planning applications to planning authorities. The Committee shares the view that the proposals will help to increase public confidence in the planning system by ensuring that neighbours are properly notified about planned developments and receive information at that point explaining the planning process to them.

482. Nevertheless, the Committee is concerned that there is not more information available at this stage on the processes that will be required under secondary legislation relating to neighbour notifications. The Committee considers this proposal to be an important part of the package of provisions designed to enhance public confidence in the system and therefore calls on the Scottish Executive to introduce any regulations under this section subject to affirmative procedure to allow further Parliamentary scrutiny to take place.

483. The Committee looks forward to considering proposals brought forward by the Scottish Executive on the most appropriate way of funding this new responsibility for planning authorities. It sees significant merit in COSLA's proposal that there should be some form of mechanism for planning fees to cover the direct administrative and other costs of neighbour notification.

Pre-application Consultation

484. Section 10 of the Bill inserts three new sections on pre-application consultation into the principal Act. These sections require a prospective

²⁴⁸ Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3320.

²⁴⁹ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3388.

applicant to comply with pre-application procedures for certain classes of development, which will be prescribed by regulations or a development order. The Policy Memorandum indicates that the categories of development considered appropriate for pre-application consultation are: proposals for major developments; proposals for developments that require an Environmental Impact Assessment; and proposals for developments defined as large scale 'Bad Neighbour' developments which represent a significant departure from the development plan.²⁵⁰ The applicant will then be required to submit a 'pre-application consultation report' as part of the planning application. The Scottish Executive also indicated in evidence to the Committee that 'guidance and advice that will demonstrate what is required in a pre-application consultation.'²⁵¹

485. In evidence to the Committee, the Scottish Executive emphasised that their objective was to—

'...move away from the stereotypical situation where a developer submits an application and then consults the community on it to one where there is a proposal for an area and there is engagement with the community on how that proposal will evolve.'²⁵²

486. The proposals to introduce requirements for pre-application consultation were welcomed in evidence to the Committee. Professor Alan Prior explained that the proposals would not only be positive in ensuring that consultation was carried out, but also in making the process smoother after applications had been introduced—

'...when the developer submits an application, they should have a good sense of what the local issues are likely to be, and they will have a good chance to amend – or perhaps even withdraw – their application. When the authority receives the application, it will know what local issues have to be raised. Therefore, the time that it takes to resolve all the issues once the application has been made should be collapsed.'²⁵³

487. A number of developers, in giving evidence to the Committee, welcomed the proposals to introduce pre-application consultations into statute and provided examples of the types of pre-application that they already undertook. The evidence provided by Homes for Scotland gives an example of this—

'Our industry welcomes the proposals. We are working actively with our member companies on how to progress pre-application discussion and community consultation. We have commissioned Planning Aid for Scotland to research the processes that might be put in place to assist that. The housebuilding industry will embrace the idea.

²⁵⁰ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 116.

²⁵¹ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 11 January 2006, column 2784.

²⁵² Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3381.

²⁵³ Professor Alan Prior, Heriot-Watt University, Communities Committee, Official Report, 18 January 2006, column 2854.

'If we step back and think about it, the proposals are really saying that if a planning proposal has the community's support, the planning application will be more robust and the planning authority will be less likely to refuse it. That is a hugely powerful message to send out to the development industry, and we will certainly embrace it.'²⁵⁴

488. Planning Aid for Scotland welcomed the proposals, but suggested that there needed to be standards to ensure the quality of pre-application consultation—

'Pre-application consultation is vital in order to front load the system, which is what we want at the end of the day. We want people to be involved in the process at a much earlier stage. There are already good and welcome examples of participation—especially involving the house-building industry—in Scotland.

'However, I have two concerns. First, arrangements require to be regularly reviewed. If consultation arrangements have been made, a system must be in place that monitors and evaluates what is on the table a year or two later. Secondly, criteria are needed. We need a template showing what is required from the developer by the local planning authority and by the community. Such details are required so that people do not simply say, "This is what we have done, and that is good enough for us." Standards must be set.'²⁵⁵

489. Representatives of community groups had reservations about how pre-application consultation could be made meaningful for communities affected by a development—

'...my previous involvement in pre-application consultations—which developers are currently encouraged but not required to carry out—suggests to me that developers engage in such discussions to ease the progress of their planning applications rather than because they genuinely want to engage with communities. I do not hold that against them, as that is only human nature. Developers want to get their development through the planning process, so they will jump through the various hoops that have been put in place. In my view, developers seriously engage with and listen to communities only if they know that the planning authority staff are watching the consultation process and are reading very carefully and acting on the reports produced during that process. That is a key point. If it is written into the bill only that consultation must take place, developers will just tick the boxes.'²⁵⁶

490. It was also pointed out that 'every developer will undertake some form of consultation—or even, if we are lucky, participation—but the bill imposes no

²⁵⁴ Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, column 3165.

²⁵⁵ Petra Biberbach, Planning Aid for Scotland, Communities Committee, Official Report, 8 March 2006, column 3250.

²⁵⁶ Harald Tobermann, Pilrig Residents' Association, Communities Committee, Official Report, 8 March 2006, column 3248.

mandatory requirement on developers to act on the findings of any consultation that is undertaken.²⁵⁷

491. Scottish Power raised a point about the 12 week minimum period that must elapse between the submission of a 'proposal of application notice' and the submission of an application. That was also supported by other energy providers working in the renewables sector. Scottish Power stated—

'Pre-application notification is a good idea. If local authorities know what is coming, it is easier for them to allocate resources. Our only concern is about the period of notice. The bill suggests 12 weeks, which we feel is a long period before the actual submission. I believe that other kinds of legislation have periods of 28 days. That would be a more realistic timescale.'²⁵⁸

492. From the local authority perspective, pre-application consultations were welcomed but questions were raised as to the role of planning authorities in such consultations. The Scottish Society of Directors of Planning expressed concerns about commitments being made to a community and then an application not getting planning permission—

'The concept of pre-application discussions is interesting and, probably, essential, but such discussions must be pitched at the right level. Pre-application discussion with communities is to be welcomed for larger-scale planning applications. However, I suggest that it should not be the responsibility of the applicant to engage in such discussion- it should be the responsibility of the local authority to manage the engagement'.²⁵⁹

493. When questioned by the Committee on whether there should be a role for planning authorities in pre-application consultations, COSLA argued that planning authorities should have the discretion to decide whether to have a role in pre-application consultation, although it recognised that this could bring into question the role of the planning authority in such a consultation—

'...we should attend meetings and facilitate things. If the council is not involved, there is a danger that a developer will give a community council or community group information that is incorrect or that does not stand up in planning terms. The council has a role to ensure that the information that is disseminated to the public is correct.

'My only concern is that, if a council facilitates a meeting, the public might perceive that it supports the developer, and that it therefore supports the development. I have been at consultations on developments where a local member chaired the meeting. That is the danger in local authorities becoming involved in such events. On

²⁵⁷ Anna Barton, Community Liaison Officer, Cairngorms National Park Authority, Communities Committee, Official Report, 8 March 2006, column 3248.

²⁵⁸ Debbie Harper, Scottish Power, Communities Committee, Official Report, 1 March 2006, column 3200,

²⁵⁹ Richard Hartland, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2916.

balance, however, it is probably best that they are involved. If councils decide to become involved, they need to ensure that they do not take a view on the proposal, and that the public are given proper information on what is acceptable in development terms and on the role of the public in objecting to or supporting an application.²⁶⁰

494. The Royal Town Planning Institute in Scotland made reference to pre-application consultations in which planning authorities had had a role, but stressed that any planning authority involvement should be the subject of guidance—

‘There have been some relatively successful cases in which developers have willingly gone into public consultation in harness with a local authority and have managed the concerns that we have talked about. Whether we have it in regulations that will implement the precise arrangements or just in good practice notes, it is important that we have clear guidance to all the parties involved on the position of each of the interests in the process. It is important that the developer goes through that process. It has, in some cases proved beneficial, although it is still far from general practice at the moment.’²⁶¹

495. The panel of witnesses who gave evidence on public engagement in the planning system also welcomed the proposals, but made the point that planning authorities must be seen to take notice of and respond to reports of pre-application consultation. Concern was also raised that developers would have experts at their disposal at the pre-application stage, which might put communities at a disadvantage.

496. The Deputy Minister, when questioned by the Committee, did not perceive the need for a role for planning authorities in pre-application consultation—

‘We do not see councils having a formal role in pre-application consultations. Of course, planning authorities already have a role in holding pre-application discussions with developers—indeed, such discussions are common. Having a discussion with an officer is not the same as having a council decision, although I think that people recognise the difference between the two. On balance, our view is that it is not necessary for authorities to have a formal role in pre-application consultations. What is important is that planning authorities reflect on what is said in consultation statements.’²⁶²

497. The Committee welcomes the provisions in the Bill to introduce a requirement for pre-application consultation for certain categories of development. It is of the view that this is an important element of the

²⁶⁰ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3312.

²⁶¹ Graham U'ren, RTPI in Scotland, Communities Committee, Official Report, 25 January 2006, column 2917.

²⁶² Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3383.

Executive's proposals to 'front load' the system by providing early opportunities for consultation.

498. The Committee also notes that this proposal is welcomed by developers who gave evidence and hopes that it is viewed more widely by developers as an opportunity to genuinely engage with communities to bring forward improved development proposals which are more acceptable to those who are affected by them.

499. The Committee considers it to be important that pre-application consultation should be carried out with as broad a range of community interests as possible. In this regard, there must be a recognition that community councils are often not the only bodies which represent communities. It is therefore recommended that the Executive should encourage planning authorities to hold up-to-date lists of all representative bodies within their areas of responsibility which can be accessed by developers.

500. In common with other areas of the planning system, it is considered important that communities have the necessary skills and capacity to engage effectively with the pre-application process. The Committee therefore recommends that the proposed Planning Advice Note on public engagement should also cover means of supporting the public and community groups in their involvement with all aspects of the planning system.

501. The Committee recognises that the detail of these proposals will only become apparent when secondary legislation is introduced and that guidance will be vital in ensuring that pre-application is not seen by some developers merely as a means of speeding up a planning application but also as a means of responding to local concerns and improving a development proposal. The Committee requests that the Executive introduce regulations under this section subject to the affirmative procedure.

502. The Committee shares COSLA and the SSDP's view that it is important for the planning authority to have a role in facilitating pre-application consultations in certain cases to ensure that appropriate and accurate information is provided to consultees about such matters as to how the proposed development relates to the local plan or technical planning issues.

503. The Committee therefore calls on the Executive to reconsider the need for planning authority involvement in this process with a view to including provisions in secondary legislation or advice in guidance.

504. The Committee agrees with the RTPI that it is important that all parties have clear information on the interests of others involved in this process. It would be essential that planning authorities were to have a role in pre-application consultations if they were clearly identified as having no connection to the developer. The Committee considers that

advice on managing this aspect of the process should be set out in guidance on the pre-application consultation process.

505. The Committee also recommends that the Executive should consider whether it would be reasonable to reduce the minimum period of 12 weeks which must elapse between the submission of a proposal of application notice and the submission of an application, with a view to providing more certainty for communities on the form of a development.

Public availability of information as to how planning applications have been dealt with

506. Section 11 introduces changes to section 36(1) of the principal Act, which requires planning authorities to keep registers of applications. The changes proposed aim to make sure that there is also a record of documents to which regard was had, and any material considerations to which regard was also had in dealing with an application, and any pre-application consultation report. The planning authority is also required to make available an explanation of the manner in which an application has been dealt with and provide a copy of the decision notice. Records of any planning obligation entered into under section 75 must also be included. These proposals aim to provide access to information on how a decision was taken and the ways in which any consultation or material considerations were taken into account.

507. The Committee strongly commends the Scottish Executive for introducing measures to allow the public greater access to information on how planning applications have been dealt with. These proposals should make a valuable contribution to improving the transparency of the planning system and also provide the public with the opportunity to scrutinise the way that planning authorities have taken decisions where this information is not already in the public domain.

Keeping and Publication of Lists of Applications

508. Section 12 introduces new section 36A into the principal Act. This new section places a statutory requirement on planning authorities to keep and publish weekly lists of planning applications and proposal of application notices for pre-application consultation. The Bill provides for planning authorities to advertise the availability of the list in a local newspaper at intervals to be prescribed as well as providing for regulations which will prescribe the form and content of the lists. The policy objective is to allow a readily accessible and regularly updated list of planning applications.

509. At its pre-legislative meetings, views were expressed to the Committee about the often high cost of newspaper advertisements in relation to planning matters – especially when only one local newspaper existed - and the inaccessibility of the format used.

510. The Committee also heard in evidence suggestions for increasing the level of information available on development proposals, such as the practice in the United States and some European countries where large billboards or notices are displayed on a development site so that those who live and work

in the vicinity can clearly identify the nature of the development that is the subject of an application or that is taking place.

511. The Committee welcomes the provisions to extend the information available to the public on planning applications and pre-application consultation and to ensure that it is readily available in an updated format for members of the public.

512. The Committee questions whether the current requirements to place newspaper advertisements relating to certain planning matters are appropriate, particularly given the high costs of these to many local authorities. The legalistic format of certain of these adverts is not considered to be an effective way of informing those who may have an interest, particularly the public, as part of a modern planning process. The Committee therefore calls on the Executive to examine the role and format of newspaper advertisements and consider whether more modern, informative and cost-effective alternatives could be introduced.

513. The Committee also calls on the Executive to consider the introduction of other innovative methods, such as the display of suitable billboards or notices on development sites and the further development of e-planning techniques, to increase public awareness of proposed developments both at the application and the development stage.

Determination of applications

514. Section 13 of the Bill inserts new section 38A into the principal Act. This new section provides for regulations or a development order requiring a planning authority to give the applicant or any person so prescribed an opportunity of appearing before and being heard by a committee of the authority. The Policy Memorandum indicates that planning authorities will be required to hold pre-determination hearings for applications for major and local developments which are significantly contrary to the development plan; for applications for developments that require an Environmental Impact Assessment; and applications for developments defined in secondary legislation as large-scale 'Bad Neighbours'.²⁶³ Planning authorities will be able to decide their own procedural rules for the conduct of hearings and who has a right of attendance. Planning authorities may also decide to hold a hearing for an application other than the classes prescribed in regulations.

515. The Minister for Communities explained that 'the intention of these proposals is to provide for the more widespread and consistent use of hearings across Scotland to allow interested persons and organisations to make representations directly to Planning Committees in respect of applications which are likely to be controversial and contested.'²⁶⁴

516. The Scottish Society of Directors of Planning noted that the detailed provisions in relation to pre-determination hearings would emerge in

²⁶³ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 129.

²⁶⁴ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006.

regulations, but commented that the Executive should be encouraged 'to ensure that we have hearings when it would be appropriate to do so and when they would add value to the process; we should not have hearings just for the sake of it or in circumstances in which they add nothing.'²⁶⁵ The RTPI in Scotland noted that the procedure was used informally by many planning authorities at present, with significant variations in practices. It therefore considered that 'regulations will require to set out a more standard approach which provides a meaningful opportunity for people to be heard and to have their views taken into account.'²⁶⁶

517. Miller Developments noted that similar provisions were in place in England and welcomed the inclusion of the provisions in the Bill—

'In many local authorities in England, where we have major schemes, the hearing process is already part of the planning application process. We have no problems with it. Although developers are opening themselves up to objectors to their schemes, they also get a chance to put across their case. The financial implications to us are pretty minimal. We would welcome the opportunity to put our case to planning committees in person.'²⁶⁷

518. Scottish Environment LINK expressed scepticism about the value of pre-determination hearings—

'Basically, pre-determination hearings provide an opportunity for somebody to stand in front of a committee and let off steam. Essentially, that is all that they can do. Just talking from experience, I know that, in one example, 600 objectors were given 15 minutes to speak about their concerns, and that was without any duplication. It was a bit of a lottery when it came to who got to speak, and the developer then got to respond. That did not really add anything to the process. The hearings will suit only certain people who like that sort of arena, where they can stand up and talk to their councillors. We do not really see how pre-determination hearings add any value, and we do not see where the demand for them is.'²⁶⁸

519. COSLA referred to the use of pre-determination hearings by the City of Edinburgh Council and indicated that there had been fewer pre-determination hearings than had originally been anticipated. COSLA explained: 'good early consultation probably reduces the need for pre-determination hearings, but when they are needed—because issues have not been resolved—I imagine

²⁶⁵ Steve Rodgers, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2920.

²⁶⁶ Written evidence submitted by the RTPI in Scotland.

²⁶⁷ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3167.

²⁶⁸ Stuart Hay, Scottish Environment LINK, Communities Committee, Official Report, 8 February 2006, column 3057.

that the community is better informed and better able to make a presentation to the hearing than it might have been otherwise.²⁶⁹

520. The Deputy Minister explained the purpose of pre-determination hearings as a means of strengthening 'public participation in the decision-making process on a range of applications, because it will allow interested parties and objectors to make direct representations to planning authorities before applications are determined.'²⁷⁰

521. The Scottish Executive also pointed out that as there were a number of existing practices in relation to pre-determination hearings in Scotland, the Bill's provisions and the secondary legislation would be a means of developing greater consistency in the use of pre-determination hearings—

'From discussions that we have had with local authorities and community and environmental organisations, it is clear that an inconsistent approach to such developments is being taken throughout Scotland. Some local authorities allow people to speak, while others do not allow them to speak at all or allow them to speak for only a certain period of time. There is a range of practice throughout Scotland. We should focus on good practice in the many areas that we need to consider. For example, who should be invited to speak? How should they be invited? When should they be allowed to speak? Will meetings take place in the evening or during the day? How will the chair of a hearing conduct business? When will people be informed of decisions?'²⁷¹

522. The Committee considers that there may be a positive role for pre-determination hearings and agrees that a more standardised approach will be helpful to users of the planning system.

523. However, the Committee is concerned that the proposals have been introduced in the Bill without research into the effectiveness of these hearings in the planning authorities that currently use them. The Committee therefore calls on the Scottish Executive to conduct research and consultation timeously on the existing models of pre-determination hearing to identify and supplement existing best practice before bringing forward more detailed proposals in secondary legislation.

Additional grounds for declining to determine an application for planning permission

524. Section 14 amends section 39 of the principal Act to set out circumstances in which a planning authority may decline to determine an application for planning permission and places a duty on planning authorities to refuse an application where the applicant has failed to comply with the new

²⁶⁹ Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3315.

²⁷⁰ Johann Lamont, Deputy Minister for Communities, Communities Committee Official Report, 28 March 2006, column 3383.

²⁷¹ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3384.

pre-application consultation requirement. The purpose of this is to limit repetitious applications, while not preventing improved applications.

525. Miller Developments indicated acceptance of these proposals—

‘As developers, we have no problem with the principle behind that. It is the rarest of circumstances in which a major developer makes repeated applications of a similar vein on the same site. So long as there is an opportunity to go back with an amended scheme at least once, we would perfectly happy with the proposal.’²⁷²

526. The Royal Incorporation of Architects in Scotland emphasised the importance of proposals having the opportunity to evolve, pointing out that ‘disappointment may follow the refusal of an initial application, but it is always worth while to consider the reasons for refusal—and whatever comment or criticism has been made—and to make positive use of them when amending the scheme before reapplying. I hope that the opportunity to do that will remain.’²⁷³

527. The Committee commends the Executive for restricting repetitious applications but allowing for repeat applications which improve on a previous application. This should contribute to increased public confidence in the planning system.

Local Developments: Schemes of Delegation

528. Section 16 inserts new sections 43A and 43B into the principal Act. Section 43A(1) requires planning authorities to prepare a scheme of delegation under which applications for local development will be determined by an appointed person, namely a planning officer. Regulations will provide for the form and content of schemes of delegation as well as the procedures for preparing and adopting a scheme. Many planning authorities in Scotland already operate schemes of delegation and the purpose of these provisions is to extend them in order to allow a wider variety of applications to be dealt with under a scheme of delegation and thereby deal more efficiently with the volume of applications received. Developments significantly contrary to the development plan, developments defined as larger-scale ‘Bad Neighbours’ and developments that require Environmental Impact Assessment may not be included in a scheme of delegation.

529. The applicant may require the planning authority to review a case where an application is refused, where an application is granted subject to conditions and where an application has not been determined within a prescribed period. Appeals may be made to a local review body made up of locally elected members, which will carry out an independent review of the planning officer’s decision rather than considering the proposal again. The Executive indicates that the objective of this is to decide appeals quickly and locally. Secondary legislation will set out a period within which the appeal must be heard, as well

²⁷² Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3167.

²⁷³ Hugh Crawford, RIAS in Scotland, Communities Committee, Official Report, 1 March 2006, column 3168.

as the terms under which further information can be requested. Guidance will be prepared on the composition of the membership of the panel.

530. Councillors from COSLA gave examples of schemes of delegation in a number of authorities and testified to their success. In some planning authorities as many as 85 to 90% of applications may be decided under a scheme of delegation. It was explained that a number of planning authorities had mechanisms whereby a number of individual objections or an objection from a community council could trigger the examination of an application by elected members. One Councillor commented on the results of the scheme in his planning authority—

‘By and large, the scheme has worked well and I am not aware that we have had any complaints from members of the public. People have not been rushing to our surgeries to say that the scheme is wrong and undemocratic; they seem to be fairly comfortable with the scheme, as the relationship between the planner and the applicant is built up there. In addition, the planning committee has fewer applications to deal with and more time to spend on the applications that come before it.’²⁷⁴

531. COSLA rejected the suggestion that there should be consistent schemes of delegation throughout Scotland, arguing that a ‘scheme depends on the relationship between the elected committee and the staff.’²⁷⁵

532. Scottish Environment LINK commented positively on the proposals—

‘The system of delegation has clear advantages in freeing up local authority capacity to deal with more controversial or difficult cases. There is currently quite a disparity between the local authorities that delegate a great deal to officials and those that delegate virtually nothing. Having a scheme of delegation that sets out the rationale behind it and states how much will be delegated and when, would be welcome from the point of view of openness, transparency and understanding how the system will work.’²⁷⁶

533. A representative of the development industry also supported the principle, but questioned the independence of the review procedure—

‘We have no problem with the proposal for a scheme of delegation; many local authorities operate such schemes quite successfully and we have no particular objection in principle to the idea being extended.

‘I have a great deal of concern about the idea of what I might term a peer review of planning officers’ decisions by local members in the same planning authority, because I cannot see that the final review of the decisions will be entirely independent and impartial. In any local

²⁷⁴ Councillor Willie Dunn, COSLA, Communities Committee 22 March 2006, column 3324.

²⁷⁵ Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3327.

²⁷⁶ Anne McCall, Scottish Environment LINK, Communities Committee, Official Report, 8 February 2006, column 3058.

authority, planning officers and elected members tend to have a decent relationship. I would therefore far rather that any review of decisions was taken by an independent party.²⁷⁷

534. The concern with the appeal to the review body was shared by a number of bodies, in particular the Law Society of Scotland and the Faculty of Advocates. The latter explained its position in oral evidence to the Committee—

‘The planning authority is and will remain a single statutory body consisting of members and planning officers. Therefore, people would seek a review of a decision by the body that made the decision in the first place. At a legal level, that causes anxiety, because the officer is simply an employee of the planning authority. At a more functional level, the relationship between planning officers and members often makes it difficult for members to be able to review the decision of an officer without, quite reasonably, being influenced by what they already know about what has occurred in the authority.’²⁷⁸

535. The Scottish Council for Development and Industry indicated that it ‘felt strongly that a different proposal should be put forward’ in order to ensure that there was no conflict of interest. It suggested that ‘local experts or elected members of other authorities – for example, an authority from over the border – should make the decision.’²⁷⁹

536. COSLA pointed out in evidence that a Planning Committee was democratically accountable and that it would be considering the application for the first time—

‘If the application is being dealt with under the scheme of delegation, the planning committee, or whichever committee deals with planning applications, will not have heard the initial application, which will have been dealt with solely by the officers. We are indeed part of the same authority but, as I have said, not every decision by or recommendation from planning officers is adhered to by planning committees. Planning committees judge all cases on their merits, either for or against. Confidence in the system should lie in the fact that the public make their appeals to the democratically elected members for the area, who have not been part of the planning process for a particular application, and who will judge the matter afresh, based on the information that is in front of them, just as they might judge any other application the first time round.’²⁸⁰

²⁷⁷ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3168-9.

²⁷⁸ Roy Martin QC, Faculty of Advocates, Communities Committee, Official Report, 1 February 2006, column 2997.

²⁷⁹ Iain Duff, Scottish Council for Development and Industry, Communities Committee, Official Report, 22 February 2006, column 3110.

²⁸⁰ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3327.

537. The Deputy Minister for Communities affirmed her confidence in local authorities to conduct a proper and independent review—

‘The review will be done before an independent group of people who were not party to the original decision, and who we believe should be able to review that decision and either confirm or reverse it on the basis of the facts of the case. It is an important step to say that we want issues to be decided locally if at all possible and that, where there is a scheme of delegation, we want any appeals to be to local decisions.’²⁸¹

538. COSLA raised an additional point in evidence to the Committee about the requirement for planning authorities to submit schemes of delegation to the Scottish Ministers before the Council itself agreed the scheme. COSLA questioned the need for the scheme to be submitted to the Scottish Ministers, arguing that it was ‘quite extraordinary that the Executive can vet a scheme before a council even looks at it.’²⁸²

539. In response to this point, the Deputy Minister explained that ‘given the need to balance the different layers of responsibility, authority and discretion, we felt that the approach that is outlined in the bill was the best way of ensuring that people would have confidence in the scheme of delegation that a planning authority proposes.’²⁸³

540. The Committee is of the view that a statutory provision for formal schemes of delegation to be put in place in all planning authorities in Scotland will be effective in helping planning authorities to manage an ever-increasing number of applications.

541. The Committee recognises the concerns put forward by a number of bodies that a review being carried out by the same statutory body that took the initial decision may not comply with the requirements of Article 6 of the European Convention on Human Rights. The Committee calls on the Executive to note these concerns and to make every effort to ensure that this part of the process is seen to be as open, transparent and robust as possible.

542. The Committee notes COSLA’s objection to a scheme of delegation being submitted to the Scottish Ministers for approval before it is adopted by the Council. It calls on the Executive to engage in further discussions with COSLA to determine whether its proposals in this area could be revised to allow the submission of a scheme to Ministers at a stage where the planning authority has approved its content.

543. The Committee calls on the Executive to bring forward regulations relating to the scheme of delegation subject to the affirmative procedure

²⁸¹ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3390.

²⁸² Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3327.

²⁸³ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3391.

in line with the recommendation made by the Subordinate Legislation Committee.

Appeals

544. Section 18 amends the provisions in relation to appeals in the principal Act. The Bill gives the Scottish Ministers the power to determine the most suitable means of determining an appeal, whether through written submissions, a hearing or an inquiry, or a combination of these. It provides for a party aggrieved by a decision of a local authority review body to appeal to the Court of Session rather than to the Scottish Ministers. It also restricts the matters to be considered at an appeal to those that were before the planning authority except where there are matters which could not be raised at the time or there were exceptional circumstances which meant that the issues were not raised at the time. The Schedule to the Bill repeals parts of sections 46 and 48 of the principal Act, which allows planning authorities and appellants the right to a hearing, normally in the form of a planning inquiry.

545. The Minister for Communities indicated to the Committee that regulations will be used to set out the procedures for all appeals considered by the Scottish Ministers. These regulations will include the procedure for the submission of appeals, procedures for the early determination of appeals by the Scottish Ministers, requirements for appellants and planning authorities to express a preference for the form of the appeal and power for the Scottish Ministers to determine the form of an appeal.

546. Professor Alan Prior commented on the proposals in relation to appeal: 'one could interpret the way in which the Executive has tried to deal with that as a means of levelling down the playing field, rather than levelling it up, by restricting the grounds for appeal by the developer.'²⁸⁴

547. The early-determination process for appeals will be developed in regulations, but the White Paper indicated that this form of sift would be introduced 'for instance where they fail to address the reasons for refusal, or are against refusal of a proposal that does not accord with the development plan.'²⁸⁵ The Faculty of Advocates expressed concerns that there was a potential to pre-judge prior to considering the merits of the appeal, arguing 'clearly some form of procedure would be required in order to make an early value judgement that an appeal is without merit.'²⁸⁶ The Planning Sub-Committee of the Law Society of Scotland raised questions about the definitions used and also whether this proposal would be compliant with the European Convention on Human Rights.

548. The Scottish Executive Inquiry Reporters Unit explained that the objective of the restriction of new material at appeals was 'to increase certainty for communities that are engaging with the process and to stop

²⁸⁴ Professor Alan Prior, Heriot-Watt University, Communities Committee, 18 January 2006, column 2863.

²⁸⁵ Scottish Executive, *Modernising the Planning System*, 2005, page 10.

²⁸⁶ Written evidence submitted by the Faculty of Advocates.

drift.²⁸⁷ It was also emphasised that ‘there is no intention to embargo additional material that is material and relevant to the outcome.’²⁸⁸

549. The Planning Sub-Committee of the Law Society raised serious concerns about the provisions giving the Scottish Ministers – but a SEIRU reporter in effect – the right to decide the most appropriate form for determining an appeal and whether this was compliant with the European Convention on Human Rights (ECHR)—

‘One guarantee under Article 6 of the ECHR is of a fair and public hearing, but the balance is being moved away from an applicant or appellant having the right to choose a hearing. Currently, there is certain encouragement in a practical sense not to go for a public inquiry, but that will be replaced by a civil servant choosing, in effect, the type of process for an applicant or an appellant. In general, the issue is not only developers’ rights, as the rights of third parties will also be determined. The change is significant, and there is certainly tension with respect to the guarantees under Article 6 of the European convention on human rights.’²⁸⁹

550. The Planning Sub-Committee of the Law Society stated its support for ‘a presumption in favour of an applicant’s or an appellant’s choice of process’ arguing that no one, from individuals to those in corporations, makes the choice of having a public inquiry lightly because of the costs involved.²⁹⁰

551. Scottish Environment LINK commented—

‘With regard to getting people engaged in the process, offering them the opportunity to select the mechanism with which they feel most comfortable is far more effective than someone from the Scottish Executive inquiry reporters unit telling them the method that they will find most acceptable.’²⁹¹

552. In response to questioning by the Committee on whether a Reporter’s decision on the procedure to be used would be transparent, the Chief Reporter responded—

‘That is our intention. Our current approach is relatively inclusive and all the material that is used in reaching the decision is open to everyone involved. That inclusion will be improved by e-enablement, because we

²⁸⁷ Jim McCulloch, Chief Reporter, SEIRU, Communities Committee, 8 February 2006, column 3028.

²⁸⁸ Jim McCulloch, Chief Reporter, SEIRU, Communities Committee, 8 February 2006, column 3029.

²⁸⁹ John Watchman, Planning Sub-Committee of the Law Society of Scotland, Communities Committee Official Report, 1 February 2006, column 2971.

²⁹⁰ *ibid.*

²⁹¹ Anne McCall, Scottish Environment LINK, Communities Committee, 8 February 2006, column 3048-9.

intend to post the material on the web as well as make it available in paper form. We hope to fulfil the requirement for transparency.¹²⁹²

553. In addition, the Bill repeals subsections 46(5) and 46(6) of the principal Act, which gives either the applicant or the planning authority the opportunity of being heard in the case of an application called in by the Scottish Ministers. Similarly, subsections 48(2) and 48(4) of the principal Act are repealed, which allow the appellant or the planning authority the opportunity of being heard before an appeal is determined by the Scottish Ministers

554. The Committee's considers that the proposals relating to the restriction of new material at appeals will help prevent cases where new material is introduced in order to promote the case of the appellant.

555. In principle, the Committee views the provisions relating to the early determination of appeals as acceptable.

556. A minority²⁹³ of the Committee is concerned at the proposal to give Scottish Ministers the power to decide the format of the appeal, given the concerns expressed by the Law Society and Scottish Environment LINK. In particular those members believe that removing the right of applicants and appellants to select the form of hearing will undermine their confidence in the system. Those members note the Law Society's suggestion that there should be a presumption in favour of the applicant's or appellant's choice of process, and considers that the Executive should reconsider this section.

557. The Committee notes the view of some witnesses that these provisions may be challenged on the basis that they are not ECHR compatible.

558. The Committee calls for all regulations relating to appeals to be subject to the affirmative procedure in order to allow the Committee to give due consideration to whether the issues raised above have been addressed.

Duration of planning permission and listed building consent

559. Section 19 amends section 58 of the principal Act in relation to the duration of planning permission and listed building consent. Planning permission will lapse after a period of three years after it is granted, unless the development is begun within that time. The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 is also amended to limit listed building consent to three years.

560. COSLA welcomed the provisions to reduce the period of consent, commenting—

²⁹² Jim McCulloch, Chief Reporter, SEIRU, Communities Committee, Official Report, 8 February 2006, column 3024.

²⁹³ Christine Grahame, Patrick Harvie and Euan Robson.

'Five years is too long; three years is sufficient time for an individual developer or a company to get their act together, within reason, to get a development moving. Leaving it longer than that could leave local authorities open to ridicule, especially if a plan has been passed and the building has been sitting there for five years without being developed.'²⁹⁴

561. Homes for Scotland expressed some concern with the proposal on the basis that the removal of suspensive conditions could substantially delay a development—

'There is evidence that it can take our member companies more than a year—sometimes much longer—to remove suspensive conditions, because the process can depend entirely on the actions of other public agencies. For example, the removal of a suspensive condition that relates to water and drainage is entirely dependent on a Scottish Water investment programme. If that window is pushed out, such that the removal of suspensive conditions takes nearer two years, that leaves only a year on the planning consent in which to implement the proposal. To us, that period seems to be far too short. There is a risk that the developer might not be confident that they could purify the conditions in time. In our view, that would increase funders' uncertainty. If suspensive conditions could not be removed in time because of the actions of third parties, funders would become nervous. That is why we are concerned.'²⁹⁵

562. Miller Developments explained that there could be advantages in the reduction of the time period when a developer became unable to deliver—

The other side of the coin is that the present five-year duration of a consent has the effect of locking up capacity—whether that is retail capacity, drainage capacity or the capacity of the road network—until the consent expires. We have experienced situations in which a consent was granted but, for whatever reason, the developer could not deliver; he might not have been able to assemble the site, for example. As the alternative developer, we have had to sit around for five years until the consent expired because the capacity does not become available until that point. The reduction in the duration of planning consents to three years might be welcomed in cases in which there were competing schemes that could be delivered in practice.²⁹⁶

563. The Committee is of the view that a three year period should be sufficient to initiate a development and the reduction in the period of consent helps to provide certainty that a site will be developed within a given period.

²⁹⁴ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 8329.

²⁹⁵ Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, column 3171.

²⁹⁶ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3172.

Planning Permission in Principle

564. Section 20 of the Bill replaces section 59 of the principal Act. It effectively changes the system of outline planning permission to one of planning permission in principle. The Policy Memorandum summarises the proposals—

‘A planning authority will be able to grant planning permission in principle, attaching a specific set out conditions that will set out those matters of detail that must still be approved before development can commence. Applications for approval will then be subject to consultation procedures. A time period will be established, following receipt of an application, within which a planning authority can request further information, before registering the application.’²⁹⁷

565. Professor Alan Prior regarded the proposals as a ‘significant step forward’, explaining—

‘Under the new system that is proposed in the bill, there will be no scope for decisions to involve only a dialogue between the planning authority and the developer. The system of outline permission and the grey areas around it will be replaced by a transparent system of planning permission in principle. If such permission is granted a full and detailed planning application will be required later on, with the attendant safeguards and transparency.’²⁹⁸

566. The importance of having planning permission in principle was stressed in relation to section 75 agreements, where the uplift in the value of land is currently calculated following the granting of outline planning permission—

‘It is important to bear in mind, particularly in the case of large housing projects, that local authorities seek to capture an uplift in value to fund supporting infrastructure through section 75 agreements. One cannot work out what that increase in value will be and what supporting infrastructure will be required unless one has outline planning permission or planning permission in principle to allow one to go to the next phase. Without it, it would be difficult to promote major housing developments or to fund the infrastructure to support them.’²⁹⁹

567. The Committee is of the view that the Bill strengthens the existing proposals for outline planning permission and should ensure that they are transparent and more robust.

Planning Obligations

568. Section 75 of the principal Act provides for voluntary planning agreements, which are drawn up by planning authorities and the developer.

²⁹⁷ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 174.

²⁹⁸ Professor Alan Prior, Heriot-Watt University, Communities Committee, Official Report, 18 January 2006, column 2866.

²⁹⁹ Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, column 3173.

Section 75 agreements set out what an applicant will deliver either in relation to the development or to associated infrastructure costs.

569. Section 22 substitutes section 75 of the principal Act. The provisions introduce a statutory requirement for all planning obligations to be registered on the planning register, thus making the process more transparent. Unilateral obligations are also introduced. These allow a developer to put forward a unilateral agreement to address the concerns of a planning authority or an objection. The provisions also provide for the modification or discharge of planning obligations under the planning system, with a right of appeal against a planning authority's failure to give notice of its determination for modification or discharge of a planning obligation. Guidance will be updated and new guidance introduced on the use of planning obligations and best practice in drawing them up.

570. In addition to the observations made at paragraphs 241-246 above on HM Treasury's proposals to introduce a planning gain supplement, a number of specific points were made in relation to the provisions in the Bill.

571. Scottish Environment LINK welcomed the proposal to include planning obligations on the planning register as a means of making them more transparent—

'Again, the principle behind the proposals is welcome. I understand that the intention is to make the planning obligations that are arrived at between developers, those who have an interest in the land and local authorities more open and available on a public register. I have been involved in negotiating a number of section 75 agreements, which can be opaque and difficult for people to understand. Anything that makes agreements more open, and makes it easier for communities to understand how they have been reached and what they are, is to be welcomed.'³⁰⁰

572. The Scottish Society of Directors of Planning expressed concerns that the proposals to introduce unilateral obligations would weaken the negotiating power of planning authorities—

'Such an approach puts the onus back on to developers to anticipate our requirements and rather undermines the negotiation part of the process. There would be a mechanism for a developer to reach its own view about what is required, regardless of what the planning authority might request, and to force the issue by attaching that view to the planning application and insisting that that is determined.'³⁰¹

³⁰⁰ Anne McCall, Scottish Environment LINK, Communities Committee, Official Report, 8 February 2006, column 3060-1.

³⁰¹ Steve Rodgers, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2935.

573. It was also pointed out in evidence that section 75 negotiations could take up a lot of time and Scottish Renewables called for 'more focus to be placed on ways of streamlining section 75 agreements.'³⁰²

574. The Scottish Society of Directors of Planning were also concerned about the provisions allowing a developer to appeal a planning authority's decision to decline to modify or discharge a planning obligation—

'The introduction of a power for developers to apply for a section 75 agreement to be modified or discharged raises the same sorts of issues. There may well be situations in which section 75 provision is negotiated and agreed and then an application for it to be modified or, indeed, discharged quickly follows. We have concerns that the ability of authorities to secure the necessary infrastructure and other improvements that are required on the back of development proposals will be undermined.'³⁰³

575. COSLA also expressed concerns about the right of appeal, suggesting that the approach 'might be flawed'—

'After all, as the name suggests, a section 75 agreement is just that—an agreement. It is entered into voluntarily and for very good reason; indeed, without such an agreement, the application for the development might well have been refused. If the provision is not examined further, it might well weaken the purpose of section 75 agreements or planning obligations.'³⁰⁴

576. In evidence to the Committee, the Scottish Executive clarified the circumstances under which an appeal could be made in relation to a planning authority declining to modify or discharge a planning obligation—

'The proposed new section gives a right of appeal if the planning agreement requires the construction of an access road or the provision of money, for example, and the developer feels that he or she has discharged that obligation and would like that to be reflected in an up-to-date agreement but the planning authority refuses to do that. It is not about asking the planning authority to review something when it does not want to do that; it is about whether the developer has discharged an obligation under the terms of the agreement.'³⁰⁵

577. The Committee commends the Executive's proposals to include planning obligations on the planning register as this should promote transparency by making the terms of the planning obligation available.

³⁰² Maf Smith, Scottish Renewables, Communities Committee, Official Report, 1 March 2006, column 3206.

³⁰³ Steve Rodgers, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2935.

³⁰⁴ Richard Hartland, COSLA, Communities Committee, Official Report, 22 March 2006, column 3333.

³⁰⁵ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column

578. However, the Committee notes the concerns expressed in evidence by the Scottish Society of Directors of Planning that the introduction of unilateral planning obligations might weaken the negotiating power of planning authorities.³⁰⁶ It also notes their concern about the manner in which a developer can appeal under the system for modifying or discharging planning obligations. It calls on the Scottish Executive to consider these concerns when preparing the relevant secondary legislation and guidance and to introduce the regulations subject to the affirmative procedure.

Good Neighbour Agreements

579. Section 23 introduces four new sections into the principal Act to provide for Good Neighbour Agreements. The Policy Memorandum states that Good Neighbour Agreements (GNA) can 'complement formal regulation by allowing a developer and a community to engage on how a development is carried out.' It argues that 'GNAs can empower communities by giving them access to more information about a development, and facilitate communication between the parties to address issues of concern and avoid disputes.'³⁰⁷

580. New section 75D defines a community body capable of entering into a Good Neighbour Agreement. New section 75E sets out the circumstances and the process by which either party to the agreement may apply to have it discharged. New section 75F sets out provisions allowing either party to an agreement to appeal the planning authority's determination or failure to make a determination and when any modification or discharge is to take effect. New section 75G concerns the continuing liability of the former owner of land in relation to a GNA. Secondary legislation will cover a number of aspects relating to the operation of GNAs and guidance will be provided on the use of GNAs.

581. The Committee also received further information from the Scottish Executive in correspondence on the policy intention underpinning the GNA proposals, as well as more detail on how they would work in practice.³⁰⁸

582. In evidence to the Committee there was considerable discussion on the added-value of GNAs, the way they would work in practice, whether community groups would have the resources and capacity to monitor whether a developer was fulfilling obligations under the agreement and how the provisions could ultimately be enforced.

583. Scottish Environment LINK unreservedly welcomed the provisions for GNAs—

'Good neighbour agreements are a positive development, and we are encouraged by their being included in the bill. They are a good way of addressing community concerns. Currently, there is nothing to stop voluntary agreements, but including good neighbour agreements in

³⁰⁶ Patrick Harvie considered that provisions relating to unilateral obligations should be removed from the Bill.

³⁰⁷ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 182.

³⁰⁸ Letter from Jim Mackinnon, Chief Planner, to Karen Whitefield MSP, 17 February 2006.

statute and giving them status is a good thing. There is a lot of evidence over a number of years—from the United States of America—that such agreements work and can address community concerns.³⁰⁹

584. In evidence to the Committee, COSLA made reference to some already successful GNAs that were already in place in Scotland, commenting that ‘the agreements would give comfort to people who live with developments about what was going to happen and when it would or would not happen.’³¹⁰ However, COSLA did raise concerns about how they would be enforced, suggesting that there could be a role for planning authorities in doing this—

‘A good neighbour agreement is a good idea that works well when both parties work to the agreement. However, we must consider what happens when an agreement goes wrong. What can we do and what do we do? I would not want local authorities to have no powers, because without them a good neighbour agreement is just a nice piece of paper. A good neighbour agreement should include an enforcement regime. If it was properly resourced, local authorities would be the ideal bodies to do the enforcing.’³¹¹

585. The Planning Sub-Committee of the Law Society of Scotland commented on the lack of consultation on the proposals—

‘Our concern about good neighbour agreements is that the measure was presented as a *fait accompli* in the white paper and was then progressed into the bill without the same significant public consultation that has taken place on other matters. We have had lively debates about how good neighbour agreements would operate in practice. We are concerned that the idea has been accepted without drilling down into the detail and considering the practicalities.’³¹²

586. For developers, part of the issue was that planning conditions and planning obligations may govern many of the same aspects about the way a development is carried out as a GNA. GVA Grimley LLP commented that ‘perhaps there should be further debate on whether there is a need for this additional level of statute’ given that ‘many of the issues that the agreements aim to address are already competently controlled under planning conditions and agreements.’³¹³

587. The Scottish Society of Directors of Planning also raised concerns about how GNAs would operate in practice—

³⁰⁹ Anne McCall, Scottish Environment LINK, Communities Committee, Official Report, 8 February 2006, column 3062.

³¹⁰ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3338.

³¹¹ *ibid.*

³¹² John Watchman, Planning Sub-Committee of the Law Society of Scotland, Communities Committee, Official Report, 1 February 2006, column 2979.

³¹³ Richard Slipper, GVA Grimley LLP, Communities Committee, Official Report, 1 March 2006, column 3177.

'It comes down to establishing their purpose and developing a clearer understanding of that compared with what is presented in the bill and its supporting documents. What can good neighbour agreements actually achieve? Are they enforceable?'³¹⁴

588. The specific issue of how GNAs could be legally enforced was addressed both by the Law Society and a community representative. The Planning Sub-Committee questioned 'who has the right to take the operator to court over a perceived or actual departure from a good neighbour agreement?'³¹⁵ Ann Coleman of Greengairs Community Council referred to the costs and other implications for a community organisation of having to resort to the law to ensure enforcement—

'I agree that such agreements should be enforceable. The problem is that the public do not necessarily want to go into such a system. We always get accused of being adversarial, but we do not want to have to use the legal system.'³¹⁶

589. The Committee welcomes the introduction of Good Neighbour Agreements in principle and considers that they have the potential, in some cases, to encourage positive and constructive liaison between communities and developers. However, the Committee is of the view that further work is required on the detailed provisions relating to Good Neighbour Agreements, particularly on their form and how they will be enforced to ensure that communities have confidence in them. The Committee therefore calls on the Executive to carry out full and comprehensive consultation before preparing any regulations under this section. It also calls for the regulations to be subject to the affirmative procedure.

PART 4 – ENFORCEMENT

Stop Notices

590. Section 24 introduces four new sections into the principal Act providing for Temporary Stop Notices (TSNs). A planning authority is given the power to issue a TSN when there has been a breach of planning control in terms of engagement in activity on any land and it is expedient that the activity – or part of it – should be stopped immediately. A TSN may prevent work for a period of 28 days, with the planning authority having the power to withdraw it. The TSN represents a much more immediate power than an Enforcement Notice. The objective is to strengthen public confidence in the planning system by providing planning authorities with a power to tackle unauthorised development or development which is threatening to cause damage to amenity though damage to buildings or the environment.

³¹⁴ Steve Rodgers, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2937.

³¹⁵ Frances McChlery, Planning Sub-Committee of the Law Society of Scotland, Communities Committee, Official Report, 1 February 2006, column 2980.

³¹⁶ Ann Coleman, Greengairs Environmental Forum, Greengairs Community Council, Communities Committee, Official Report, 8 March 2006, column 3254.

591. COSLA regarded the introduction of a TSN as helpful for planning authorities, arguing that the 'current process is so long that people can go well down the road before such action is taken.'³¹⁷

592. Ann Coleman of Greengairs Community Council acknowledged that TSNs would help strengthen enforcement powers, but emphasised that resources to enforce the range of measures available was as important to increase public confidence—

'Frankly, we do not have an enforcement system for the 21st century. The stop notices and all the rest of it try to make things work. That is all very well if we can get hold of enforcement officers, but we have had some horrendous experiences with that... We have quite a lot of experience of the non-enforcement of conditions. Enforcement would go some way towards helping the public to trust and have confidence.'³¹⁸

593. The Law Society expressed a particular concern about the compensation provisions for TSNs—

'Our concern is about the compensation provision, which appears to apply when planning permission has been granted for the activity that has been stopped for 28 days, but not when someone is acting under permitted development rights. Such a person would be required, under the temporary stop notice, to cease undertaking that activity—which may well be an economic activity—for 28 days. At the end of that period, he could pursue compensation only if he obtained a certificate of lawfulness. It seems a bit artificial that, on the face of it, the bill excludes compensation for someone who operates under permitted development rights.'³¹⁹

594. The Faculty of Advocates highlighted the potential for two separate processes to be running at once—

'Under the existing legislation, one of the grounds for appeal against enforcement proceedings is that planning permission should be granted for the unauthorised development. The proposal is that that right of appeal be removed. Consequently, although the enforcement notice might be appealed against, if planning permission was being sought to legitimise the operations on the ground, an application would have to be made for planning permission. There would then be two separate processes running at the same time: the enforcement notice process and the new planning application, seeking retrospective planning permission. In the faculty's view, that goes against the desire to

³¹⁷ Councillor Trevor Davies, Communities Committee Official Report, 22 March 2006, column 3331.

³¹⁸ Anne Coleman, Greengairs Environmental Forum, Greengairs Community Council, Communities Committee, Official Report, 8 March 2006, column 3251.

³¹⁹ John Watchman, Planning Sub-Committee, Law Society of Scotland, Communities Committee, Official Report, 1 February 2006, column 2985.

introduce efficiency and seems to take away quite an efficient mechanism that works at the moment.³²⁰

595. In written evidence, the RTPI in Scotland confirmed its strong support 'for temporary stop notices and for the tightening up of planning enforcement generally.' The SSDP gave its support to TSNs and outline how they should help to build community confidence in enforcement and improve on existing enforcement notices—

'Often, there is fear and trepidation about serving stop notices because of the potential compensation claims. A stop notice often does not do what it says. I frequently get tangled up in knots trying to tell a community or a group of local residents that a stop notice will not stop the development because there is a right of appeal against the accompanying enforcement notice. As a result of that, people lose faith and confidence in the system. That needs to be rectified. A temporary stop notice that says, "Stop the development until we get matters sorted out or understood" would be much more effective.'³²¹

596. The Committee welcomes the introduction of the Temporary Stop Notice as a more effective means of taking immediate action against breaches of planning control. The Committee believes that this power should provide greater security to communities that planning authorities can respond to breaches of planning control and notes COSLA's support for the provision. The Committee also notes the concerns of the Law Society and the Faculty of Advocates in relation to the potential for two processes to be running simultaneously and suggests that the Executive consider these comments with a view to bringing forward improvements to the Bill's provisions at Stage 2.

Enforcement Charters

597. Section 25 introduces new section 158A into the principal Act. Planning authorities will be required to prepare enforcement charters, which set out a statement of the authority's enforcement policy and how members of the public may bring any apparent breaches of planning control to the attention of the planning authority and how the authority will deal with any complaint.

598. The Planning Sub-Committee of the Law Society of Scotland commented on the impact that enforcement charters should have on local authorities—

'It is proposed that enforcement policies should be reinforced. Local authorities should get to grips with enforcement, which should be put back on to their planning agenda through the preparation of enforcement charters. That would be one way of getting local authorities to look at

³²⁰ Ailsa Wilson, Faculty of Advocates, Communities Committee, Official Report, 1 February 2006, column 2999-3000.

³²¹ Richard Hartland, Scottish Society of Directors of Planning, Communities Committee, Official Report, 25 January 2006, column 2941.

their areas and deciding in a transparent way what needs to be done by way of enforcement.³²²

599. Miller Developments also welcomed Enforcement Charters as providing greater clarity on the role of planning authorities—

‘Ironically, planning enforcement is quite an important issue for developers. One of the arguments that we frequently hear from the public concerns the ability or willingness of local authorities to enforce the planning consents, conditions or obligations that they may have imposed on developers. What we often say is that that is a matter that their local authority can deal with under its powers and often members of the public do not believe that the local authority will be particularly great at enforcing the planning consent after it has been granted. There is an element of truth in that. We would welcome anything that gives the enforcement process more teeth. The enforcement charter does that, and we welcome it, but I would like to ensure that local authorities have the resources to be able to implement it.’³²³

600. It was pointed out to the Committee that enforcement might have been neglected by some planning authorities due to resource issues. Professor Alan Prior suggested that there was no need to use trained planners to act in an enforcement capacity—

‘Enforcement does not need to be monopolised by professional planning skills; it requires mediation and other tasks that a range of people other than planning professionals could perform. That might release planning officers who spend time on enforcement to do other things. It might address the fact that planning officers are not tackling enforcement because they are trying to do all the other things at the same time.’³²⁴

601. The Deputy Minister for Communities emphasised that, in her view, local authorities should attach significant importance to enforcement—

‘...local authorities should reflect on the priority that they have given to planning and enforcement and on whether their planning budget has grown in line with the growth of the general local authority budget. I am keen that enforcement is recognised as a significant priority for local authorities. The resource challenges can be met through dialogue between the local authority and the Executive.

‘Furthermore, effective enforcement aims not just to deal with the person against whom enforcement action is taken, but to send a message to others who might choose to do the same. Lack of enforcement in respect of one development creates an atmosphere in which the planning

³²² Frances McChlery, Planning Sub-Committee, Law Society of Scotland, Communities Committee, Official Report, 1 February 2006, column 2982.

³²³ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3178.

³²⁴ Professor Alan Prior, Heriot-Watt University, Communities Committee, Official Report, 18 January 2006, columns 2868-9.

system is undermined. A broader consequence of lack of enforcement is the cost to the community. Thus, high gains are to be had from proper enforcement.³²⁵

602. COSLA, while welcoming the new powers in the Bill, called for fixed penalty notices to be introduced, particularly as a means of dealing with serial offenders—

‘... the serial offenders take us all for a ride and are the real problem. We need the power to fine such people. I would not want to fine everyone, because people often act out of ignorance and it would not be right to fine people in those circumstances. However, we need extra leverage so that we can lean on serial offenders who do something wrong two, three or four times. One mechanism that people use is the retrospective planning application. The fees for such applications should be significantly higher than the fees for a proper application and there should be fixed penalty notices and fines in serial enforcement cases.’³²⁶

603. The Deputy Minister, in evidence to the Committee, emphasised that ‘the bill contains provisions for those who breach planning controls to be prosecuted, with a maximum fine of £20,000’ and explained that the Executive was ‘pursuing the matter with the Crown Office, as we know that it is relatively uncommon for enforcement cases to be passed to the procurator fiscal.’³²⁷

604. In response to questioning by the Committee on fixed penalty notices, the Deputy Minister stated—

‘...we are considering whether to introduce fixed-penalty notices at stage 2. Fixed penalties would be fines payable following failure to comply with an enforcement notice. They would offer an alternative to prosecution when that was thought by the planning authority to be disproportionate or impractical. They would need to be set at a level that was sufficient to act as a deterrent, while major breaches should be pursued through prosecution: the fines should not be a back-door route out of someone having the full force of the law against them. We are minded to consider fixed-penalty notices at stage 2, because we recognise the strong argument for local authorities having a range of options open to them, which would discourage developers from taking their chance with the law.’³²⁸

605. The Committee is of the view that Enforcement Charters should promote better public understanding of the responsibilities of planning authorities in relation to enforcement, and of the policies of individual

³²⁵ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3392.

³²⁶ Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3331.

³²⁷ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report 28 March 2006, column 3392.

³²⁸ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report 28 March 2006, column 3393.

planning authorities for dealing with complaints about apparent breaches of planning control.

606. Much of the evidence to the Committee on enforcement testified to the importance of planning authorities having the resources to improve enforcement measures. The Committee recognises that the Deputy Minister is also of the view that enforcement needs to be properly resourced by local authorities. The Committee therefore calls on the Executive to promote the better resourcing of enforcement within planning authorities, and examine the potential for the use of staff other than trained planners to facilitate this.

607. The Committee recognises the problems that planning authorities face in dealing effectively with developers who consistently breach planning controls. The Committee calls on the Executive to bring forward amendments to the Bill at Stage 2 to give planning authorities the power to issue fixed penalty notices to developers who systematically breach planning controls.

PART 5 – TREES

608. Section 26 of the Bill amends the sections of the principal Act relating to Tree Preservation Orders. The aim of these provisions is to make the procedure for serving and enforcing a Tree Preservation Order (TPO) more straightforward, and thereby improve the protection of trees.

609. The provisions allow TPOs to be served where a tree, groups of trees or woodlands are of cultural or historical significance. A single procedure for making a TPO is introduced, allowing for the TPO to take effect from a date specified in the order. The Bill introduces a right of entry which allows a person authorised by the planning authority to publish a TPO immediately so that a tree in imminent danger can be protected. The Bill requires statutory undertakers (such as electricity operators or railway companies) to notify the planning authorities when they uproot, fell or lop trees protected by TPOs. This will allow planning authorities to keep their records up to date and consider the need for replacing the trees. A replacement tree will also be covered by a TPO, unless the planning authority chooses to revoke it.

610. In evidence to the Committee, the Deputy Minister confirmed that ancient woodlands would be covered by TPOs and provided further clarification on the meaning of 'cultural and historical significance' in the context of TPOs—

'You will be happy to know that, subject to further discussion with stakeholders, we intend to define "cultural or historical significance" in guidance. The definition is likely to include examples, such as a tree's being the oldest surviving tree of a particular species in Scotland—I think that I have visited our oldest surviving tree—and of trees that are linked

to the history or culture of an area, such as the Douglas firs in Perthshire.³²⁹

611. The Minister also explained that £2.7 million identified in the Financial Memorandum would finance local authority tree officers with responsibilities other than just TPOs—

‘The tree officers will have not only that statutory function; they will have wider responsibilities, which we should all welcome, relating to management of open space, landscaping and other environmental issues. We have to consider not only cost but benefit. There will be benefits in savings as the system becomes easier to use. It will be for local authorities to determine the number of staff they need to carry out the range of functions, which might be different in different parts of Scotland.’³³⁰

612. The Committee considers that the provisions relating to Tree Preservation Orders will both simplify the process and promote the better preservation of trees in Scotland.

PART 6 – CORRECTION OF ERRORS

613. Section 27 introduces a new Part into the principal Act relating to the correction of errors or omissions in a decision letter issued by the Scottish Ministers or by a Reporter, where the approval of the applicant has been obtained.

614. The Committee questioned Scottish Executive officials on this provision and welcomed their assurances that the provision would in no way change or affect the substance of a decision. It notes the examples of the types of cases in which this provision might be used that were provided in correspondence from the Chief Planner.³³¹

615. The Committee is therefore content with Part 6 – Correction of Errors.

PART 7 – ASSESSMENT

616. Section 28 introduces a new part into the principal Act on the assessment of a planning authority’s performance or decision making. It gives the Scottish Ministers the power to conduct, or appoint a person to conduct on their behalf, an assessment of a planning authority’s performance of either general or particular functions under the planning Acts, and the same powers to assess how a planning authority deals with applications for planning permission. Following the completion of any such assessment, a report is to be issued to the planning authority and to the Scottish Ministers, if the latter

³²⁹ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3405.

³³⁰ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3406.

³³¹ Letter from Jim Mackinnon, Chief Planner, to Karen Whitefield MSP, 31 January 2006.

were not responsible for conducting the assessment. A planning authority is then required to prepare and submit a 'response report' to the Scottish Ministers indicating how they plan to implement the recommendations or providing reasons as to why they decline to implement the recommendations. The Scottish Ministers have the power to issue a direction to a planning authority requiring them to take action.

617. In evidence to the Committee, the Deputy Minister explained the objectives behind these proposals—

'More rigorous audit and intervention are intended to stimulate authorities to make improvements to planning services a higher priority, to provide the basis for sharing good practice, to give ministers the opportunity to intervene where performance failure is persistent, and to improve public confidence in the system, which relates to the second part of the question. That reflects the balance that we seek to strike in our relationship with local authorities. There is a great deal to be done and we must work positively with local authorities. We must understand the challenges that they face and we must support them, but we must also recognise that it is reasonable to expect planning authorities throughout the country to meet certain standards and to be consistent.'³³²

618. The Chief Planner emphasised the importance of public confidence in the service provided by planning authorities, and not just in the results of applications, appeals or objections—

'Much of the debate with communities is on objections to individual planning applications. We need to take the debate out of that environment and to think about quality of service. Can people access planning officers? Is enough time allowed for committee hearings? Do people feel that they get adequate opportunities to participate in hearings? We want to build on that engagement. Discussions about the planning service should not take place only between the Executive and planning authorities, but must involve other participants. Such discussions should consider the quality of local planning services and—in addition to specific issues on individual applications or development plans—the debate should cover the quality of service that is offered, access to that service and transparency.'³³³

619. COSLA gave a qualified acceptance to the proposals—

'If the system takes a fair and balanced view of the internal workings of the local government organisation and its part in the planning process, that is fair enough; we all have to be assessed and we all have to have the ability to improve. We need to benchmark ourselves against each other. That happens at the moment. Local authorities compare the time

³³² Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3407.

³³³ Jim Mackinnon, Chief Planner, Communities Committee, Official Report, 28 March 2006, column 3408.

that it takes them to turn around an application with the time that it takes other local authorities to do so. However, there are many hidden aspects that are outwith the control of local authorities that can slow down performance.³³⁴

620. COSLA emphasised that the assessment proposals should take account of delays that were caused by other parties, including the Scottish Executive and its agencies – that were involved in decisions. An example was given of a project which ‘was called in by ministers and it was 15 months before we got a decision back.’³³⁵

621. The RTPI in Scotland expressed reservations in written evidence about the proposals relating to the assessment of planning authorities’ performance—

‘While this is an important new section, we regret the necessity for both a general clause relating to performance and a further one specific to the assessment of decision-making. The new culture for planning, driven by greater respect for development plans themselves, must remove the focus of attention from process performance in development management to outcome performance in the achievement of the planning vision. We are inclined to recommend the deletion of the proposed new Clause 251B as it is covered by the generality of 251A.’³³⁶

622. Homes for Scotland welcomed the assessment powers, but also suggested that the information should be made publicly available—

‘The audit proposals are welcome, but audit must not be a cosy, closed process between the Executive and the planning authority. The audits should be transparent and the findings should be published and open to scrutiny by the community; it is only in that way that changes can be driven into the system where changes are required. Therefore, we need a system that goes beyond the current proposal that the matter will be dealt with between the Executive and planning authorities. We should publish the information and allow people to make their own judgments about performance.’³³⁷

623. The Committee welcomes the provisions in relation to the assessment of a planning authority’s performance and decision making. It is of the view that such assessments will contribute to promoting better performance among planning authorities, as well as highlighting where issues – such as a lack of resources – were hampering the capacity of a planning authority to fulfil its obligations. It also considers that the focus on the service provided by planning authorities will help

³³⁴ Councillor Willie Dunn, COSLA, Communities Committee Official Report, 22 March 2006, 3288.

³³⁵ Councillor Trevor Davies, COSLA, Communities Committee, Official Report, 22 March 2006, column 3287.

³³⁶ Written evidence submitted by the RTPI in Scotland.

³³⁷ Allan Lundmark, Homes for Scotland, Communities Committee, Official Report, 1 March 2006, column 3181.

to promote a planning system that is fit for purpose and has the confidence of the public.

624. The Committee considers that any such assessments must take account of external factors that may affect a local authority's performance, especially when delays are caused by other partners or stakeholders in the process.

625. The Committee sees merit in the suggestion that reports of assessments should be made publicly available to improve the transparency of the process.

PART 8 – FINANCIAL PROVISIONS

Fees and Charges

626. Section 29 of the Bill introduces amendments to section 252 of the principal Act in relation to fees and charges. These provisions give the Scottish Ministers powers to make regulations which provide for fees and charges in relation to the performance of a planning authority's functions, rather than just for any permission, consent, approval, determination or certificate. Notably, this will allow expenditure for monitoring the conditions attached to a planning consent to be covered.

627. The Minister for Communities indicated that a Planning Finance Working Party had been established to consider fee ranges for different levels of the hierarchy, potential categories of costs to be recovered by fees (including pre-application consultation, neighbour notification, monitoring and enforcement), the basis for calculating expenditure and fees for retrospective applications.³³⁸

628. COSLA provided an example of one planning authority in which fees covered only 27% of the cost of planning services. In general, COSLA welcomed the provisions relating to fees—

'COSLA would like to see fees rise significantly to fund the process. Developers would too, if we deliver a quicker and more efficient planning system. A structure in which more is paid by bigger developers and for bigger developments in return for a quicker response time is one that we should consider. ..That will mean that the big strategic developments in all our areas will be delivered more quickly and effectively, which will drive forward our economy. A fee structure that is aimed at charging more at the top end for a faster and better quality service will help subsidise the system and will give us what we want, which is a good planning system that is robust, fair and open and delivers quickly in terms of driving forward the Scottish economy.'³³⁹

629. Miller Developments indicated that there would probably be an acceptance of increased fees but concerns would remain about the capacity

³³⁸ Letter from Malcolm Chisholm, Minister for Communities, to Karen Whitefield MSP, 23 March 2006.

³³⁹ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3286.

of planning authorities to deliver the service given the resource issues that they face and their dependence on other parties to the process—

'With regard to the principle of increased fees, you will probably find little reluctance from the development industry to taking that on board. Arguably, the current planning application fee is the smallest part of the costs that are involved in progressing a planning application. The consultants' fees will add up to many times what the planning application fee will be. Would we pay more for a faster, more efficient system? Yes, there is no problem with that, but can you deliver that faster, more efficient system? I have concerns about that, not only in relation to local authorities, which face the sheer task of getting staff with sufficient skills to assess major applications, but in relation to getting consultation responses from bodies outwith local authorities.'³⁴⁰

630. Scottish Renewables made a similar comment on fees—

'If increased fees brought more certain determination times, that would be helpful. .. If increased fees do not produce better determination times, however, we would have concerns. We also accord with the view that the issue is to do with not only the local authority's ability, but that of other statutory consultees, to engage with the process within an effective timescale.'³⁴¹

631. In response to a question from the Committee on whether it would be appropriate for local authorities to set fees, the Deputy Minister emphasised the need for consistency across Scotland:

'We want to revise the entire fee structure to reflect the new hierarchy, to ensure that authorities can cover a broad range of costs and to allow for higher fees for retrospective applications. However, we want to strike a balance. There should be consistency; it will be important for people to know that equivalent applications will be treated in much the same way throughout Scotland.'³⁴²

632. The Committee notes that the Financial Memorandum refers to additional costs falling only to those who submit applications for major developments. The Committee is of the view that the current fees for large applications often do not reflect the scale of the work involved in processing such applications and it therefore agrees that fees for major developments should increase. However, it also recognises that developers should benefit from a more efficient service to justify the increased costs.

³⁴⁰ Colin Graham, Miller Developments, Communities Committee, Official Report, 1 March 2006, column 3181.

³⁴¹ Maf Smith, Scottish Renewables, Communities Committee, Official Report, 1 March 2006, column 3210.

³⁴² Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3409.

633. The Communities Committee is of the view that provisions which allow for the charging of fees for the performance by the planning authority of any part of its functions have the potential to alleviate some of the resource issues faced by planning authorities.

634. The Committee calls on the Scottish Executive to consider COSLA's suggestions that planning authorities could set fees within certain bandwidths and that the real costs of neighbour notification should be taken into account in the determination of individual fees.

Grants for Advice and Assistance

635. Section 30 of the Bill introduces new section 253A into the principal Act, providing for the Scottish Ministers to make grants for the purpose of providing advice and assistance in connection with any matter relating to the planning Acts.

636. In evidence to the Committee, the Scottish Executive indicated that this provision would be used to provide support to Planning Aid for Scotland on a 'secure footing' and would also include £2.25m for upskilling for planning authorities, for mediation projects and for upskilling and resourcing communities.

637. The Committee is acutely aware of the complexities of the planning system, which will be increased in the short term due to the number of new provisions contained in the Bill. The Committee is also acutely aware that the Bill proposes increased community involvement at various stages in the planning process and if the public are to participate in an effective and meaningful way, they will have to possess the necessary skills and have access to advice and resources that will enable them to do so. The Committee is also aware of the valuable work carried out by Planning Aid for Scotland and welcomes the provision of more secure funding for it. The Committee has heard evidence testifying to the potential value of mediation in the planning system and welcomes the Executive's commitment to piloting a mediation project. It is also of the view that resources for communities will be vital as they take on a greater role in the planning system, notably in relation to development plans and pre-application consultation.

PART 9 – BUSINESS IMPROVEMENT DISTRICTS

638. New section 31 of the Bill enables a local authority to make arrangements for the establishment of Business Improvement Districts (BIDs) within its area. Arrangements for the creation of cross-boundary BIDs may be made by regulations under section 32. Subsequent sections of Part 9 provide for the making of financial contributions to a BID, the keeping of a revenue account by the local authority, proposals for establishing a BID, approval by ballot, power of veto by the local authority, commencement and duration of BIDs and powers allowing Ministers to make regulations.

639. The Policy Memorandum states that the 'overall aim of the policy is to increase economic growth and stability by enabling businesses to take forward their own priorities in the area they are located.'³⁴³ The aim is to give impetus to the drive to regenerate and improve city and town centres in Scotland through partnership between the public and private sectors. The Scottish Executive describes a Business Improvement District (BID) as a precisely defined geographical area of a town, city, or commercial district, where businesses vote to invest collectively in local improvements with a view to improving economic performance in the district. BIDs are developed, managed and paid for by the business sector by means of a compulsory BID levy on each business's non-domestic rates bill. Each business liable to contribute to the BID will be able to vote on whether or not that BID goes ahead. A BID can be established wherever a local business community wishes to provide and fund additional services. It could be located in a town centre, in one or two particular streets, in an entire city centre area or in an industrial estate or a business park.³⁴⁴

640. The Local Government and Transport Committee, as secondary committee, reported to the Communities Committee on this part of the Bill.³⁴⁵

641. The Communities Committee notes that the evidence provided to the Local Government and Transport Committee from both the business sector and local authorities was largely in favour of Business Improvement Districts, although the Federation of Small Businesses in Scotland raised a concern about the effect of increasing pressures on local authority budgets.

642. The Communities Committee notes the concerns expressed to the Local Government and Transport Committee about the statutory or compulsory nature of any levy to be imposed on businesses in a BID area. However, the Communities Committee shares the view of the Local Government and Transport Committee that the success of BID proposals in England – where local businesses supported BIDs in 22 out of 27 cases - testifies to the success of the BID model where there is commitment to it.

643. The Communities Committee concurs with the Local Government and Transport Committee that the system should be developed in such a way as to ensure that landlords and property owners do not pass the costs of a BID levy on to their tenants.

644. The Communities Committee notes the discussion on the need for additionality in terms of any contribution provided by a local authority or other public agency in a BID area. The Committee agrees that any services provided under the auspices of a BID should be additional to those that would otherwise be provided to the locality.

645. The Communities Committee notes the conclusion of the Local Government Committee that there is broad overall support for the

³⁴³ Planning etc. (Scotland) Bill, Policy Memorandum, paragraph 221.

³⁴⁴ Scottish Executive website 'Local Government Finance and Local Funding'.

³⁴⁵ The Report by the Local Government and Transport Committee to the Communities Committee on the Planning etc. (Scotland) Bill is at Annex A.

proposals contained in Part 9 of the Bill, which provide for the establishment of Business Improvement Districts where they are proposed and approved by local businesses. The Communities Committee is of the view that BIDs could potentially contribute to the regeneration of town and city centres, as well as other urban areas and business districts. The majority³⁴⁶ of the Communities Committee is therefore content with the provisions contained in Part 9 of the Bill.

PART 10 – MISCELLANEOUS AND GENERAL PROVISIONS

646. Section 47 amends the principal Act to allow for strategic development plans and local development plans to supersede existing development plans. Part 10 also includes a number of amendments to the principal Act, the majority of which update references to ensure consistent terminology.

647. Section 49 of the Bill makes amendments to the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. The provisions will reduce the need for Scottish Ministers to be involved in certain listed building consent cases in certain local authorities; tighten controls over demolition works in conservation areas; and widen the scope for investing in conservation areas by ending the requirement for conservation areas to be defined as ‘outstanding’ for the purposes of obtaining a grant.

648. The Committee notes the largely technical amendments introduced by sections 47 and 48.

649. The Committee is of the view that the provisions in section 49 will contribute to the regeneration and protection of designated conservation areas across Scotland.

Subordinate Legislation Committee Report

650. The provisions of the Bill that confer powers to make subordinate legislation were referred to the Subordinate Legislation Committee under Rule 9.6.2. The Subordinate Legislation Committee examined these provisions in detail at its meetings on 14 and 28 March 2006 and raised a number of points with the Executive. The Subordinate Legislation Committee accepted the Executive’s responses on a number of issues, but made a number of comments on certain provisions, which are detailed below.³⁴⁷

New section 7(1) and (2)

651. The Subordinate Legislation Committee (SLC) noted that the power in new section 7(1)(d) would enable Ministers to make regulations prescribing matters more substantive than the justification for policies and proposals, and diagrams to explain these, for inclusion in the strategic development plans. The Executive indicated to the SLC that, as the provisions in the regulations are likely to be focused more on matters of form, it considered negative procedure to be appropriate.

³⁴⁶ Patrick Harvie dissented.

³⁴⁷ The Report by the Subordinate Legislation Committee to the Communities Committee on the Planning etc. (Scotland) Bill is contained at Annex A.

652. The SLC accepted that the content of the regulations is likely to be administrative but, in the absence of sight of any draft regulations, felt unable to exclude the possibility that more substantive material might be included and recommended that the first exercise of this power should be introduced subject to the affirmative procedure.

New section 12 – Examination of proposed strategic development plans

653. The SLC asked about the interaction of the provisions relating to the circumstances in which Ministers are to appoint a person to examine a proposed strategic development plan and the power to make regulations as to the procedures to be followed at such examinations. The Executive has confirmed that the appointed person will have a choice as to the form of the examination. The Executive further clarified that the reporter 'cannot invent new procedures but can select an appropriate procedure from those provided for in the regulations.'

654. The SLC considered that the interaction is not made sufficiently clear in the Bill and recommended that the Executive should reconsider the wording in this regard at Stage 2.

New section 19 – Examination of proposed local development plan

655. The same points as raised in paragraphs 653-654 above in relation to the examination of the proposed strategic development plan apply to the examination of a proposed local development plan.

656. In addition, the SLC expressed concern at the power which allows Ministers to prescribe the circumstances in which a planning authority is not obliged to take account of the reporter's recommendations. The Executive provided the SLC with some of the circumstances in which it is envisaged that authorities will be able to depart from recommendations and explained that it considered these matters as suitable for secondary legislation in order that the criteria justifying departure from recommendations can be extended or reduced in light of practical experience.

657. While the SLC accepted the justification for taking this power, it considered that the power has not been appropriately delegated in the Bill as it stands. Given that the Executive was able to provide a list of some circumstances the SLC wondered why it was not possible to indicate these criteria on the face of the Bill, together with a power to amend the list from time to time. The Committee noted that this is the approach the Executive is now considering in relation to section 39 (power of veto). The SLC recommended that subsequent amendments to the specified criteria should be introduced subject to affirmative procedure.

New section 22 – supplementary guidance

658. The SLC queried the voluntary nature of adopting such guidance and whether local authorities might avoid issuing guidance to avoid regulation by Ministers. The Executive clarified that the need for guidance is a matter for the planning authority and that guidance that has met prescribed procedures for consultation and adoption would become part of the development plan for the purposes of determining applications. The Executive has indicated that it is

looking at the detailed drafting of this section, in particular the balance between planning authority discretion and Ministerial intervention.

New section 23D – Meaning of key agency

659. The SLC asked for clarification of which bodies were likely to be covered by the term 'key agency' and whether it was possible to identify any key characteristics of such agencies on the face of the Bill. The Executive explained that key agencies would be those bodies 'which hold information or provide services which are considered essential in the preparation or delivery of a development plan but did not consider it meaningful to include such a description on the face of the Bill.

660. The SLC considered that a working definition such as that given above would have been helpful on this face of the Bill and that if such clarification was given on the face of the Bill, it would be minded to accept that negative procedure was appropriate for the exercise of this power.

Section 4 – Hierarchy of development for the purpose of development management

661. The SLC sought clarification of the scope of the meaning of 'local' and 'major' and whether regulations will be made in such a way as to take account of the differing impacts of development in rural and urban contexts. The Executive has explained that 'major' projects will deal with the small number of large and complex applications for which it is considered that the current two month determination period is insufficient. The remainder of developments will be classed as local developments. The Executive is currently working on the thresholds for major developments and intends to consult on the draft regulations.

662. Given the potential importance of the regulations, the SLC recommended that the first set of regulations under this power should be introduced subject to affirmative resolution procedure

Section 15 – Manner in which applications for planning permission are dealt with

663. The SLC noted that this power represents a significant increase in Ministerial power and asked for justification of the negative procedure and indication of its intended use.

664. The SLC expressed concern that it is directions to be made under regulations, rather than the regulations themselves, which will specify the class of developments which may have conditions attached and that this sub-delegation will result in the prescription of classes of development not being subject to Parliamentary procedure.

Section 16 – Local development plans: schemes of delegation

665. The SLC asked the Executive to clarify its understanding of the operation of the system and particularly its compatibility with the European Convention on Human Rights. The Executive has indicated that regulations under this power combined with a right of challenge to the courts will provide a procedure that is compliant with Article 6 of ECHR.

666. Without sight of the draft regulations the SLC was unable to make a judgement on the use of this power but recommended that the power should be introduced subject to the affirmative procedure. The SLC's recommendation corresponds with that of the Committee at paragraph 397.

Section 39 – Power of veto

667. The SLC expressed concern that the criteria for veto have not been put on the face of the Bill. The Executive has indicated a willingness to consider amending the Bill expressly to include some criteria for the exercise of the veto by planning authorities.

668. The Committee calls on the Executive to bring forward such amendments at Stage 2 that satisfy the concerns raised by the Subordinate Legislation Committee in its report.

Equal Opportunities

669. There is significant emphasis placed on the encouragement of public engagement in the planning system in the Bill, and the Committee has commented at paragraph 226 in this report on the need to ensure that equalities groups are fully involved in consultation at all stages in the process.

670. The Committee also received written evidence from the Commission for Racial Equality (CRE) in Scotland which raised some concerns in relation to the promotion of race equality in the planning system, commenting that the Bill 'in its current format, it could perpetuate the inequalities experienced by some racial groups, particularly Scottish Gypsies/Travellers.'³⁴⁸

671. The CRE raised concerns that—

'...planners have little understanding of the relationship between planning and race equality. Research published in 2004 by the Office of the Deputy Prime Minister (ODPM), which covered England, found that, 'issues about diversity and planning are not that well understood or a priority in planning practice and procedure.'³⁴⁹

672. They were of the view that little awareness exists in planning authorities in Scotland of the RTPI's guidance on dealing with racist representations and that as far as they could determine, planning education does not cover the relationship between equality/diversity and planning.

673. The Committee is concerned that there appears to be little awareness of the RTPI guidance and would urge the Executive to identify the extent to which equality and diversity issues are included in both formal and workplace training for planners and whether there is a need for provision to be improved.

674. The CRE raised a specific concern that the current planning system discriminated against Gypsy/Travellers in Scotland. They commented on the

³⁴⁸ Written evidence submitted by the Commission for Racial Equality (CRE) in Scotland.

³⁴⁹ *ibid.*

lack of formal sites for Gypsy/Traveller sites to meet current and future need and called for 'the introduction of a statutory duty on planning authorities to provide caravan sites for Gypsies/Travellers, including transit sites'.³⁵⁰

675. The Committee is aware that the Scottish Parliament Equal Opportunities Committee made a recommendation in 2001³⁵¹ that, 'local planning authorities should be required to identify the need for Gypsy/Traveller site provision and land for sites in statutory plans'. In its 2005 report,³⁵² which considered what action had been taken since its 2001 recommendations, the Equal Opportunities Committee noted that progress had been slow, despite the fact that the Scottish Executive's response to the Committee in relation to this recommendation indicated that:

'Scottish Planning Policy 3 states that the need of Gypsies/Travellers for appropriate accommodation should be set out in local housing strategies and that planning authorities should continue to play a role, through development plans, by identifying suitable locations where need is demonstrated.'³⁵³

676. The Committee is also concerned that the provision of suitable Gypsy/Travellers sites is not being afforded sufficient attention by many planning authorities, despite the statement by the Executive in guidance that they should do so.

677. The Committee therefore calls on the Executive to examine the potential for including a provision on the face of the Bill which would require local authorities to specifically address the provision of suitable Gypsy/Travellers sites when preparing development plans.

678. The Committee is aware that the Executive is committed to mainstreaming equality in its policies. It would therefore strongly encourage the Executive to include a duty in the current Bill to place an obligation on the Scottish Ministers and local authorities to exercise the functions conferred on them by the eventual Act in a manner which encourages equal opportunities and the observance of equal opportunity requirements. The Committee notes that such a provision was included in the Housing (Scotland) Act 2006, following a recommendation by the Committee.

679. The Committee acknowledges that there are already duties under the Race Relations Act 1976 for local authorities to assess and consult on the likely impact of policies on the promotion of race equality and to monitor policies for any adverse impact on the promotion of race equality. Similar requirements will shortly be placed on public bodies in Scotland by the

³⁵⁰ *ibid.*

³⁵¹ Equal Opportunities Committee, 1st Report 2001: Inquiry into Gypsy Travellers and Public Sector Policies, Vol 1, paragraph 47, Recommendation 10.

³⁵² Equal Opportunities Committee, 5th Report 2005: Preliminary Findings on Gypsy/Travellers – Review of Progress.

³⁵³ Scottish Executive, June 2004: Delivering for Scotland's Gypsies/Travellers – An Updated Response to the Equal Opportunities Committee Inquiry into Gypsy Travellers and Public Services 2001, page 4.

forthcoming public sector duties in relation to age, disability and gender equality.

680. The Committee considers that an overarching provision in the Bill would ensure that the observance of equal opportunities is firmly embedded in the planning system. The Committee therefore calls on the Executive to bring forward amendments at Stage 2 to ensure that equality issues are accorded the same degree of importance in this legislation as in the recent housing legislation.

Policy Memorandum

681. Under Rule 9.6.3 the Committee is required at Stage 1 to consider and report on the Policy Memorandum. The Scottish Executive prepared a Policy Memorandum, which accompanied the Bill when introduced.

682. The Committee agrees that the Policy Memorandum provided a comprehensive explanation of the policy objectives of the Bill. It is content that alternative ways of meeting those objectives were considered, that an inclusive and in-depth consultation process took place, and that there was an adequate consideration of the Bill on equal opportunities (subject to the Committee's comments at paragraphs 669 to 680 above), island communities, local government and sustainable development. **However, the Committee notes the views expressed in evidence from the Planning Sub-Committee of the Law Society of Scotland and the Faculty of Advocates that individual sections of the Bill – or the processes that they will introduce through regulations – may not be compatible with human rights legislation.**

683. Article 6(1) of the European Convention on Human Rights requires that in determination of their civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law.

684. This report highlights a number of areas where doubts concerning the human rights compatibility of sections of the Bill were questioned by witnesses; notably in relation to the local review panels, the early determination of appeals and the repeal of the right to be heard. The processes to be used by local review panels and in the early determination of appeals will both be developed in secondary legislation, as the detail is as yet unavailable. The Planning Sub-Committee of the Law Society of Scotland commented that:

'Strictly speaking, the law refers to the legislation being ECHR compliant. One could say that the bill is potentially ECHR compliant, but without the underpinning detail of, for example, what will be in the council reviews, it is difficult to say whether the process will be ECHR compliant. Therefore,

from a practical viewpoint, it is essential that we know more of the detail about the processes that will be used in council reviews.³⁵⁴

685. There was also some discussion in evidence as to whether, in considering ECHR compliance, it was appropriate to focus on individual proposals or whether the Bill should be considered as a package. The Scottish Executive commented in evidence that ‘particular bits of the process might not be ECHR compliant, but the process as a whole does protect the individual and would be ECHR compliant.’³⁵⁵ Furthermore, the Policy Memorandum emphasises that ‘there will remain a right of legal challenge to the Court of Session, and in our view this ensures that the provisions are compliant with Article 6’ of the ECHR.³⁵⁶

686. However, the Law Society of Scotland pointed out that ‘European Court jurisprudence makes it clear that the fairness and justice of the whole system, and indeed any particular case is also relevant.’³⁵⁷

687. In evidence to the Committee, the Scottish Executive clarified its interpretation of planning jurisprudence—

‘Courts up to the European convention courts have considered the planning system in its current format. They did not consider each individual part of the system; they accepted that although some parts—including the reporters—are not ECHR compliant on their own, the protection of having an appeal to the court on a point of law makes the system ECHR compliant on an holistic view. Therefore, one must be careful to examine not an individual provision in the bill but the bill as a package and whether all the protections put together are sufficient to make the bill ECHR compliant. That is the assessment that has been made.’³⁵⁸

688. The Committee notes that certain measures are being introduced which the Executive acknowledges may not be ECHR compliant if viewed in isolation. A majority³⁵⁹ of the Committee accepts the Executive’s assertion that the Bill taken as a whole will be ECHR compliant and that this will cure any potential defects in individual parts of the process.

689. However, a minority³⁶⁰ of the Committee does not agree with the Executive’s view that the compliance of the Bill when viewed holistically will cure these potential defects. Additionally the minority considers that

³⁵⁴ John Watchman, Planning Sub-Committee of the Law Society of Scotland, Communities Committee, 1 February 2006, column 2957-8.

³⁵⁵ Lynda Towers, Office of the Solicitor to the Scottish Executive, Communities Committee, Official Report, 8 February 2006, column 3027.

³⁵⁶ Policy Memorandum, paragraph 249.

³⁵⁷ Written evidence submitted by the Law Society of Scotland.

³⁵⁸ Lynda Towers, Office of the Solicitor to the Scottish Executive, Communities Committee, Official Report, 8 February 2006, column 3420.

³⁵⁹ Karen Whitefield, Euan Robson, John Home Robertson, Cathie Craigie, Scott Barrie, Dave Petrie.

³⁶⁰ Christine Grahame and Patrick Harvie. Tricia Marwick abstained.

this failure to comply not only with the letter but also with the spirit of ECHR principles will reinforce public distrust in the planning system and perceptions that communities will remain disadvantaged compared to planning authorities and developers. Neither do those members consider that final recourse to the Court of Session represents a viable option for the vast majority of communities or individuals due to the high costs of court action.

Finance Committee Report

690. In reporting to the Committee on the Financial Memorandum (FM),³⁶¹ the Finance Committee indicated that it 'considers the FM to be inadequate and therefore recommends, in the strongest terms, that the Executive provides as much specific information to the Parliament as early as possible to inform its consideration of the Bill, preferably in advance of the Stage 1 debate.'³⁶² At the time of publication of this report, that additional information had not been received.

691. The Finance Committee drew the Committee's attention to eight key issues in relation to the Financial Memorandum: the inadequacy of existing funding of local authorities, indirect costs on local authorities, staff recruitment and retention problems, the cost of neighbour notification, cost of consultation on the National Planning Framework, the lack of information on the costs emanating from subordinate legislation, changes to fees and charges and the costs for key agencies. Many of these issues are also addressed by the Committee in various parts of this report.

692. The Finance Committee considered the issue of the existing shortfall in funding for planning services. It noted that the estimates of the shortfall had only been published in January, and were not therefore included in the Financial Memorandum. The Finance Committee commented on the fact that despite the long consultation in the lead up to the introduction of the Bill that there was a lack of an assessment of shortfalls in the existing system 'to ascertain how easily the transition can be made and to assess the associated costs' when the Bill was introduced.³⁶³

693. The Finance Committee noted that the Financial Memorandum did not take into account the indirect costs on local authorities for tasks associated with the planning service such as the costs of traffic engineers, flood assessment appraisals, environmental appraisals and legal advice. COSLA estimated these costs of being in the region of £24 million. The Finance Committee encouraged the Executive to undertake additional work to estimate the impact of the Bill's provisions on other local authority services.

694. The Finance Committee indicated that it was 'seriously concerned that the existing shortage of qualified staff will stifle the effective implementation of

³⁶¹ The Finance Committee Report to the Communities Committee on the Planning etc. (Scotland) Bill is contained at annex A.

³⁶² Finance Committee, Report to the Communities Committee on the Planning etc. (Scotland) Bill, paragraph 52.

³⁶³ *ibid*, paragraph 16.

the Bill, requiring a longer transition period than anticipated and higher costs.³⁶⁴

695. Executive officials acknowledged in evidence to the Finance Committee that figure of £1.7m included in the Financial Memorandum to cover the costs of neighbour notification was an underestimate and that the cost for the four major city authorities alone could be as much as £1.5m. The Finance Committee expressed concern about the lack of a realistic estimate for the costs of neighbour notification and suggested that additional work should be carried out as a matter of urgency and revised costs should be provided to the Parliament. It also suggested that the new estimates should cover potential costs linked to complaints against planning authorities for the failure to notify.

696. The Finance Committee also commented on the failure of the Executive to factor in the cost of the consultation exercise for the National Planning Framework in the Financial Memorandum.

697. The Finance Committee was concerned that the financial implications of subordinate legislation had not been taken into account in the Financial Memorandum. It therefore reiterated that 'subordinate legislation is part of the parent bill and a range of costs must be given in the FM.'³⁶⁵

698. The Finance Committee expressed doubts as to whether the savings to businesses and developers linked to the more efficient processing of planning applications would be delivered within the two-year timeframe indicated by the Scottish Executive. The Finance Committee therefore indicated that it would welcome more information on processing agreements.

699. The Finance Committee encouraged the Scottish Executive to invite comments from key agencies as to whether the provisions of the Bill had any financial implications on them.

700. In evidence to the Communities Committee, the Deputy Minister explained the work undertaken by the Executive in estimating the costs, and committed to providing revised estimates before the Stage 1 debate:

'Detailed consultation was carried out and the estimates that are in the financial memorandum are the result of that process. It would have been foolish for us to say that we would do no further work on those estimates, given the process that exists for people to highlight the challenges that we face on the financial package. I have made the point before that the planning reforms will liberate money and get rid of the noise in the system that is created by inefficiencies. The priority that local authorities attach to planning is also an issue. The financial memorandum simply reflects the existing financial challenges.

'We said that we would be happy to supplement the information that the financial memorandum provides with the assessment of planning

³⁶⁴ *ibid*, paragraph 23,

³⁶⁵ *ibid*, paragraph 36.

authorities' current and future requirements that the planning finance working party is conducting. We expect to be in a position to make the revised estimates available before the stage 1 debate, in line with the requests that the Finance Committee made.³⁶⁶

701. The Committee received a summary of the responses from local authorities to a survey conducted by the Planning Finance Working Party. The Committee notes that the Planning Finance Working Party is also committed to carrying out a more detailed and comprehensive assessment of the financial implications for local authorities of the implementation of the planning reform proposals and that this evidence may be available in advance of the Stage 1 debate.³⁶⁷

702. The Communities Committee has heard concerns in evidence about the importance of sufficient resources for delivering the package of policy measures in the Bill. It is of the view that adequate financial and human resources must be available to planning authorities for the modernisation of the planning system to be effective.

703. The Communities Committee notes the points made by the Finance Committee on the Financial Memorandum. The Committee agrees that some of the figures contained in the Financial Memorandum are inadequate and that there are other costs that have not been included. The Committee looks forward to receiving the additional information that the Deputy Minister made a commitment to provide before the Stage 1 debate takes place.

Other issues

Houses in Multiple Occupation (HMOs)

704. In written evidence, Sustainable Communities Scotland (SUSCOMS) raised the issue of the proliferation of Houses in Multiple Occupation (HMOs) used mainly for student accommodation in certain communities in Scotland that are situated close to higher education institutions. They outlined their concern that—

‘When student accommodation is left to market forces, communities near universities are frequently overwhelmed by student numbers living in HMOs. Formerly mixed sustainable communities are replaced with a monoculture of young, transient and short-term residents. This situation seriously damages the viability of the traditional community, which is weakened and eventually destroyed as conditions deteriorate and families and other long-term residents move away.’³⁶⁸

705. SUSCOMS outlined their view that the planning system is ‘insufficiently robust’ to address this issue and suggested that the situation could be addressed by amending the current Use Classes Order so that the adaptation

³⁶⁶ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 29 March 2006, column 3435.

³⁶⁷ Supplementary evidence submitted by the Scottish Executive.

³⁶⁸ Written evidence submitted by Sustainable Communities Scotland.

of family accommodation to become HMOs would be considered a change of use requiring planning permission. They further suggested that this change would as a consequence allow planning authorities to 'consider and assess the full range of student housing needs within their local plan policies and make decisions which are based on these.'

706. A similar issue had been raised previously with the Deputy Minister during the consideration of amendments lodged at Stage 2 of the Housing (Scotland) Bill which proposed measures to regulate the numbers of HMOs in certain areas. At that time, the Deputy Minister stated that—

'I understand the concern that underlies the amendments. The high concentration of HMOs in certain areas may change the character of the community and have an impact on the local environment and local services ... I do not support the amendments because I believe that the planning system is the appropriate mechanism to address such problems where they arise.'³⁶⁹

707. The Committee questioned the Deputy Minister on this issue when she gave evidence on the Planning etc. (Scotland) Bill and she responded by indicating that—

'We recognise that some local authorities might need to identify through the planning system the number of HMOs in their areas, which is a different activity from saying whether an individual flat would pass HMO licensing. We are in dialogue with local authorities and others on that and we will report further on it at a later stage.'³⁷⁰

708. The Chief Planner advised that a seminar on HMOs issue had provisionally been arranged to take place in April 2006 to discuss issues of concern and to obtain views on whether legislation might be required. He indicated that the Executive would be in a position to report back to the Committee on the output from that event in advance of Stage 2.

709. The Committee welcomes the Executive's recognition that the relationship between planning and HMO licensing requires clarification. The Committee looks forward to receiving further information on the outcome of the Executive's further discussions on this issue prior to the start of Stage 2 consideration.

Petitions

710. During a lengthy period prior to the introduction of the Bill, and since the start of the Stage 1 process, the Committee has considered a range of petitions referred to it by the Public Petitions Committee.

711. Many of the issues raised in these petitions, such as public engagement in the planning system and calls for the introduction of a third party right of

³⁶⁹ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 2 November 2005, column 2556.

³⁷⁰ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 2006, column 3410.

appeal have been considered extensively during the Stage 1 process and are discussed elsewhere in this report.

712. One issue which the Committee agreed to pursue was that relating to the means by which the potential impact on public health of certain developments is assessed. The Committee questioned certain witnesses on this issue.

713. The RTPI in Scotland commented on the current approach and the importance of planning authorities being able to refer to a scientific authority on health issues—

‘The issue is not whether health is a material consideration, but whether the planning authority is in a position to make what amounts to a value judgment about health. All planning decisions are based on value judgments. Policies are there to be interpreted. However, if there is a black-and-white situation—something is or is not dangerous to health—it is subject either to the environmental regulatory system or to the health regulatory system. It is a scientific question. Traditionally, the planning system has avoided scientific decision making. It is used to putting in place checks and balances and assessing competing factors. At the end of the day, a value judgment is made. If there is a black-and-white case relating to health, someone with scientific authority should advise the planning authority, so that the authority can take the issue into account, instead of being forced to make a value judgment based on the information that is given to it ... The system depends on there being scientific advice and a parallel procedure that indicates whether something is or is not okay before it is taken into account.’³⁷¹

714. In response to questioning as to whether health could be considered a material planning consideration, the Deputy Minister said that—

‘When the case for there being a health problem has been made, then of course health can be a material consideration; but when there is no evidence to back up people’s fears, that is a different matter. I reassure members that research into whether health risks attach to any type of development is constantly under review. The Executive wants to keep as up-to-date as possible on health advice.’³⁷²

715. A Committee member suggested to the Deputy Minister that health-related facts related to an application could be gathered together and presented to the planning committee in a similar manner to that in which environmental information is produced in environmental impact assessments. She responded by stating that—

‘The Royal Commission on Environmental Pollution has recommended that human health issues be recognised more explicitly, which I think is

³⁷¹ Graham U’ren, RTPI in Scotland, Communities Committee, Official Report, 25 January 2006, columns 2949-50.

³⁷² Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 28 2006, column 3413

what you are suggesting should happen. We acknowledge the concerns and will take them into account when we review our guidance on environmental impact assessments.³⁷³

716. The Committee considers it important that information on recognised and substantiated risks to human health which may potentially arise from proposed developments should be taken into account by planning authorities. It welcomes the Deputy Minister's statement that the issue of human health risks will be taken into account as part of any review of guidance on environmental impact assessments and requests that the Executive presents the draft revised guidance to the Committee or its successor for consideration.

Affordable Housing

717. The issue of how the provision of affordable housing is dealt with by the planning system was raised in both written and oral evidence.

718. The Rural Housing Service suggested in a written submission that there should be a specific requirement for local authorities to include proposals to address affordable housing needs in development plans. It stated that—

'The Scottish Executive should be more prescriptive to local authorities regarding what they should do to deliver affordable housing. There needs to be an expectation that local authorities will use all of the planning tools available to them to deliver affordable rural housing ... Currently it is too easy for planners to ignore SPP 15 and PAN 74 and more innovative solutions for small rural communities.'³⁷⁴

719. In commenting on strategic development plans, the Scottish Rural Property and Business Association (SRPBA) suggested that there was 'an opportunity to place affordable housing issues at the centre of strategic planning. Rural exception sites should be recognised as an effective mechanism for delivering affordable housing in rural areas. All planning authorities should be required to have a policy on rural exception sites as part of their development plan.'³⁷⁵

720. It was stated by some local authorities in oral evidence that, whilst some councils have affordable housing policies, there are issues in relation to the sustainability of such policies. Councillor Willie Dunn of West Lothian Council said—

'...we have an affordable housing policy, as part of our local plan, that states that 15 per cent of all development should be affordable housin ...

³⁷³ Johann Lamont, Deputy Minister for Communities, Communities Committee, Official Report, 28 March 28 2006, column 3414.

³⁷⁴ Written evidence submitted by the Rural Housing Service.

³⁷⁵ Written evidence submitted by the Scottish Rural Property and Business Association.

That policy is sustainable today, but we will tell you in 12 months' time if the developers take us on on it.³⁷⁶

721. This situation was echoed by Councillor Eddie Phillips of East Renfrewshire Council—

East Renfrewshire Council's guidance has a quota of 25 per cent ... we recently attempted to secure affordable housing on a brownfield site in one of the council's poorer areas, but the developer came back to us with starting prices of £105,000 per unit. That is a clear indication that there is no meeting of minds on what is meant by affordable housing.³⁷⁷

722. The Committee notes the views expressed which suggest that planning guidance alone may be insufficient to encourage planning authorities to address the issue of affordable housing provision when preparing their development plans. The Committee therefore recommends that the Executive should consider whether appropriate amendments could be brought forward at Stage 2 to place a statutory requirement on planning authorities to address the issue of affordable housing properly when drawing up development plans.

723. The Committee also calls on the Executive to keep its planning guidance on affordable housing under review to reflect the difficulties being encountered by planning authorities in implementing affordable housing policies.

Possible Stage 2 amendments by the Scottish Executive

724. The Scottish Executive Rural Group published a consultation paper on *Enhancing Our Care of Scotland's Landscapes* in January 2006, containing proposals for legislation to give Scottish Ministers powers to designate, de-designate, or revise the boundaries of any National Scenic Area (NSA). The Scottish Executive advised the Committee during the Stage 1 process of amendments it is considering bringing forward at Stage 2.³⁷⁸ These include a range of provisions to provide a statutory definition of purpose for NSAs and to define, designate, de-designate, or revise the boundaries of any NSA; additional measures to enhance enforcement through the introduction of fixed penalty notices for breaches of planning control; and a withdrawal of the Notice of Intention to Develop procedure so that local authority applications will be subject to the standard planning applications process and the wider reforms set out in the Bill.

725. The Committee intends to take evidence on the proposals in relation to National Scenic Areas before Stage 2 consideration commences. It has also requested further detailed information from the

³⁷⁶ Councillor Willie Dunn, COSLA, Communities Committee, Official Report, 22 March 2006, column 3304.

³⁷⁷ Councillor Eddie Phillips, COSLA, Communities Committee, Official Report, 22 March 2006, column 3305.

³⁷⁸ Letter from Jim Mackinnon, Chief Planner, to Karen Whitefield MSP, Convener of the Communities Committee, 17 February 2006.

Executive in relation to the proposal to remove the Notice of Intention to Develop procedure.

Conclusions

726. The majority³⁷⁹ of the Communities Committee welcomes the Planning etc. (Scotland) Bill. The Communities Committee has made a number of recommendations in this report in response to the evidence that it has heard or received on the Bill. It urges the Scottish Executive to take these into account with a view to introducing amendments to improve the legislation at the later stages of the Parliamentary process.

727. The majority³⁸⁰ of the Communities Committee recommends that the Parliament agree the general principles of the Planning etc. (Scotland) Bill.

³⁷⁹ Patrick Harvie dissented, Christine Grahame abstained.

³⁸⁰ Patrick Harvie dissented, Christine Grahame abstained.

Finance Committee

The Planning etc. (Scotland) Bill

The Finance Committee reports to the Communities Committee as follows—

Introduction

1. Under Standing Orders, Rule 9.6, the lead committee in relation to a bill must consider and report on the bill's financial memorandum at stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.
2. This report sets out the views of the Finance Committee on the Financial Memorandum of the Planning etc. (Scotland) Bill, for which the Communities Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.
3. The Finance Committee agreed to adopt level 3 scrutiny in considering the Bill, which involved seeking written evidence from organisations financially affected by the Bill, then taking oral evidence from COSLA and the Executive Bill Team.
4. The Committee took oral evidence from representatives of CoSLA at its meeting on 21 February 2006. The relevant extract of the *Official Report* of the meeting can be viewed by clicking [here](#). The Committee then took evidence from the Bill team on 28 February, which can be viewed by clicking [here](#).
5. In addition to receiving written submissions from CoSLA, the Committee also received submissions from Cairngorms National Park Authority, Scottish Natural Heritage, Scottish Council for Development and Industry, Scottish Environment Protection Agency, Scottish Enterprise and Scottish Water. This evidence is set out in the Annex to this report, along with the correspondence and supplementary evidence submitted to the Committee from the Scottish Executive.
6. The Committee would like to express its thanks to all those who submitted their views.

Objectives and the Financial Memorandum

7. The Bill seeks to modernise the planning system by making it more efficient and more inclusive. Specifically, the Bill seeks to:
 - enhance the role and status of the National Planning Framework as the vehicle for national policy and programmes;
 - replace existing provisions for development planning to try to ensure that development plans are more relevant, up to date and inclusive of local people;
 - improve the development control process (renamed development management) to ensure that planning decisions are not unduly delayed;
 - introduce planning controls to enable better enforcement in relation to unauthorised development; and
 - deal with the protection of trees, the correction of errors in decisions, auditing and performance of planning authorities and encourage collective investment by local businesses.
8. The Financial Memorandum (FM) sets out the anticipated costs arising from the Bill, dividing the costs between the Scottish Executive, local authorities and businesses as follows:

9. **Scottish Executive** – Overall additional costs have been estimated at £1.214 million per annum from 2008-09. A breakdown of these costs is provided below.

| Estimated cost to Scottish Executive per year | | |
|--|------------------------------------|--|
| Cost heading | Scottish Executive Planning | Scottish Executive Inquiry Reporters Unit |
| National Planning Framework | £60,000 | 0 |
| Strategic Development Plans | -£19,000 | £24,000 |
| Local Development Plans | £42,000 | £375,000 |
| Development Management (including notifications) | £315,000 | £325,000 |
| Handling of appeals | £132,000 | -£432,000 |
| Reduction of time limit for appeals from 6 to 3 months | 0 | £392,000 |
| Total | £530,000 | £684,000 |

10. There are further estimated costs on the Scottish Administration of £500,000 over 3 years from 2005-06 for pilot projects for Business Improvement Districts.

11. **Local authorities** – The preliminary estimate of additional costs is £8.9 million per annum for ongoing costs, and £10.7 million per annum including transitional costs. These are to arise from the Bill's provisions in respect of development planning, development management, enforcement and tree preservation orders.

| Estimate of additional costs to local authorities per year in FM | |
|---|----------------------|
| Development Planning | £3.4 million |
| Development Management | 347,000 |
| Enforcement | £2.5 million |
| Trees | £2.7 million |
| Total ongoing costs | £8.9 million |
| Total | £10.7 million |

12. **Businesses** – The FM estimates that the overall effect of reforms will be 'broadly neutral', but notes that there will be extra direct costs in relation to major developments. Extra costs will arise in respect of consultations and application fees, these are expected to be partly offset by savings arising from more efficient decision making processes. The net additional cost per major development has been estimated at £15,000.

| Estimate of costs on business per major development | |
|--|----------------|
| Development planning additional costs | £0 |
| Development Management – increased fees (maximum level) | £25,000 |
| Inclusion Measures – pre-application consultation and hearings | £20,000 |
| Typical saving from earlier determination (maximum saving) | -£30,000 |
| Total | £15,000 |

Summary of evidence

Existing funding for planning services

13. The Bill's reforms will have a major impact on local authorities and occur within a context of significant concern about the adequacy of existing resources for local authorities' role in planning. Arup research for the Executive published after the Bill was introduced concluded that 'the planning service has not been given the priority it has needed to operate effectively in recent years'. Specifically, the research identifies an existing shortfall in resources of £17.5 million³⁸¹.

³⁸¹ [Arup research key conclusions](#)

14. As the Arup research was only published in January, the findings were not taken into account in estimating the cost of the Bill. Executive officials stated in oral evidence that—

“...the figures in the Arup reports are initial cost estimates that carry significant uncertainty. Since then, we have established a planning finance working party whose work will supplement the initial assessment and analysis in the Arup reports.”³⁸²

15. When asked how much credence the Committee could place on figures in an FM produced before the Executive received information on the existing shortfall in funding, officials responded—

“We said in the financial memorandum that the estimates are initial estimates that carry significant uncertainty. The information was the best we could provide at the time, unfortunately.”³⁸³

16. The Committee is aware that preparations for this Bill, which is detailed in the Partnership Agreement, have been underway for a number of years and therefore does not understand why work to assess existing difficulties with the system was not initiated until February 2004. It would appear to the Committee to be a logical first step, in advance of introducing a Bill which proposes fundamental changes to the planning system, to assess the existing system to ascertain how easily the transition can be made and to assess the associated costs.

In-direct costs on local authorities

17. In oral evidence COSLA detailed preliminary work they had undertaken with 5 representative councils which indicated that, at present, further costs of around £24 million associated with the planning system but outwith the planning service itself fall to councils. For example, the costs of traffic engineers, flood assessment appraisals, environmental appraisals and legal advice³⁸⁴. COSLA’s written submission states that it is not clear that these additional costs are taken into consideration in the FM.

18. The Committee wishes to encourage the Executive to undertake additional work estimating the financial impact on local authorities which specifically focuses on the allocation of resources outwith the planning service.

Recruitment and retention of staff

19. One of the key objectives of the bill is to improve the efficiency of the existing planning process. However, recruitment and retention of trained planners and the ability to free up their time for the specialist element of their work has been a problem for a number of local authorities and this may have had an impact on the efficiency of the existing planning service. The Arup research concludes that ‘there is an overall shortage of qualified planning staff across Scotland and there are concerns about the future supply of planning graduates, especially in the West of Scotland where the University of Strathclyde has recently closed its planning school’³⁸⁵.

20. In oral evidence COSLA suggested that an ageing workforce and the number of planners moving from local authorities to the private sector on qualification was exacerbating problems with levels of staffing.³⁸⁶ Due to this lack of qualified planners, local authorities then contract in planners from the private sector at a higher cost than in-house provision.³⁸⁷

21. Executive officials detailed work underway to address problems with recruitment and retention in oral evidence stating that the Executive has introduced a £2m planning development budget to assist local authorities to develop in-service training modules over

³⁸² [Tim Barraclough, Official Report 28 February 2006](#) (FI Col 3457)

³⁸³ [Tim Barraclough, Official Report 28 February 2006](#) (FI Col 3458)

³⁸⁴ [Ian Snodgrass, Official Report 21 February 2006](#) (FI Col 3451)

³⁸⁵ [Arup research key conclusions](#)

³⁸⁶ [Ian Snodgrass, Official Report 21 February 2006](#) (FI Col 3453)

³⁸⁷ [Ian Snodgrass, Official Report 21 February 2006](#) (FI Col 3453)

the next two years.³⁸⁸ Executive officials suggested that the source of the problem with recruitment appears to be that planning is not currently perceived as an attractive career option by those applying to university.³⁸⁹

22. The FM factors in £1.8m for 'transitional costs' for local authorities between the existing system and that proposed by the Bill. The COSLA submission notes that 'there are no defined timescales cited in the Financial Memorandum over which costs to local authorities would be expected to arise. Local circumstances, including the capacity of understaffed planning teams to respond to legislative change will determine the timescale over which that change may be achieved.'
23. **The Committee appreciates that the Bill is part of a package of policy changes from the Executive which aim to promote a change in the culture of planning that will hopefully make it a more attractive career option. However, the Committee is seriously concerned that the existing shortage of qualified staff will stifle the effective implementation of the Bill, requiring a longer transition period than anticipated and higher costs (including contracting increasing numbers of private sector planners).**

Neighbour notifications

24. The Bill requires that local authorities are responsible for ensuring neighbour notifications about planning applications for developments in close proximity to them. At present such notifications is the responsibility of the applicant. The associated cost in the FM is estimated to be £1.7m across all planning authorities which represents one additional member of staff per authority.
25. Concerns have been raised that neighbour notifications for major developments could have a greater impact on the workload of local authorities than anticipated in the FM (for example the work involved for Glasgow City Council in notifying neighbours for the construction of the M74).
26. Executive officials acknowledged in oral evidence that £1.7m is an underestimate, citing a study undertaken by a working group made up of four city local authorities which estimates neighbour notification will cost approximately £1.5m for those authorities alone³⁹⁰.
27. COSLA officials intimated in oral evidence that the cost of neighbour notifications would include the administration for complaints based on a failure to notify³⁹¹. Initially Executive officials stated in oral evidence that the Executive did not anticipate a higher incidence of challenges when local authorities take on neighbour notification duties and therefore financial estimates had not been included in the FM for such challenges. However, one of the officials went on to state that—

"I am sure that there will be a significant number of challenges in the early years of the new neighbour notification arrangements because there is widespread misunderstanding at the moment about which neighbours are entitled to be notified."³⁹²

28. **Where the Executive cannot specify the exact cost of a policy, it is the Committee's preference to receive a range of potential costs or an estimate which reflects the worst case scenario. In relation to neighbour notifications, the Committee considers the actual cost of implementation of this policy could be significantly higher than estimated in the FM.**

³⁸⁸ [Michael Lowndes, Official Report 28 February 2006](#) (FI Col 3459-60)

³⁸⁹ [Michael Lowndes, Official Report 28 February 2006](#) (FI Col 3461)

³⁹⁰ [Michael Lowndes, Official Report 28 February 2006](#) (FI Col 3464)

³⁹¹ [Ian Snodgrass, Official Report 21 February 2006](#) (FI Col 3450)

³⁹² [Michael Lowndes, Official Report 28 February 2006](#) (FI Col 3466)

29. **The lack of precision from the Executive in estimating the cost of implementing provisions on neighbour notifications is a matter of concern to the Committee. The difference between the underestimate from the Executive in the FM and the estimate extrapolated from limited work by four city-based local authorities leaves the Committee considering two starkly different estimates.**
30. **The Committee recommends that the Executive undertakes additional work on the likely financial impact of the provisions on neighbour notifications involving local authorities as a matter of urgency, and seeks to provide revised costs to the Parliament as soon as is practicable.**
31. **The Committee suggests that this work should include consideration of the potential costs for local authorities responding to challenges on the basis of a failure to notify, as the Committee's experience in other areas is that challenges to local government through its own systems and through the ombudsman are on a steep upward curve.**

Development planning

32. The Committee questioned Executive officials on what appeared to be minimal costs for the key provisions relating to the development and implementation of the national planning framework. Executive officials noted that the cost of a team dedicated to working on the framework had been included in the FM but added that—

“Another cost element that has not yet been fully factored in is the cost of all the consultation that will have to take place to ensure that the national planning framework is properly and thoroughly examined in public.”³⁹³

33. During the evidence session, the Committee requested additional information on the cost of such consultation. The Executive's supplementary written submission estimates the cost of such consultation at approximately £200,000.
34. **Whilst the Committee appreciates this additional information and will draw it to the attention of the lead committee, Members are most concerned that the Executive has failed to factor into the FM large sums of money for anticipated expenditure. The fact that the Bill team has been able to estimate this figure upon request, suggests that the FM could have included more information on introduction if the Executive had undertaken more preparatory work.**

Subordinate legislation

35. The Cairngorms National Park Authority's submission suggests that the figures in the FM are 'purely rough estimates at this time and not based on the reality of working with the new system.' For example, Part 8 of the Bill lays down provisions for Ministers to set fees and charges for payment to planning authorities to undertake 'of any of the authority's functions' and states that the detail of the charging system will be in subordinate legislation.
36. The Committee is concerned that the Executive is not conforming to its own guidance and would reiterate that subordinate legislation is part of the parent bill and a range of costs must be given in the FM.
37. Should the Bill be passed, the Committee would appreciate a written update from the Executive following Parliamentary approval of all subordinate legislation introduced by the Bill detailing the overall estimated cost of the Bill including those detailed in subordinate legislation to allow the Committee to compare this cost with the estimate detailed in the FM.

³⁹³ [Tim Barraclough, Official Report 28 February 2006](#) (FI Col 3472)

Fees and charges

38. The FM suggests that increased application fees could cover the cost of neighbour notifications. The FM also suggests that businesses are likely to face application fees of up to £25,000 and pre-application consultation and hearings costs of up to £20,000, set against assumed savings of up to £30,000 per application due to earlier determinations within a more efficient application process. Executive officials anticipated that these savings would be delivered within two years of passing the Bill³⁹⁴.
39. Given the concerns outlined above in relation to delayed implementation due to existing funding and staffing shortages, the Committee is not convinced that these efficiency savings will be delivered within this timeframe. In addition, should application fees be required to offset the cost of neighbour notifications, and the system for notification proves much more expensive than estimated in the FM, the Committee is concerned that businesses could be in a position where they are paying a sizeable fee for applications which are still subject to delays.
40. In response to these issues Executive officials stated that—
- ”For processing agreements, we propose that if, for a clear reason, an authority does not keep to its side of the agreement, there should be an element of return to the applicant. That should be an incentive for the authority to stick to the timetable.”³⁹⁵
41. The Committee welcomes this proposal from the Executive and hopes that such a scheme would offer reassurances to businesses required to pay higher application fees. The Committee would appreciate further details of the specifics of such a scheme to be presented alongside the associated subordinate legislation when it is laid before Parliament.

Efficiency savings – local authorities

42. The FM factors in a £335,300 efficiency saving across local authorities as a result of the removal of the need for two tiers of development plan across Scotland. Part of this is anticipated to arise from a saving of half a day per week for a senior policy officer in each planning authority as a result of the introduction of model development plan policies.
43. **The Committee welcomes confirmation from Executive officials that any such efficiency savings will be available for re-allocation by local authorities, as opposed to being removed from grant aided expenditure at source**³⁹⁶.

Key agencies

44. The Bill identifies a role for “key agencies” in relation to development plans, but it is not clear from the Bill or the accompanying documents what their precise responsibilities are to be. The Explanatory Notes state that these agencies are likely to include Scottish Natural Heritage (SNH), Cairngorms National Park Authority (CNPA), the Scottish Environmental Protection Agency (SEPA) and Local Enterprise Companies.
45. The CNPA’s submission suggests the Bill will have cost implications for the CNPA which are not specified in the FM and that it will be content if the Executive undertakes to adjust the CNPA’s budget to reflect the cost of additional responsibilities.
46. Executive officials stated in oral evidence that they were not aware of any key agencies raising concerns relating to funding adding that—
- ”If those bodies had budgetary constraints, difficulties or requirements in respect of the duties under the bill, they would have to negotiate with their sponsoring departments on

³⁹⁴ [Tim Barraclough, Official Report 28 February 2006](#) (FI Col 3470)

³⁹⁵ [Tim Barraclough, Official Report 28 February 2006](#) (FI Col 3470-1)

³⁹⁶ [Tim Barraclough, Official Report 28 February 2006](#) (FI Col 3472)

what resources—if any—might need to be added to help them to deal with those responsibilities.”³⁹⁷

47. **The Committee notes the apparent difference of opinion between the CNPA and the Executive Bill team in relation to the requirement for additional funding for key agencies. The Committee would encourage the Bill team, in conjunction with the relevant sponsoring departments, to actively invite comments from key agencies on this matter to prevent the development of a shortfall in funding for these agencies.**

Conclusions

48. The Committee considers that the proposed changes in the Bill aimed at making the planning service more efficient, if effectively implemented, could have a positive impact on the Scottish economy as a whole. However, the Committee has reservations relating to the costs associated with the provisions of the Bill.
49. One of the Committee's key concerns is the lack of funding for local authorities for administering the existing planning service [*paras 15-20*]. The Committee is concerned that this, in conjunction with the existing shortage of qualified staff will stifle the effective implementation of the Bill, requiring a longer transition period and higher costs than anticipated [*paras 21-25*].
50. The distinct lack of detail in the FM and the acknowledgement from Executive officials that much of the work on the detail of the new planning system is at an early stage suggests that the Executive has introduced the Bill well in advance of the completion of the necessary preliminary work to assess its potential financial impact.
51. The Committee has therefore been put in a difficult position by the Executive, scrutinising an FM which the Executive openly acknowledges: includes 'significant uncertainties'; is already out of date in part (for example including underestimated figures for neighbour notifications [*paras 26-32*]); and which does not include detailed costs for key provisions including consultation on the national planning framework [*paras 33-34*] and the nature of the fee structure [*paras 35-41*] which will be provided within subordinate legislation.
52. The Committee is aware that, as the development of the new planning system is at such an early stage, the work it has invited the Executive to undertake to attempt to address some of these uncertainties may take a considerable period of time. However, at present the Committee considers the FM to be inadequate and therefore recommends, in the strongest terms, that the Executive provides as much specific information to the Parliament as early as possible to inform its consideration of the Bill, preferably in advance of the Stage 1 debate.
53. **The Committee recommends to the lead Committee that the issues highlighted in this report, particularly in relation to the adequacy of existing local authority funding and the level of additional funding for implementation of the Bill proposed in the FM, be raised with the Minister.**

³⁹⁷ [Tim Barraclough, Official Report 28 February 2006](#) (FI Col 3469)

SUBMISSION FROM COSLA

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

COSLA has responded to many of the consultation papers leading up to the Bill, including the submission of a response to the White Paper on Planning. COSLA has cautiously welcomed the Bill, as many of our member councils believe that the current planning legislation is no longer capable of meeting the needs of Scotland's community, in terms of development. We do not accept everything in the Bill proposals and will challenge those issues that we believe will be detrimental to local decision-making elsewhere in the Parliamentary process. However, one of the most pressing issues is the lack of resources presently available to many authorities to deliver the current planning system, far less the White Paper's proposals. A key resource issue is that local authorities are finding it increasingly difficult to fund the recruitment and retention of professional planners. This, in turn, can have a negative impact on performance.

COSLA agrees that there are not enough resources presently to allow the planning service to perform to the standards demanded by the Executive and supports the Executive's position, in principle, that a significant increase in resources will be needed to undertake the culture change sought in this Bill. We reflect our concerns on this in our answers to the following questions.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

COSLA's comments have been reflected to a certain extent. COSLA is aware that the Executive has undertaken significant study into this issue, following the results of the establishment survey carried out by the Scottish Society of Directors of Planning in 2003. COSLA was also engaged in the Executive's work on resources as well as the further questionnaire to local authorities carried out at the end of 2005. However we believe, that other council costs need to be taken into account. COSLA is currently examining the cost implications for other council services that provide necessary support to the planning system currently. It is likely that such support will need to continue. Further funding will add value to the planning service, but it should be noted that other council services are underfunded as well. Additional funding for the planning service should not be at the expense of other local government services.

3. Did you have sufficient time to contribute to the consultation exercise?

In gathering comments from our member councils, COSLA, as is our practice, has to build in a time factor to deal with differing local authority committee cycles, where individual council responses are politically ratified. That said, we believe sufficient time was available in this instance. In terms of the Bill itself, many of the proposals are of a technical nature, the analysis of which has not been assisted by the short time scale in which the parliamentary process is conducted. However, COSLA is currently undertaking further analysis with the assistance of the Scottish Society of Directors of Planning and Directors of Finance.

We do express our concerns that as this Bill is effectively an amendment to the existing legislation, rather than a new Bill, it makes it difficult to make comparisons with the existing legislation, particularly in regard to the technical proposals mentioned.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

COSLA itself is not directly affected by the financial implications of the Bill. However, representing the interests of our member councils, we believe that, in line with the various studies and reports published in recent months, the local authority planning service in Scotland has been under funded for some years. The position taken by the Financial Memorandum could be broadly viewed as reasonable, in recognising the shift in funding away from the planning service. However, to reiterate our concerns expressed above, COSLA must remind the Committee that local government has been dealing with a number of other huge priorities over a number of years and what we will not accept is the funding of the planning system, to the detriment of other services.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Again, COSLA would not be directly affected, but we would assert that our member councils cannot begin to achieve the culture change proposed by the Planning Etc. (Scotland) Bill, unless the resources identified in the Financial Memorandum, at the very least, are made available to them. Local authorities have broadly welcomed the Bill proposals and recognise the need to improve the quality, efficiency and effectiveness of the service. Particularly welcomed are the proposed enforcement powers. However, there are other aspects of the Bill that come at a cost, regardless of the supposition that efficiencies can be achieved by certain proposals, such as the removal of a tier of development planning from all but city/region areas. It has to be remembered that preparation of development and local plans is not funded from fees accrued by the planning application process. Fees only aim to cover the costs of development control, or development management as is now proposed. It is arguable yet that full cost recovery actually happens.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

In principle, the margins of uncertainty seem reasonable. However, there are no defined timescales cited in the Financial Memorandum over which costs to local authorities would be expected to arise. There is a reference to a "transition period", but this is not clearly defined. The transition phase to adjust to the new legislation and accompanying regulations and guidance will almost certainly be different in each local authority. Local circumstances, including the capacity of understaffed planning teams to respond to legislative change will determine the timescale over which that change may be achieved. This should be recognised as an additional cost.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

It seems reasonable to focus the Committee's attention on a range of existing legislation and regulation that has association with the planning function in local authorities. These have cost implications, which will continue into any new planning legislation. For example, the Environmental Assessment (Scotland) Act is a significant cost burden in terms of data gathering and analysis as well as public consultation. The drafting of a development plan will have to take account of this legislation and should a Strategic Environmental Assessment be required, which for almost every development plan, will be the case, the costs in the short to medium term are already significant. COSLA is not clear that these costs are taken into consideration in this Financial Memorandum.

Other Executive policy areas are dependant upon the planning system to support their agenda. For example, planners are obliged to take account of the impact of waste landfill sites, windfarms and other renewable energy structures and telecommunications masts, which may require specialist skills not always available. All of this comes at a cost and although these initiatives have progressed, there has been no supporting growth in resources to the planning service to deliver the necessary functions. For example, several authorities, in

response to the latest questionnaire, indicate resource problems in dealing generally with environmental impact assessments and sustainability/biodiversity issues.

It has to be said that for many other council services and interests, such as education, social work, housing, roads and transport, tourism and leisure services, the planning service has a pivotal role. The demands on the planning service extend beyond professional planners to the administrative and technical support and other related back office activities. Again, the cost implications of such support need to be recognised and factored into funding.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

A considerable amount of subordinate legislation, regulation and guidance is anticipated in connection with the Bill. It is only to be expected that associated future costs will follow, especially as new pressures emerge on the planning process. COSLA cannot however, provide any quantified costs for such issues. The difficulty in doing so arises again from limited understanding of the costs currently felt by councils in undertaking compliance with existing subordinate legislation, regulation and guidance. Some of the studies carried out for and on behalf of the Scottish Executive will focus on costs to councils in regard to handling of specific categories of planning applications, such as minerals, listed buildings and conservation area consents, telecommunications development and hazardous substances consents. Councils, in responding to the Scottish Executive questionnaire issued in late 2005 have provided information on costs associated with these specific issues.

The proposals concerning neighbour notifications have been identified as an issue of concern for a number of local authorities. We acknowledge that the Executive see this new duty as funded through the application fee structure. But disparities will exist in terms of geographic issues in rural authorities, as well as density issues in urban authorities. A number of councils have already undertaken costing exercises on this matter, confirming that disparity does exist. What COSLA would find unacceptable, would be the introduction of a flat rate element into the fee structure to deal with neighbourhood notification. A flat rate would not deal with expenditure disparities.

But there are many other issues that cannot be costed similarly. Nor can COSLA predict at this time, future costs falling to local authorities linked to related European and domestic legislative proposals that may impact on the delivery of the planning function. A key example of this in terms of the current planning system was the impact of the EU Strategic Environmental Assessment Directive and the related Scottish legislation. There was no means to identify in advance of the domestic legislation what the financial burden would be on local authorities and over what timescales it would have the greatest impact. As indicated above, the impact on development planning has been significant in terms of cost as well as the need to factor in additional time resources, leading to the potential for slowing down the development planning process, rather than speeding it up, as sought by Ministers.

COSLA doubts that this will have the same impact in the longer term, in a financial context, but it is a key example of lack of recognition of the impact of such legislative changes on local authorities' ability to deliver an efficient and effective service. COSLA welcomes the principles of Strategic Environmental Assessment, but it should be a lesson learned in assuming that councils would be able to bear the cost without further resources being made available.

Kathy Cameron
Policy Manager, Environment and Regeneration
COSLA

SUBMISSION FROM CAIRNGORMS NATIONAL PARK AUTHORITY

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes we did respond to the White Paper. We made general comments on resource implications, regarding for example administrative costs for neighbour notification.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

No, there is only reference to resource implications for local authorities: not CNPA which is a NDPB.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes thank you.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

No. CNPA cannot raise additional income from Council Tax base or from windfall (unbudgeted) planning fee income. As NDPB we are funded by the Executive. Higher fees will not cover cost of neighbour notification as we only receive 50% of fee from local authority. Additionally the proposals do not identify how neighbour notification is dealt with for re-notifications after "call-in" & rectification of any erroneous initial notifications by LA pre-"call in".

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

If Executive undertake to adjust our budget to reflect cost of additional responsibilities we will be content from financial perspective.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Do not think so as the full implications have not been comprehensively assessed and worked through the system – figures are purely rough estimates at this point in time and not based on reality of working with the new system.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

See below.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

To take the last point first – the answer is no. The Bill will give rise to a variety of secondary legislation and costs cannot even be estimated until the detail of that is available e.g. changes to the General Permitted Development and Use Classes Orders.

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Thank you for your letter of 25th January addressed to John Markland, seeking SNH's views on the Financial Memorandum that accompanies the above Bill.

The Planning Bill is a complex piece of legislation and much detail of the proposed arrangements has yet to be defined through secondary legislation. It is therefore difficult to determine the financial impact of the proposals in any detail at this stage. Against this background, however, we have some general comments on the Financial Memorandum.

Importance of adequate funding

We would emphasise the importance of adequate resourcing in order to support all the bodies which will be involved in the implementation of the new arrangements. This is particularly true of the Executive itself, and we welcome the intention to increase the staff complement in some key areas (including a small dedicated team to lead on preparation of the National Planning Framework, as indicated in para. 218). Planning authorities are also central to the success of the proposed reforms. Although the provision of funding for local authorities is not primarily a matter for SNH, discussion through the Planning Finance Working Party (para. 244) will be of particular importance in clarifying the need for additional support and refining the estimates presented in the Financial Memorandum.

SNH input to development plans and development management

The most direct implications of the proposals for SNH arise from the new duties on key agencies in relation to the development plan process and development management, which are not directly addressed by the Memorandum. SNH already directs considerable resources into consultation during development plan preparation, and it is difficult to judge whether these will need to increase as a result of these proposals. It seems likely that the formal requirement to engage in preparation of the main issues report, proposed plan and action programme on a five year cycle will be offset to some degree by the relatively concise, focused nature of these documents, and these duties may only represent a modest increase in workload. SNH also engages extensively with developers in relation to particular proposals, and our role in relation to development management will not be entirely new. The balance of our involvement may nonetheless change under the new regime, particularly in relation to pre-determination hearings, which could result in significant time commitments for staff. At this stage, the net implications for SNH therefore appear fairly modest. They will, however, arise at a time when the calls on the time of our staff from other new procedures, such as SEA and those introduced under the Nature Conservation (Scotland) Act and the Water Framework Directive, will also be increasing. It will, moreover, only be possible to assess the probable impact properly when we have seen the detail of the secondary legislation and the procedural guidance which will flow from the Bill.

Proposals for National Scenic Areas

The Committee will be aware that the Executive has recently issued a consultation paper on *Enhancing Our Care of Scotland's Landscapes*. SNH strongly supports this initiative, which seeks views on proposals for a new statutory basis for National Scenic Areas, for possible introduction to the Planning Bill at Stage 2. Key to fulfilling the new statutory purpose and aim is the preparation of a Management Strategy for each NSA. The paper includes a preliminary estimate of the likely costs associated with this process (a total of approx. £1.98m for strategy preparation, £0.85m annual support costs and some additional costs for specific projects arising from the strategies). While these costs are relatively modest in the context of the wider planning reforms, it will be important to ensure that they are provided for adequately, either through SNH grant or directly through the Scottish Executive. There is an important issue of principle here, as NSAs represent a national resource and should be funded at

national level so that the onus does not fall entirely on the ten local authorities concerned. At a more practical level, there is no current intention to place Management Strategies on a statutory footing, and the success of this voluntary approach will be closely dependent on adequate financial support. SNH will be required to be adequately resourced if we are to meet local authority demands through our grants programme.

Wider public engagement

It will be important to ensure that all interested parties, including community groups and voluntary bodies, are able to engage fully with the planning system. This objective is one of the central planks of the proposed reforms, and we would sound a note of caution in relation to the view expressed in the Memorandum that “the load on individuals should not...increase” (para. 279). The proposed ‘front-loading’ of public engagement should, if achieved in practice, result in a shift from reactive objection to more ‘strategic’ input earlier in the planning process. This will require effective participation in development planning on a regular five year cycle, along with pre-application consultations and pre-determination hearings, and may well require greater time input from individuals. This in turn implies a need for additional financial commitments to promote awareness of the new system among local communities, and to increase their capacity to contribute effectively.

I hope that these comments are helpful, but please do not hesitate to contact my colleague Mark Wrightham (01463 667922; mark.wrightham@snh.gov.uk) if you would like to discuss any of this in more detail.

Yours sincerely,

John Thomson
Director of Strategy and Operations – West

SUBMISSION FROM SCOTTISH COUNCIL FOR DEVELOPMENT AND INDUSTRY

Questionnaire

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Planning Etc. (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

SCDI has been involved in the consultation for the Bill. SCDI has no comment on the financial assumptions made in the Bill but does believe that significant extra resources are required to ensure the planning system works as efficiently and effectively as it should. This underlying pressure on the planning system will be increased by a number of the changes proposed in the Bill.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes. Paragraph 265 of the Financial Memorandum states that, “Undoubtedly, however, there is a case for improving resources available to the planning service.”

Paragraph 267 states that, “We have to accept as a starting point that the planning system at present is under-resourced and under-performing.” It continues, “the reform proposals,

particularly when transitional costs are taken into account, seem likely in the early years to generate more costs than savings.”

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill has no financial implications for SCDI.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

N/A

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

SCDI has no comment to make on this issue.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

SCDI agrees with the Financial Memorandum that states in paragraph 269 that the costs on business and others of the Bill are difficult to reliably estimate due to a lack of specific detail as to how the new systems will operate. SCDI has no evidence to suggest that the estimates given in the Financial Memorandum are inaccurate, but also has no information with which to measure their accuracy.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

SCDI believes that it is likely that there will be future costs associated with the Bill when further details are produced through secondary legislation. However, SCDI has no information as to the level of these costs.

SUBMISSION FROM SCOTTISH ENVIRONMENTAL PROTECTION AGENCY

1. Background – SEPA’s role in the Planning System

1.1 Influencing the planning system is one of the key non-regulatory ways in which SEPA can achieve its six environmental outcomes³⁹⁸ and provide for effective protection of Scotland’s environment. SEPA is currently a statutory consultee for certain types of development and the Agency works closely with all planning authorities across Scotland on both strategic, development planning and development management matters.

³⁹⁸ SEPA’s Environmental Outcomes are: 1. Minimised, recovered and well-managed waste, 2. Good water environments 3. Good air quality, 4. Good land quality, 5. A respected environment: protected, informed and engaged communities and 6. Economic wellbeing. Go to www.sepa.org.uk for more details

1.2 Most of SEPA's outcomes and objectives require to be taken forward proactively by the planning process, particularly in relation to taking forward sustainable development. For example, to achieve SEPA's waste outcome, the National Waste Strategy sets out a need for Scotland to move from a situation where it landfills over 90% of its waste (in 2002), to one where waste is managed more sustainably through reduction, reuse and recovery with only 30% landfilled by 2020. Clearly to make such a transition requires an effective and fit for purpose planning system that can provide the spatial framework for delivery of the network of waste infrastructure facilities to achieve this objective.

1.3 Earlier reviews of SEPA's work in this area, principally the 2002/3 Policy and Financial Management Review (PFMR) undertaken by the Scottish Executive, recommended an enhanced input to planning processes. The Board and Management of SEPA readily endorsed this view and directed resources to this area as a result.

1.4 Accordingly, SEPA allocates significant resources for engaging with the planning system at all its levels, from influencing Scottish planning policy and advice, to working with Planning Authorities in the preparation of Development Plans and engaging with planners and developers to facilitate the determination of planning applications. To do this work, SEPA has 24 dedicated planning staff responsible for planning liaison work at both national and local level. Further support is provided by specialist staff within SEPA such as hydrologists and ecologists. SEPA typically provides input to 8500 planning applications per year and to the preparation of every development plan in Scotland. SEPA is also committed to following up its representations on development plans and planning applications and frequently gives evidence to planning inquiries and hearings.

2 Responses to Questionnaire

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Bill has come forward following very extensive consultation on both its principles and on some of the detail which may follow. SEPA has played an active part in contributing to all of the consultations to date. SEPA made some reference to the resource implications of specific proposals.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The Financial Memorandum does not detail resource implications for SEPA or other key agencies, so have not been reflected at this stage.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

SEPA already puts considerable resources into engaging with the planning system and, therefore, any significant alterations to that system such as those proposed by the Bill will have resource implications for the Agency. Proposals such as statutory pre-application discussions, good neighbour agreements, pre-determination hearings and the duty to cooperate in a wider range of development planning activities will all have implications.

As noted above, the Financial Memorandum does not detail resource implications for SEPA. Therefore there is some uncertainty about the implications for the Agency as no research has

been undertaken to evaluate potential costs. This uncertainty is increased by the fact that some of the resource implications of the Bill will not be known until further detail is provided. For example, a statutory duty will be placed upon key agencies (which we expect will include SEPA), but it is unclear at this stage what that duty will entail in detail. We would expect resource implications to be assessed as further details are brought forward in subordinate legislation and guidance.

It is the case, though, that SEPA will need to embrace the culture of change that the Planning Bill is seeking to sweep in, and, just like planning authorities, SEPA will need to change its own processes and realign its resources to where they can best contribute to making the planning system the driver for sustainable development that it could and should be. Accordingly, while the Bill will impact on the Agency's activities considerably and while reserving judgement on some of the detail to emerge in subordinate legislation, SEPA will seek to manage this through re-prioritisation or resources in line with the Bill and through development of effective and efficient new procedures.

1. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
2. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
3. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

As noted above, there is uncertainty regarding the resource implications of some of the detailed arrangements that will emerge in subordinate legislation and in guidance. This has not been estimated at this stage but, as the Financial Memorandum indicates, as each new regulation is drafted it will be accompanied by a Regulatory Impact Assessment. We would expect these to consider fully the costs to key agencies such as SEPA and, where appropriate, for additional resources to be made available to meet new duties which will have identifiable additional resource implications.

SUBMISSION FROM SCOTTISH ENTERPRISE

Scottish Enterprise (SE) welcomes this opportunity to comment on the Financial Memorandum for the Planning Etc (Scotland) Bill. SE has been a keen contributor to the entire consultation process and has commented on all aspects of the Bill, in both written form and through direct evidence to the Parliament's Communities Committee. In terms of this response, SE would like to reiterate two main points:

- The White Paper introduces many new responsibilities, monitoring and reporting regimes, appeal processes and public consultation requirements without identifying how these will be resourced. There are significant resource implications for Local Authorities who are already struggling to provide sufficient Planning Staff with the relevant skills. Without adequate resourcing the proposed changes to the Planning system will not work, introducing lack of clarity and continued delay. In addition there are likely to be increased costs associated with extra public consultation, planning fees and new appeal arrangements which will impact directly on those seeking approval for development. However the Network would caution that fees remain competitive and do not become a potential disincentive to invest.
- SE is supportive of the statutory requirement on Local Enterprise Companies to engage in the deliberations of Local Development Plans and agrees that it should ensure better co-ordination of spending and policy decisions. However the Network is conscious of potential resourcing issues and would welcome further discussions as to the applicability of Network staff benefiting from the Executive's planned expenditure

on training needs and skills gaps, as outlined in the White Paper. Apart from a need to update the skills set of existing staff, the Network does not envisage that the proposed Bill would have any further direct cost implications, as it is merely formalising existing activities and relationships.

SE continues to support the Executive's ambition of modernising the Planning Process and believes that Scotland's competitiveness is dependent on a Planning System that has clarity of purpose, is inclusive of all relevant perspectives and is responsive of the needs of the development sector.

Yours Sincerely,

Allan McQuade
Director, Property, Locations and Place

SUBMISSION FROM SCOTTISH WATER

Scottish Water welcomes the opportunity to respond to the Planning etc. (Scotland) Bill – Financial Memorandum.

Scottish Water is particularly interested in this paper due to our major involvement in three distinct areas relating to planning.

- Scottish Water is a major applicant in the planning process. The organisation made around 270 applications in 2005/06.
- Scottish Water is also a statutory consultee in the planning process. We receive and manage 16,000 development control applications each year.
- Scottish Water is a major provider of infrastructure which enables new house building and commercial developments.

We are pleased to offer Scottish Water's response to the questions posed regarding the Financial Memorandum.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
 - Scottish Water responded to the White Paper – Modernising the Planning System in September 2005.
 - Scottish Water identified that it needed greater clarity on the Planning etc (Scotland) Bill February 2006 such that it could seek to redress any necessary funding deficit through formal economic regulatory mechanisms with the Water Industry Commission. Areas of financial concern in this consultation included planning fees associated with applications from Scottish Water, anticipated increases in costs associated with the proposed appeals process and greater clarity on the use of planning agreements with developers and how this may affect project timescales and costs. It was difficult to provide any meaningful detailed budgetary costs that would impact Scottish Water within our response to the consultation due to the level of uncertainty at that stage
2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
 - Scottish Water identified areas of financial concern as highlighted above and these would appear to be reflected within the Financial Memorandum. However it is

important to note there was, and still is, insufficient information available to fully quantify the financial impact of the Bill.

3. Did you have sufficient time to contribute to the consultation exercise?

- Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

- Scottish Water is not currently funded in the regulatory period 2006-10 for the implications arising from the Bill. Scottish Water believes that the Bill may have significant financial implications for our organisation, however there remains a high level uncertainty around the requirements of the Bill and it is difficult to determine where the balance of savings or costs lie for Scottish Water.
- For example, we believe the proposed Strategic Development Plan approvals provide an opportunity for savings together with the long term benefits of E-Planning. In contrast, additional resources will be required to support regular 5 yearly reviews of Statutory Action Plans and Local Development Plans. It is also a concern that the proposed Appeals process could increase costs incurred in the delivery of projects.
- It is important to note that Scottish Water's investment programme which covers the regulatory period 2006 – 2010, also makes no allowance for the impact that the Planning etc (Scotland) Bill will have on Scottish Water and therefore any additional funding that may be required will be over and above the regulatory settlement determined by the Water Industry Commission for 2006 to 2010.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

- As stated in the answer in question 4, Scottish Water is not currently funded for the additional financial costs associated with the Bill. Scottish Water has recently accepted the Water Industry Commission's Determination of Charges for 2006-2010 and there is no funding within the regulatory settlement for the costs and duties highlighted in the Bill.
- Scottish Water is aware that the Scottish Executive has recently intimated that grants may be available to partially off-set initial setup costs. However, we are further concerned that financing some of the additional set-up and on-going running costs associated with the Bill will only be possible by passing these costs, which are not directly related to quality and efficiency, directly onto Scottish Water customers.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

- Scottish Water believes the Financial Memorandum is unclear as to when these costs may impact and as previously indicated projecting accurate costs at this stage is not a practicable option due to the need for further guidance and clarification.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

- Please refer to the answer provided to Question 6 above.
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
- Scottish Water believes that there may be future costs associated with the Bill as more guidance becomes available. Scottish Water believes that it is only when more detail regarding the Bill has been developed, that a more accurate costing of the impact on Scottish Water can be produced.
 - Particularly, Scottish Water welcomes further consultation on the future fee structure attached to Planning Applications.
 - Scottish Water will continue to support the delivery and implementation of the Planning etc (Scotland) Bill through participation in working groups.

SUPPLEMENTARY SUBMISSION FROM COSLA

I refer to the oral evidence given by COSLA witnesses to the Finance Committee on 21 February 2006, in respect of the above.

Following consultation with Councillor Willie Dunn, COSLA Economic Development and Planning Spokesperson, I have been asked to provide you with further comments, in light of the offer made to provide supplementary evidence. Please find below our responses in respect of the issues raised.

COSLA was asked if we had been involved in any discussions, even preliminary ones about the Executive's broad intention and parameters for charging. COSLA has been party to the discussions on resources for planning, as a member of the steering group overseeing the work of the consultants ARUP, who were commissioned to produce reports on the current resources issues for the Scottish planning system. Throughout these discussions and the subsequent dialogue in the Planning Finance Working Party at which COSLA is represented, there has been recognition by the Executive of the need to look at the fee structure for the planning system. This position was acknowledged by COSLA and the Scottish Society for Directors of Planning and it has been further reflected that this was only part of the equation in addressing the resource issue, as it is understood that the fee structure does not cover the costs of the development of structure and local plans and that this element of development planning must be funded from the local authority settlement.

COSLA understands that the information interpreted by ARUP taken from the LFR7 returns, suggests a drift away from planning towards economic development, which are packaged together in the Green Book (Grant Aided Expenditure). COSLA would wish to point out that such a shift comes more as a result of the growth in competing economic development priorities for local authorities, than from a perspective that planning is not in need of resourcing.

The COSLA witnesses were asked if calculation of the cost of neighbour notification was possible under a number of circumstances. COSLA would refer the Committee to work carried out by City of Edinburgh Council which has been subscribed to by a number of other authorities as being a reasonable reflection of costs in a range of circumstances. A copy of the Edinburgh work is attached. Rural authorities have indicated that the costs of identification of land ownership have to be factored into the overall costs as well as the specific needs of addressing neighbour notification in remote rural areas. To this extent, it is difficult to determine that a fixed rate can be factored into planning fees to cover neighbour notification, as this would not reflect actual cost in every instance.

Finally, COSLA was asked to apply an example of cash values for a range of fees, if the percentage increase advocated by ARUP were to be applied.

The fee structure is currently determined by the Scottish Executive and a range of fees set for householder and more significant planning applications and applied by all planning authorities. ARUP suggested a 34% increase to address under-resourcing issues in the current system. It is reasonable to suggest that not all elements of the market could bear such an increase, for the current planning system.

The Bill proposes that minor householder applications will no longer require formal planning permission; therefore fee income will be lost. As the Executive has agreed with the assumption of full-cost recovery from planning fees, the revised structure would have to take account of that loss.

COSLA would suggest that it not for us to demonstrate revised cash values, but it is for the Executive to test any proposals in the market and build into the structure an element of cross-subsidy as the Executive has previously suggested. If there is a willingness on the part of large scale developers to pay higher fees to obtain a faster, more efficient planning system, then cross –subsidy should, to a large extent be achievable and less impact be felt by smaller developers in fee terms.

I trust that you find these comments of use.

Yours sincerely

James Fowle
Team Leader - Environment and Regeneration

INFORMATION PROVIDED BY CITY OF EDINBURGH COUNCIL

1. **Estimated volume of Neighbour Notifications based on actual Planning Decisions in 2003-04**

Methodology

To obtain an estimate of the number of neighbours who would require to be notified in the course of a year, a sample of applications submitted during the period April - December 2003 were examined and then grossed up to represent the numbers given in the Scottish Executive return of decisions taken during the period 1 April 2003 to 31 March 2004.

The **first assessment** is based on development types 1, 3a, 3b, 4a, 4b, 5a, 5b, 9 and 9a – a basis comparable to existing notification requirements placed on applicants. For development types 3a, 4a, 5a, and 9 there were small numbers of items in the basic sample so additional samples were taken from applications submitted during 2003.

A **second assessment** was made based on a possible extension of notification procedures to include Listed Building Consents and Conservation Area Consents (development type 6) and Advertisement Consents (development type 7).

The calculations are based on continuation of the current regulations requiring notification of both the owner and the occupier of domestic properties and also with the addition of the lessee of non-domestic properties. No real information was available to obtain mean numbers of neighbours by domestic and non-domestic property types, so a factor of 2.2 was applied based on observation from the sample survey of property types in areas where such applications commonly occurred.

Summary

Based on current regulations, the Council would have issued notifications to **55844 properties**. Applying the 2 domestic and 3 non-domestic multipliers, this gives an annual total of **119975 individual neighbour notification letters** or **2307 per week**.

Adding the extra types of consents which could be notified would increase these totals to **86,746 properties** and **187,959 individual neighbour notification letters** or **3615 per week**.

This compares with an average of **540 items** despatched each week (range: 360 to 745) in respect of acknowledgement of applications, representations and notification of decisions to applicants and people who submitted representations.

Assessment 1: based on current notification requirements

| Development Type | Development Description | No. of Applications April 03 – March 04 | Neighbour Type | MEAN # of neighbour notifications per application (derived from sample) | Neighbour notification estimate for all applications decided (2003-04) |
|------------------|-------------------------|--|--------------------------|---|--|
| 1 | where > 40% Flatted | 1963 | Non-Domestic | 0.8 | 1570.4 |
| | | | Domestic | 11.2 | 21985.6 |
| 1 | where <= 40% Flatted | 347 | Non-Domestic | 0.4 | 138.8 |
| | | | Domestic | 7.7 | 2671.9 |
| 3a | Major Dwellings | 66 | Non-Domestic | 5.0 | 330.0 |
| | | | Domestic | 36.2 | 2389.2 |
| 3b | Minor Dwellings | 310 | Non-Domestic | 3.4 | 1054.0 |
| | | | Domestic | 13.5 | 4185.0 |
| 4a | Major Business | 28 | Non-Domestic | 13.9 | 389.2 |
| | | | Domestic | 13.4 | 375.2 |
| 4b | Minor Business | 334 | Non-Domestic | 6.0 | 2004.0 |
| | | | Domestic | 14.3 | 4776.0 |
| 5a | Other major | 36 | Non-Domestic | 6.1 | 219.6 |
| | | | Domestic | 17.6 | 633.6 |
| 5b | Other minor | 356 | Non-Domestic | 3.7 | 1317.2 |
| | | | Domestic | 16.3 | 5802.8 |
| 9 | Other consents | 141 | Non-Domestic | 6.2 | 874.0 |
| | | | Domestic | 23.6 | 3327.6 |
| 9a | Telecom equipment | 100 | Non-Domestic | 3.9 | 390.0 |
| | | | Domestic | 14.1 | 1410.0 |
| | Total | 3681 | | | |
| | | sub-total | Non-Domestic | (rounded) | 8287 |
| | | | | X 3 letters | 24861 |
| | | sub-total | Domestic | (rounded) | 47557 |
| | | | | X 2 letters | 95114 |
| | | TOTAL | All notifications | 55844 properties | 119975 letters |

Assessment 2: including listed building consents, conservation area consents and advertisement applications

| Development Type | Development Description | No. of Applications April 03 – March 04 | Neighbour Type | MEAN # of Neighbour Notifications per application (derived from sample) | Neighbour Notification Estimate for All Applications decided April 03 – March 04 |
|------------------|--|--|----------------|---|---|
| 6 | Listed Buildings and conservation consents | 735 | Average all | 32.1 | 23593.5 |
| | | | | X 2.2 letters | 51905.7 |
| 7 | Advertisements | 235 | Average all | 31.1 | 7308.5 |
| | | | | X 2.2 letters | 16078.7 |
| | total | 970 | | 30902 properties | 67984 letters |
| | total from above | 3681 | | 55844 properties | 119975 letters |
| | Grand total | 4651 | | 86746 properties | 187959 letters |

2. Estimated costs of Neighbour Notifications to CEC if implemented in 2003-04

Staffing

Some of the activities which will need to be done are of a technical nature, e.g. mapping the boundary of an application site onto a GIS property database and then establishing which properties are within specified distances. Other tasks are more administrative in character e.g. printing standard letters and preparing them for posting. Supervision will also be required for these additional staff as will a need to handle queries, complaints, etc from people who receive notifications, and from some who have not. The assessed volume of work leads to the staffing estimate of a new team comprising one Chief Technician, two Technicians and two Support Assistants which would have gross annual salary costs of approximately £132,435 per annum. Generalised building and other indirect staff related costs could amount to another £78,999. A total of **£211, 434 staff costs**.

Supplies and services costs

Postage (including signed-for service), stationery and advertising costs (where no building on a neighbouring plot of land and owner not identifiable) could amount to an additional **£223,785**. This assumes a minimum additional IT charge based on the current software used within the Council already incorporating routines used in England for neighbour notification. Thus, it is assumed that it could define potential neighbours to a proposed development and then to generate letters to them without major software development costs.

Total costs

Adding staff costs to costs of supplies and software, a **total cost** to the Council in 2003-04 could have been in the order of **£435,219**. With approximately 4650 applications per annum (including LBC, CAC and Advertisement Consents) requiring to be notified to neighbours, the average a notification cost of **approximately £ 93.57 per application** would be incurred.

SUPPLEMENTARY SUBMISSION FROM THE SCOTTISH EXECUTIVE

When planning officials from the Executive's Development Department gave evidence to the Finance Committee on 28th February, Jim Mather MSP asked if it would be possible to provide a more comprehensive assessment of the wider costs and benefits to the economy that will flow from the planning reform proposals. He suggested a "virtual business plan for planning in Scotland from 2006 onwards." We undertook to think further on these issues and write to the Committee in due course.

First of all, we are grateful for Mr Mather's suggestion. The issue of how the planning system impacts on the wider economy, and the role that it plays in assisting economic growth is an important one. You may be aware that Kate Barker has recently been asked by the Chancellor of the Exchequer to undertake such a study for England, and it may be that something similar for Scotland would be beneficial. This is something that the Executive can look at, should Parliament pass the Bill and we have certainty about the shape of the overall package.

In general terms, there are a number of issues that would merit further examination. We believe, for example, that the proposed changes to the development planning system will introduce greater certainty to developers and communities alike because of the requirement to update plans regularly according to a strict timetable. Delays and uncertainty caused by out of date development plans that may well act as a disincentive to investment should be significantly reduced. More applications should be submitted on a basis consistent with up to date development plans and this should mean that more applications are approved without appeals against planning authorities' decisions. Our proposals for enhancing the status of the National Planning Framework should also lead to more effective delivery of essential infrastructure, necessary for the national economy.

The proposed changes to the development management system, we believe, should produce significant benefits to those who promote major developments, particularly in terms of faster processing of applications and better information about decisions. Applicants are likely to be charged higher fees for large scale developments to recover the actual costs of processing, but these additional costs will be offset by faster determination of applications and earlier commencement of development.

These are broad assumptions on the nature of the benefits likely to be produced by the reform proposals. From an economic perspective, there are a number of complexities that would merit further investigation:

- Whether more frequent revisions of development plans would result in the release of more land for development (e.g. housing development) that would increase the net amount of development taking place, and therefore GDP;
- Whether a more efficient and predictable development planning system would lead to the submission of a greater number of planning applications, resulting from greater confidence in the system;
- Whether – as a result of the two points above - investment decisions would be affected, and development could be diverted from elsewhere to Scotland;
- Whether a more rapid determination process could lead to development proposals being submitted earlier.

These questions are fundamentally about development economics. There are, for example, so many factors involved in a decision to make a business investment that it has always been difficult to assess what the precise impact of the planning system on this is. It is noticeable, for example, that businesses were unable to provide information on this when asked as part of the drafting of the Financial Memorandum. Another fundamental question to examine would be whether greater efficiency in the planning system merely results in more efficient use of resources within the same levels of investment, or whether a more efficient planning system fundamentally stimulates additional economic activity.

These are questions which any further research would need to look at in more detail, and – as noted above – the Executive would be happy to consider this when and if the Bill is passed..

We also gave a commitment to provide more information about the costs of producing the second National Planning Framework. We have already told the committee that the extra cost of the dedicated team preparing the next NPF will be about £105,000 in each of the years 2006-07 and 2007-08. The team leader's costs are about £53,000 per year in addition to this. We estimate that senior management involvement over this period could be about 2 days/month at Division and Group head level, which would cost another £20,000 per year, and input from the rest of the Executive could be a similar amount.

The costs of carrying out a major consultation exercise of this kind can vary considerably, according to such elements as the size and complexity of the consultation document, the use of public meetings and the means of analysis of responses. We estimate that the total cost of this is likely to be about £200,000, including the cost of a Strategic Environmental Assessment.. Costs to local authorities and others arising from consultation on the NPF will also be significant, but they are difficult to assess.

Tim Barraclough

Local Government and Transport Committee

Report by the Local Government and Transport Committee to the Communities Committee on the Planning etc. (Scotland) Bill

The Committee reports to the Communities Committee as follows—

EXECUTIVE SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. **The Committee, while acknowledging the concerns of the Federation of Small Businesses about the possible effect of increasing pressures on local authority budgets, notes the more favourable approach taken by members of CBI Scotland towards the perceived benefits of Business Improvement Districts. The Committee also notes the generally successful experience of the 22 BID projects which have been developed in England and Wales by the Association of Town Centre Management supported by the Office of the Deputy Prime Minister.**

2. **The Committee notes the evidence received from the FSB, the CBI and BT plc who all expressed concerns about the statutory or compulsory nature of any levy to be imposed on businesses in a BID area. The Committee recognises that for any BID proposal to be provided with sustainable levels of future revenues there will be a requirement for compulsion to pay the levy to exist. However, the Committee, in view of the evidence received, recognises that a central pillar of the BID proposal, namely compulsion to pay the levy, has not found greater levels of support from the business community. Nevertheless, the Committee notes that south of the border, in 22 of the 27 areas in which business cases for BID proposals were made, the proposals were voted for by local businesses.**

3. **The Committee notes that the Executive's intention to seek a section 104 Order, which would make provisions enabling property owners or landlords to be liable for a BID levy in Scotland, would create a structure which is different from that in England and Wales. There is a question as to whether landlords or property owners who pay a levy will recoup it from their tenants, who may already be liable to pay their own levy. The Committee seeks an explanation from the Scottish Executive as to how it expects the system to work in practice in such a way that landlords and property owners do not pass the costs of a BID levy on to their tenants.**

4. **The Committee endorses the concerns of witnesses that services which are to be provided by a local authority or other public agency in a BID area should genuinely be**

additional to those which it would otherwise provide under its existing statutory duties or as part of the services which it would otherwise provide to its local community generally.

5. The Bill should require that a BID proposal should include a clear statement of what level of service is currently provided by a local authority or other public agency and what additional services will be provided if the BID proposal is approved.

6. The Committee recommends that the Scottish Executive should give further reassurance about the potential cost impact of BIDs on the small business sector.

7. The Committee endorses the provisions in the Bill which enable a local authority to veto proposals for a BID prior to a ballot being held. It is important that a local authority should indicate any concerns it might have at an early stage of proposals being developed.

8. The Committee notes that the financial support which the Scottish Executive is making available to each of the six pilot schemes will not normally be available to a proposed BID. The pilots will not have gone through the voting arrangements for a BID, and will not be required to pay a levy.

9. The Committee, however, notes that the Executive will also be able to draw on the experience of the 22 BIDs which were established in England and Wales in assessing the viability of this legislative proposal.

10. The Committee considers that there is broad overall support for the proposals contained in Part 9 of the Bill, which provide for the establishment of Business Improvement Districts where they are proposed and approved by local businesses. Subject to the comments made above in this report, the Committee commends the general principles of Part 9 of the Bill.³⁹⁹

INTRODUCTION

11. The Planning etc (Scotland) Bill was introduced by Malcolm Chisholm, Minister for Communities on 19 December 2005. The Parliament, at its meeting of 21 December 2005, agreed that the Communities Committee should be designated as lead committee, and that the Local Government and Transport Committee be designated as secondary committee, in consideration of the Bill at Stage 1.

12. The establishment of Business Improvement Districts (BIDs), which is the subject matter of Part 9 of the Bill, falls within the remit of the Local Government and Transport Committee in virtue of the proposed involvement of local authorities in the establishment and operation of BIDs.

13. The Committee took oral evidence on Part 9 of the Bill from the Association of Town Centre Management and from the Federation of Small Businesses at its meeting of 14 March 2006. Oral evidence was taken from the Minister for Finance and Public Sector Reform and his officials at the Committee's meeting of 21 March 2006. Associated written submissions and other written evidence are attached to this report. The Committee wishes to express its thanks to all those who provided written and oral evidence on the Bill.

PART 9 OF THE BILL

14. Section 31 of the Bill enables a local authority to make arrangements for the establishment of Business Improvement Districts within its area. Arrangements for the creation of cross-boundary BIDs may be made by regulation under section 32. Subsequent sections of Part 9 provide for the making of financial contributions to a BID, the keeping of a revenue account by the local authority, proposals for establishing a BID, approval by ballot, power of veto by the local authority, commencement and duration of BIDs and powers allowing Ministers to make regulations.

³⁹⁹ Bruce Crawford and David McLetchie dissented.

BUSINESS IMPROVEMENT DISTRICTS

15. According to the Scottish Executive, a Business Improvement District (BID) is a precisely defined geographical area of a town, city, or commercial district, where businesses vote to invest collectively in local improvements resulting in improved economic performance. BIDs are developed, managed and paid for by the business sector by means of a compulsory BID levy on each business's non-domestic rates bill.

16. Before agreeing to fund the additional investment the businesses themselves will decide how their money will be spent and how much they are prepared to pay. Each business liable to contribute to the BID will be able to vote on whether or not that BID goes ahead.

17. A BID can be established wherever additional services to those which the Local Authority provides are desired by the local business community. It could be located in a town centre, in one or two particular streets or an entire city centre area. Equally it could be located in an Industrial estate, business park or even, if there is sufficient business support, in a sparsely populated area.⁴⁰⁰

OVERALL VIEWS ON BIDS

18. The Minister, in his evidence, commended the concept of Business Improvement Districts. He stated that—

19. 'In general, there is a strong body of support for the concept in the business community.'⁴⁰¹

20. In written evidence, the proposals were generally supported by the Highland Council, Scottish Chambers of Commerce (SCC) and by the Royal Institute of Chartered Surveyors (RICS).⁴⁰²

21. The Scottish Retail Consortium (SRC) stated that it supports the BID funding mechanism and believes that if BIDs are developed and led by the private sector, they will be key to the continued regeneration of our towns and cities.⁴⁰³

22. CBI Scotland said that it is supportive of BIDs so long as they enjoy the confidence of local firms and have majority support from local businesses; are genuinely business led, and not simply a convenient vehicle for public sector and local authorities to pursue their own agendas; and the activities of a BID would not otherwise be done by the council or other public sector agencies.⁴⁰⁴

23. COSLA, in its written evidence, said that it does not oppose BIDs and acknowledges that they may have a role to play for some local authority areas. However, it cannot accept BIDs unless its concerns (referred to elsewhere in this report) are taken into account. It went on to say that local authorities must retain the right to decide on local issues, local priorities, local services and the best tools to deliver these.⁴⁰⁵

24. The Federation of Small Businesses in Scotland (FSB), in its written submission, said that the Federation was opposed to the concept of BIDs, largely because of concerns about the effect of increasing pressures on local authority budgets.⁴⁰⁶ It went on to say—

"However, if legislation is passed which sets up the framework to allow BIDs to be created, this must ensure that BIDs only go ahead when there is genuine and widespread support from the local business community. The worst case scenario for small businesses is that

⁴⁰⁰ Scottish Executive website "Local Government Finance and Local Funding"

⁴⁰¹ OR Col 3535

⁴⁰² Highland Council, SCC, RICS, written evidence

⁴⁰³ SRC written evidence

⁴⁰⁴ CBI written evidence, para. 14

⁴⁰⁵ COSLA written evidence

⁴⁰⁶ FSB written submission

they end up paying a levy additional to their business rates for local services or capital projects that they do not want and that do not benefit their business.”⁴⁰⁷

BENEFITS OF BIDS

25. The Minister, in oral evidence, stated that—

26. ‘The main reason why BIDs have become popular is that they empower businesses to devise their own solutions for improved economic performance.’⁴⁰⁸

27. The Association of Town Centre Management (ATCM) is the leading organisation supporting town centre management, business led partnerships and BIDs. It was involved with the Office of Deputy Prime Minister in researching and drafting legislation and guidance for the Westminster Parliament. It supplied the Committee with a leaflet listing various benefits of BIDs, which included: producing economic well being and economic growth; attracting inward investment; increasing consumer spend and sales; giving businesses a local voice; promoting greater understanding of the role of local authorities; and increasing an area’s desirability and attracting occupiers.⁴⁰⁹

28. The ATCM was invited to develop and deliver a national BID pilot operating at 22 sites in England and Wales. The BID Project Director of the ATCM said in oral evidence—

29. ‘There are 22 BIDs in England. I have been heavily involved in BIDs and I believe that they are an innovative and stimulating concept, because they allow and encourage partnerships to engage fully with businesses. Even I have been surprised and impressed by the amount of interest, support and time that businesses have given to BIDs. For example, at the 22 sites in England, on an average 50 per cent turnout, 70 per cent of businesses have voted in favour of the BIDs.’⁴¹⁰

30. CBI Scotland, in its written evidence, said that the main benefits of BIDs, cited by its members, were: an opportunity to fund improvements resulting in increased civic distinction, pride and excellence; the creation of a clean, safe and attractive urban environment over and above that already provided by public agencies; the creation of better conditions for enhancing footfall, sales and profits; and encouraging local authorities and other public agencies to take a more business oriented approach to their affairs.⁴¹¹

31. The SCC said that it believed that BIDs could provide a valuable opportunity for businesses and communities to come together and fund ‘added value’ investment in local areas.⁴¹²

32. UNISON, however, argued that businesses would only be interested in developing a BID in an area which is attractive, successful and worthwhile investing in. In the more run down, deprived areas, it said, the private sector will see no interest in investing and working with what little community structure exists.⁴¹³

33. Similarly, the FSB, in oral evidence, stated—

34. ‘We also worry that the proposal will work in places such as Glasgow, Edinburgh, Aberdeen and Dundee town centres. However, they already do big jobs; they have a big footfall and they are doing pretty well. The BIDs will exaggerate the differences between the areas that are doing really well and those that are suffering.’⁴¹⁴

⁴⁰⁷ Ibid

⁴⁰⁸ OR Col 3524

⁴⁰⁹ ATCM leaflet “BIDs: The Benefits”

⁴¹⁰ OR Col 3485

⁴¹¹ CBI written evidence, para 3

⁴¹² SCC written evidence

⁴¹³ UNISON written evidence

⁴¹⁴ OR Col 3506

35. **The Committee, while acknowledging the concerns of the Federation of Small Businesses about the possible effect of increasing pressures on local authority budgets, notes the more favourable approach taken by members of CBI Scotland towards the perceived benefits of Business Improvement Districts. The Committee also notes the generally successful experience of the 22 BID projects which have been developed in England and Wales by the Association of Town Centre Management supported by the Office of the Deputy Prime Minister.**

THE BID LEVY

36. Where a BID has been agreed and endorsed by a ballot, a levy is made on the non-domestic rates of all the businesses in the area, whether or not they voted for the BID proposal.

37. The ATCM, in oral evidence said that—

‘It would be fair to say that the purpose of a business improvement district is to ensure that, if a proposal is put forward and enacted, it is paid for by everyone, not just by some people.’⁴¹⁵

and—

‘The idea behind business improvement districts is to ensure that, if you go through the process and tick the box, everyone has to contribute.’⁴¹⁶

38. The FSB, in oral evidence, however, stated that—

‘Whether it is called a tax or a levy, the key difference is that, at the moment, contributions are voluntary. Businesses ask, "Is this going to benefit me? Is it going to benefit the business? Is it going to benefit the location?" and they make a decision about whether or not to contribute. Businesses are worried that, once a BID is approved, they will be compelled to pay the extra money whether they like it or not. As I say in my written submission, the worst-case scenario for small businesses is that they will end up paying more money for services or physical infrastructure improvements that they do not want. The worry is that businesses will pay more and will not get back what they put in.’⁴¹⁷

39. The CBI reported that some firms are uneasy about aspects of the proposals. These include a concern that in some cases BIDs may be designed with certain types of firms in mind, and may be voted in by those firms, leaving others paying part of the cost but receiving little benefit; and concerns about a statutory scheme being imposed on an unwilling minority.⁴¹⁸

40. BT plc said that it would not favour any compulsory obligation to fund town centre improvements.⁴¹⁹

41. Some members of the Committee felt that large out-of-town shopping facilities had undermined town centres. Such firms would not be called on to pay a levy if they were not in the catchment area of a BID, whereas traditional smaller businesses within the area, whose rates tended to make up a larger proportion of their profits and turnover, would be required to pay.

42. The ATCM, in oral evidence, stated that—

‘On the question whether the net could be drawn wider so that out-of-town retailers pay the levy, I should say that that is not the concept of business improvement districts. BIDs involve drawing a ring round a recognised area in which every business that benefits must contribute to the funding of the BID's projects and services. A business improvement district is what it

⁴¹⁵ OR Col 3495

⁴¹⁶ Ibid

⁴¹⁷ OR Col 3511

⁴¹⁸ CBI written evidence

⁴¹⁹ BT plc written evidence

says it is. It is not a philanthropic gesture or a community district or a general benefit district. The purpose of a BID is to improve the trading environment or public realm for the businesses within the area. If a BID proposal will not do that, businesses should not vote for it.⁴²⁰

43. **The Committee notes the evidence received from the FSB, the CBI and BT plc who all expressed concerns about the statutory or compulsory nature of any levy to be imposed on businesses in a BID area. The Committee recognises that for any BID proposal to be provided with sustainable levels of future revenues there will be a requirement for compulsion to pay the levy to exist. However, the Committee, in view of the evidence received, recognises that a central pillar of the BID proposal, namely compulsion to pay the levy, has not found greater levels of support from the business community. Nevertheless, the Committee notes that south of the border, in 22 of the 27 areas in which business cases for BID proposals were made, the proposals were voted for by local businesses.**

RURAL AREAS

44. In its original consultation on the Bill, the Scottish Executive asked respondents whether there was a need for the BID concept to be developed further to be of greater use in rural areas.

45. In its response, also submitted in evidence to this Committee, the Royal Institute of Chartered Surveyors in Scotland said that—

‘Rural towns should not be excluded as they may have sufficient businesses to operate a successful BID. The added benefit is that a BID proposal may unite rural communities. The BIDs concept will be more difficult to operate in smaller communities, however, collective consideration and partnership agreements, no matter how small, should not be deterred. It should also be borne in mind the rateable value of businesses in rural areas tend to be lower than those in city centres and consequently the increase in the rate poundage would require to be greater in those areas compared to city centres.’⁴²¹

46. The ATCM agreed that it might be difficult to create a cohesive group of businesses with similar requirements for projects and services if they are spread out and that there were no examples of BIDs in rural areas in England.⁴²²

47. The Minister said that—

‘In an urban setting, the size of a BID often settles itself because the local businesses tend to know the ideal geographical scope. Obviously, a rural BID would have to cover a larger area, but if businesses come together in the right way, there is no reason why a BID project cannot be set up in a rural area.’⁴²³

CHARITIES

48. In his oral evidence, the Minister confirmed that charity shops within a BID area would also be liable to pay the levy unless the BID board had agreed to exempt them.⁴²⁴

49. Commenting on the experience in England, ATCM said—

‘On charity shops, the secondary legislation allows for BID proposers to decide which businesses should and should not be involved, which should and should not be exempt, and how the levy is to be charged. The businesses then vote on whether that is appropriate. The proposers therefore decide whether charity shops will be liable for the full levy, exempt or

⁴²⁰ OR Col 3490

⁴²¹ RICS written evidence Question 9

⁴²² OR Col 3493

⁴²³ OR Col 3526

⁴²⁴ OR Col 3535

given a discounted rate. A mixed view has been taken on that. Some businesses take the view that charity shops should contribute to the pot because they already have the benefit of reduced rates or no rates, even though they sell brand new stock and so affect other businesses. Indeed, some charity shops feel that, because they are as affected as other businesses by issues such as crime—they can be more affected by crime, because they tend to be manned by voluntary staff who are not trained and who may be more susceptible to money being grabbed from the till—they benefit more from BID projects and services and are therefore willing to pay. In other areas, the view has been taken that charities should not be charged. The important point is that the issue is covered in the BID proposal and the businesses in the area decide whether it is appropriate.⁴²⁵

LANDLORDS AND PROPERTY OWNERS

50. Both the Scottish Retail Consortium and COSLA argued that the inclusion of landlords or property owners in a BID scheme should be mandatory. COSLA said that the current proposals will mean a tenant will pay a BID levy but the landlord/ owner of the property will get many benefits from the BID but have no obligation to pay into it.⁴²⁶

51. The SRC argued that—

‘Property owners have a key long-term interest in urban management – whether through a BID or the continuation of an existing voluntary scheme. The owners of property and not those who occupy it will often feel the benefits of a successful scheme, such as higher land and property values leading to higher rents, most keenly. A system that did not include property owners would see occupiers being penalised for supporting a BID: paying once for the BID levy and then paying again in the form of increased rents (values are likely to rise as a result of the work of BIDs).⁴²⁷

52. The ATCM agreed that property owners should make a contribution to a BID.⁴²⁸

53. The Minister indicated that the question was within the remit of the Westminster Parliament. He informed the Committee that—

‘...we have taken steps on the use of a section 104 order under the Scotland Act 1998, which we hope will progress through the Westminster Parliament.’

54. Further information about the Scottish Executive’s intention to seek a section 104 Order was provided to the Committee by a letter from the Minister dated 28 March 2006, a copy of which is appended to this report.

55. In reviewing the evidence, some members of the Committee suggested that where a landlord was involved in a BID, the landlord would tend to shift the responsibility of paying its share of the costs onto its tenant occupiers. If this was precluded by the Bill, then this would, in effect, introduce a levy on landlords. The Committee sought the views of the Minister on this question by a letter to the Minister dated 22 March 2006.

56. In responding, by the letter of 28 March 2006 referred to above, the Minister accepted that there is a risk that liable landlords/ owners will pass down the costs of the BID in rental charges. However, he went on to say that discussions on levels of rent an occupier would be willing to pay are negotiable and both parties have a certain amount of power in these situations. Copies of this correspondence are appended to this report.

57. The Committee notes that the Executive’s intention to seek a section 104 Order, which would make provisions enabling property owners or landlords to be liable for a BID levy in Scotland, would create a structure which is different from that in England and Wales. There

⁴²⁵ OR Col 3490

⁴²⁶ COSLA written evidence

⁴²⁷ SRC written evidence

⁴²⁸ OR Col 3492

is a question as to whether landlords or property owners who pay a levy will recoup it from their tenants, who may already be liable to pay their own levy. The Committee seeks an explanation from the Scottish Executive as to how it expects the system to work in practice in such a way that landlords and property owners do not pass the costs of a BID levy on to their tenants.

ADDITIONALITY

58. Concerns were expressed by a number of organisations that the services provided by a local authority or other provider should genuinely be additional to the services which they would or should normally be expected to provide.

59. For example, in its written evidence, Scottish Chambers of Commerce said that—

‘Scottish Chambers of Commerce’s primary concern is that BIDs must not replace services which businesses are already paying local authorities and other public sector agencies to provide. The purpose of BIDs must be to allow for additional investment in the area in question over and above existing contracted services. Businesses will only buy in to BIDs if they offer added value to what is already available to them. Given that the ballot to create a BID will rightly require both a majority vote and a substantial turnout of local businesses in order to be successful, the active participation of the business community will be essential. This will only be achieved if business has faith that BIDs will deliver the added value they are seeking.’⁴²⁹

60. The CBI said that the principle of additionality should be paramount: BIDs should bring new money to bear on new projects and initiatives, and not simply be a substitute which allows a local authority to recoil from work it already undertakes and funds. It said that Audit Scotland should perhaps have powers to investigate whether this is the case.⁴³⁰

61. The Scottish Retail Consortium said that there should be a service-level agreement with a minimum standards specification between the BID company and the local authority.⁴³¹

62. COSLA, in its written evidence, said that if BIDs are to deliver services above and outwith the baseline service provided by a local authority, it must be for each local authority to set the baseline for the level of service provision.⁴³²

63. The ATCM stated that—

‘We have also introduced baselining and service level agreements through the BID process. We recommend that if businesses identify issues that link to public services, they should identify clearly in the BID what the local authority does and get it benchmarked in writing.’⁴³³

64. The Minister, in his oral evidence, said—

‘I do not have a clear definition of what constitutes additionality, because I believe that the businesses and local authority involved in a BID should be able to decide on their own priorities. There is a fear that some projects that might emanate from BIDs will simply replace existing local government services, but local government exists and operates on the basis that it is interested in improving conditions in local communities. Local authorities are not instinctively minded to find ways of avoiding their obligations just because a BID has been put in place. That said, we have committed ourselves to monitoring how BIDs operate.

⁴²⁹ SCC written evidence para 3.8

⁴³⁰ CBI written evidence para 5

⁴³¹ SRC written evidence para 2

⁴³² COSLA written evidence

⁴³³ OR Col 3497

Certainly, we would be extremely concerned if evidence arose that the net effect of a BID was to substitute activity that should have taken place anyway.⁴³⁴

65. and he went on to say—

‘The bill contains a requirement for people to define the activities that they currently undertake as far as they can, although margins will always be involved.’⁴³⁵

66. The Committee endorses the concerns of witnesses that services which are to be provided by a local authority or other public agency in a BID area should genuinely be additional to those which it would otherwise provide under its existing statutory duties or as part of the services which it would otherwise provide to its local community generally.

67. The Bill should require that a BID proposal should include a clear statement of what level of service is currently provided by a local authority or other public agency and what additional services will be provided if the BID proposal is approved.

68. The Committee recommends that the Scottish Executive should give further reassurance about the potential cost impact of BIDs on the small business sector.

BUSINESS INVOLVEMENT IN A BID BOARD

69. The CBI, in its written evidence, said that—

‘BID boards must be business-led, preferably chaired by a businessperson, and operationally and organisationally independent of local authorities, and ideally involve small and larger firms. The support of local authorities should be sought too.’⁴³⁶

70. The SCC, SRC and FSB all agreed that BID boards should be business-led.⁴³⁷

VOTING ARRANGEMENTS

71. Section 36(3) of the Bill provides that a ballot on a BID proposal can only be held if the proposals are supported by at least 5% of those entitled to vote.

72. Section 37 provides for a “dual key” system for determining the result of a ballot. For a proposal to be successful a majority of those who vote must vote in favour, those voting must represent 25% of those entitled to vote, those in favour must represent a greater rateable value than those against and at least 25% of the rateable value must be represented by those who vote.

73. Section 38 allows BID proposers to set higher criteria for a ballot to be approved, if they wish to do so.

74. Under section 39, the local authority may veto a proposal prior to a ballot going ahead, subject to appeal to Scottish Ministers under section 40.

75. These arrangements were broadly welcomed by those who gave evidence. The FSB, while being generally opposed to the concept of BIDs, acknowledged that—

‘These measures will ensure that anyone proposing a BID must work hard to engage the business community and make them aware of the ballot and the BID proposal in order to meet the required minimum turnout. It should also ensure that local authorities, Local Enterprise Companies or Town Centre Management Partnerships cannot push through a

⁴³⁴ OR Col 3528

⁴³⁵ OR Col 3529

⁴³⁶ CBI written evidence para 5

⁴³⁷ SCC written evidence para 3.2, SRC written evidence, OR Col 3504

BID without working constructively with the local business community and putting together a proposal which local businesses understand and support.⁴³⁸

76. The Scottish Retail Consortium said that the minimum threshold for a ballot to go agreed should be 25% in order to discourage speculative proposals. It said that the minimum turnout should be set at 45%.⁴³⁹

77. The ATCM endorsed the provision in the proposed Scottish legislation that any local authority veto should be declared prior to the ballot going ahead.⁴⁴⁰ Falkirk Council said that it has a need for such a veto,⁴⁴¹ and COSLA too said that the local authority is a body of locally elected members who are elected to deliver local solutions to local situations and, accordingly, must have the power of veto.⁴⁴²

78. Further information about proposed arrangements for calculating the split of the rateable value element of the vote between landlords and occupiers was provided to the Committee by the letter from the Minister dated 28 March 2006, a copy of which is appended to this report

79. The Committee endorses the provisions in the Bill which enable a local authority to veto proposals for a BID prior to a ballot being held. It is important that a local authority should indicate any concerns it might have at an early stage of proposals being developed.

FUNDING

80. The ATCM confirmed that existing BIDs in England are able to apply for other sources of funding, such as lottery funding. It said that—

‘They might be eligible depending on what other structure they set up, but business improvement districts that have set up not-for-profit limited companies have vehicles to secure funding. By having the levy, they also have leverage, which is equally important. We have always advocated a cocktail of funding, which has been the case in town centre management.’⁴⁴³

81. CBI Scotland noted that—

‘Section 42 is effectively a sunset clause, capping the lifetime of a BID to five years unless it is subsequently extended by a further ballot. This is sensible, however there must also be an “escape mechanism” so firms can withdraw support from a failing BID if key performance indicators are not achieved. Details of how this could be achieved, together with the refund of BID levies, should be a matter for consultation, but business must not be locked in to failure. We welcome the commitment from Ministers to consider this in the supplementary guidance.’⁴⁴⁴

82. COSLA raised the issue of Non-Domestic Rate Income buoyancy retention. In its written evidence it said that—

‘Improvements to a business area within a Local Authority will lead to an increase in NDRI. COSLA believes a local authority should be able to retain additional NDRI received as the result of a BID process. COSLA has previously stated that where a council’s rating base increases as a result of economic growth in its area, a predetermined proportion of the increased NDRI could be fed into AEF calculations but the balance retained by the individual

⁴³⁸ FSB written submission

⁴³⁹ SRC written evidence

⁴⁴⁰ OR Col 3487

⁴⁴¹ Falkirk Council written evidence 9(c)

⁴⁴² COSLA written evidence

⁴⁴³ OR Col 3493

⁴⁴⁴ CBI written evidence para 12

council for local use. This would appear to be a perfect example of where this should apply.⁴⁴⁵

PILOT BID PROJECTS

83. On 19 March the Minister announced that a total of £500,000 had been set aside for six pilot BID projects. The CBI, in its written evidence submitted prior to the announcement, said—

‘Clearly, these pilot schemes provide an opportunity to convince the business community that BIDs can deliver improved trading conditions through the provision of more attractive, vibrant and safer environments. However, £500,000 of taxpayers money is being made available - over three years - in the form of seedcorn funding in order to encourage the formation of the pilot BIDs. This money, at this level at least, presumably will not be available to subsequent BIDs promoters, so any examination of the results of the five pilot projects must take due cognisance of this.’⁴⁴⁶

84. **The Committee notes that the financial support which the Scottish Executive is making available to each of the six pilot schemes will not normally be available to a proposed BID. The pilots will not have gone through the voting arrangements for a BID, and will not be required to pay a levy.**

85. **The Committee, however, notes that the Executive will also be able to draw on the experience of the 22 BIDs which were established in England and Wales in assessing the viability of this legislative proposal.**

GENERAL PRINCIPLES OF PART 9 OF THE BILL

86. **The Committee considers that there is broad overall support for the proposals contained in Part 9 of the Bill, which provide for the establishment of Business Improvement Districts where they are proposed and approved by local businesses. Subject to the comments made above in this report, the Committee commends the general principles of Part 9 of the Bill.**⁴⁴⁷

⁴⁴⁵ COSLA written evidence

⁴⁴⁶ CBI written evidence para 6

⁴⁴⁷ Bruce Crawford and David McLetchie dissented.

Mr Tom McCabe
Minister for Finance and Public Service Reform

22 March 2006

Dear Tom

Business Improvement Districts

Thank you for your appearance at the Local Government and Transport Committee yesterday on the subject of Business Improvement Districts. The evidence you provided will assist the Committee in drawing up its report to the Communities Committee on this aspect of the Planning etc. (Scotland) Bill.

Before the Committee agrees its report, members would be grateful for further clarification from you on the question of voting rights for landlords who own property within a proposed BID. For example, in balloting on whether a BID should go ahead, would a landlord of a large shopping mall within a BID have the same voting rights as the owner of 2 or 3 small shops? Would votes be weighted in this situation and, if so, how?

In reviewing the evidence, some members suggested that where a landlord was involved in a BID, the landlord would tend to shift the responsibility of paying its share of the costs onto its tenant occupiers. If this was precluded by the Bill, then this would, in effect, introduce a levy on landlords. This is not the case for BIDs in England. Members would be grateful for your response to these comments.

The Committee will finalise its report to the Communities Committee shortly after the Easter recess and, in order to allow an early draft to go to members, I would be grateful for a response by **31 March**.

Yours sincerely

Bristow Muldoon MSP
Convener, Local Government and Transport Committee

Thank you for your letter of 22 March requesting further clarification on the subject of Business Improvement Districts (BIDs).

You asked about voting rights for landlords. As I said when I appeared before the Committee on 21 March, provisions to include landlords – and property owners - are reserved and we are in discussion with the UK Government about including these in a section 104 Order under the Scotland Act 1998. Our intention is that the legislation will provide for the BID Board to determine whether landlords – or property owners - should be involved, and the extent of their financial contribution. All whom the BID Board agrees should contribute towards the funding would have a headcount vote. However, no landlord or owner would be able to vote more than once so as to prevent any possibility that they might dominate the numerical count. This will not be the case for occupiers who may have two or three small shops in an area and will be entitled to a vote for each business they occupy within the designated BID area. The reason for this is to allow each individual business the opportunity to consider the benefits for that business and vote accordingly. The benefits to owners will arise from an increase in rental levels and a reduction in vacancy rates and these are likely to happen no matter what improvements are made. The same cannot be said for specific businesses, who would receive variable benefits depending on the specific improvements made.

The rateable value element of the vote would be split according to the proportion each party paid towards the BID levy for the property in question. The BID proposer will be required to consult with businesses as to how the levy is to be split between owners and occupiers, and the funding arrangements will be specified in the final BID proposals. If the occupier contributed 60 per cent of the levy payment, and the owner 40 per cent then the rateable value vote would be split 60/40.

There is a risk that liable landlords/owners will pass down the costs of the BID in rental charges. However, discussions on levels of rent an occupier would be willing to pay are negotiable and both parties have a certain amount of power in these situations. If landlords/owners were to increase rental levels without agreement, they run the risk that tenants will look for alternative premises. We believe it will be in the interests of both occupiers and landlords/owners to work together to ensure that a BID succeeds as benefits will accrue to them both. If the BID policy is used properly and all those who contribute are fully engaged in the development of the BID proposals, then I believe that a genuine business partnership can be formed that will benefit all contributors.

As you correctly state, there is no provision for landlords/owners in the English legislation, despite significant pressure at the time to include this. I understand that the problem of identifying the appropriate owner to charge was one of the stumbling blocks which led this outcome. We believe the situation in Scotland is capable of being addressed as local Assessors can assist a BID proposer in the identification of the relevant owners. However, as I indicated at the start of this letter, the legislation needed is reserved and we are currently in discussion with the UK Government about this. If we were to go ahead with provisions in this area, we would also of course need to consult key stakeholders before reaching a final view.

TOM McCABE

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

11th Meeting, 2006 (Session 2)

Tuesday 18 April 2006

Present:

| | |
|----------------------------|-------------------------------------|
| Andrew Arbuckle | Bruce Crawford JP (Deputy Convener) |
| Dr Sylvia Jackson | Paul Martin |
| David McLetchie | Michael McMahon |
| Bristow Muldoon (Convener) | Tommy Sheridan |

Apologies were received from: Fergus Ewing

The meeting opened at 2.03 pm.

6. **Planning etc. (Scotland) Bill (in private):** The Committee considered a draft report to the Communities Committee on the Planning etc. (Scotland) Bill.

Bruce Crawford proposed the following text to be inserted in place of paragraph 27 of the draft report at the end of the section entitled 'Benefits of BIDs'—

'The Committee notes that various bodies including CBI Scotland, the Scottish Chambers of Commerce and the Scottish Retail Consortium were generally supportive of the proposals for Business Improvement Districts. The Committee also notes the evidence received in regard to the experience of the 22 BID projects developed in England and Wales. However, the Committee agrees with the Federation of Small Businesses about the potential effect of increased pressure on local authority budgets as a result of the creation of BIDs and is concerned that this issue has not been appropriately addressed by the Scottish Executive.'

The proposal was disagreed to.

Bruce Crawford proposed the following text to be inserted after paragraph 57 of the draft report at the end of the section entitled 'Additionality'—

'The Committee is also concerned about the potential impact of BIDs on business running costs in that there is a real danger that a BID levy will simply become another level of taxation on individual businesses. The Committee recognises that it may not be possible, particularly for small businesses, to either increase costs to their

customers or make the necessary savings in order to pay the levy. The Committee is not convinced that the impact on the small business sector has been given significant enough consideration in the Executive's proposals.'

The proposal was disagreed to.

Bruce Crawford proposed the following text to be inserted in place of paragraph 73 of the draft report at the end of the section entitled 'Pilot BID projects'—

'The Committee is particularly concerned that the Executive's proposals for six pilot BID projects are not in reality true pilots but can be more properly described as grant aid schemes. The Committee would have preferred to have seen properly worked up pilot schemes including a process where businesses in the BID grant areas were given the opportunity to vote on the proposals and contribute by way of levy (Albeit that it is recognised that any business' contribution would have been voluntary).'

The proposal was disagreed to.

Bruce Crawford proposed the following text to be inserted in place of paragraph 74 of the draft report under the section 'General Principles of part 9 of the Bill'—

'The Committee is concerned that

- a) The Executive have not given significant enough consideration to the impact on local authority budgets from the BID proposals (see paragraph 27)
- b) A central pillar of the BID proposal namely compulsion of individual businesses to pay the levy has not found greater levels of support from the business community (see proposed new paragraph 35)
- c) The impact upon small businesses being compelled to pay the levy has not been given significant enough consideration by the Executive (see paragraph 58)
- d) The proposed pilot schemes are not in reality true pilots and the Committee would have preferred to have seen properly worked up pilot schemes including a process where businesses in the BID grant areas were given the opportunity to vote on the proposals and contribute by way of levy (see paragraph 73).

'As a result the Committee is not in a position to commend the general principles of Part 9 of the Bill.'

The proposal was disagreed to.

Bruce Crawford and David McLetchie dissented from the paragraph 74 of the draft report under the section 'General Principles of Part 9 of the Bill'

The meeting closed at 5.36 pm.

Martin Verity
Clerk to the Committee

SUBMISSION FROM CBI SCOTLAND

Introduction

1. CBI Scotland represents and promotes the interests of 26,000 business - large and small - across Scotland, with policy on devolved issues determined and executed under the direction of the CBI Scotland Council.
2. Our membership contains the full spread of firms which could be affected by Business Improvement Districts (BIDs), so we very much welcome the opportunity to contribute to Parliaments consideration of this matter as part of its deliberations of the Planning etc (Scotland) Bill. This response builds on CBI Scotland's written submission to the Scottish Executive's consultation on Business Improvement Districts, held in 2003.

General Points

3. Feedback from CBI Scotland members has highlighted support for the concept of Business Improvement Districts, particularly amongst firms engaged in the tourism and retail sectors. These firms believe BIDs could make a valuable contribution to allowing companies to pursue common business priorities for their area. The main benefits cited by these members are:

- An opportunity to fund improvements resulting in increased civic distinction, pride and excellence.
- The creation of a clean, safe and attractive urban environment over and above that already provided by public agencies
- The creation of better conditions for enhancing footfall, sales and profits
- Encouraging local authorities and other public agencies to take a more business oriented approach to their affairs

4. CBI Scotland wants these firms to have the chance to organise and run BIDs. However, we have also found that some firms are uneasy about aspects of the proposals. These concerns are:

- That Scots firms continue to labour under a rate poundage higher than that for firms south of the border – a top-up rate or BID levy would make this worse for firms in BID areas and add to their costs. It has since been confirmed however that the higher rate poundage surcharge will be eliminated by April 2007.
- That many of the benefits which BIDs are designed to deliver are services which firms expect local authorities to provide as part of their general provision, and for which Scots firms already contribute in the form of non-domestic rates⁴⁴⁸. As with planning gain, there is a concern that service and infrastructure provision traditionally paid for and delivered by the state is gradually being made a responsibility of the business community. Members believe there should be no duplication of existing council services.
- There is a concern that in some cases BIDs may be designed with certain types of firms in mind, and may be voted in by those firms, leaving others paying part of the cost but receiving little benefit.
- A number of firms are happy with existing voluntary partnership arrangements and have concerns about statutory schemes being imposed on an unwilling minority. Also, they have concerns about how BIDs would interact with existing voluntary arrangements.
- Whether businesses would have an effective say in the running of BIDs

⁴⁴⁸ The amount collected in NDR in 2006/07 will be £2.001 billion (*Scottish Executive Draft Budget 2006/07*).

5. Clearly the broad support that exists amongst our members for BIDs is not unqualified. Our view remains that with the broad support of the local business community such a scheme could work well. However, a framework of safeguards needs to be put in place to address the concerns many firms have. These safeguards must include:

- *There must be a clear and unequivocal mandate in support of a BID:* i.e. a threshold for approving a BID based on a majority of those who vote, with a minimum turnout of perhaps 60% of those eligible to vote. Also, there must be sufficient time for businesses to digest and consider BID proposals. BID promoters should accept that there must be proper, wide and rigorous local consultation with businesses as the business case is developed. There should, as a result, be no difficulty with the acceptance of reasonably high voting thresholds.
- *Independent leadership of BIDs is critical:* BID boards must be business-led, preferably chaired by a businessperson, and operationally and organisationally independent of local authorities, and ideally involve small and larger firms. The support of local authorities should be sought too.
- *The principle of additionality should be paramount:* BIDs should bring new money to bear on new projects and initiatives, and not simply be a substitute which allows a local authority to recoil from work it already undertakes and funds. Audit Scotland should perhaps have powers to investigate whether this is the case.
- *There must be robust key performance indicators:* BID promoters should publish measurable and tightly defined targets so that affected firms are able to check that it is delivering real results.
- *Clarity on the system of payments:* The additional sums paid under a BID levy regime ought to be shown separately on non-domestic rates bills.

Pilot/Demonstration Projects

6. The Scottish Executive is currently inviting applications to organise and run five pilot 'demonstration' and 'pathfinder' business improvement district projects. Clearly, these pilot schemes provide an opportunity to convince the business community that BIDs can deliver improved trading conditions through the provision of more attractive, vibrant and safer environments. However, £500,000⁴⁴⁹ of taxpayers money is being made available - over three years - in the form of seedcorn funding in order to encourage the formation of the pilot BIDs. This money, at this level at least, will presumably will not be available to subsequent BIDs promoters, so any examination of the results of the five pilot projects must take due cognisance of this. The ideal ought to be genuinely business-led and business funded BIDs.

Costs

7. We accept that the costs to our members and the wider business community is ultimately for them to reflect on and decide through their support or otherwise for any prospectus and subsequent vote tabled by BID promoters. We note too that local authorities will incur costs, not least in carrying out the billing and collection of the BID levy. Clarity will be required from local authorities as to whether they will seek to recover these outlays through the revenues generated by the BID levy.

Specific issues within Part 9 of the Planning etc (Scotland) Bill

8. Section 35 requires a local authority to maintain a bank account on behalf of the BID. Clarity is required as to what would happen if the expenditures of the Business Improvement District exceeded its income, and whether a higher levy would be levied to cover the different. Presumably such issues will be covered in subsequent Ministerial guidance.

9. Section 36 requires supporters of a BID to demonstrate support from at least 5 per cent of non-domestic ratepayers. The establishment of a threshold for support before a ballot can even be

⁴⁴⁹ Planning etc (Scotland) Bill, Financial Memorandum, part 281

considered is welcome, and should encourage the promoters of the BID scheme to have a degree of confidence about the level of support for an affirmative vote before proceeding further.

10. Section 37 sets out the thresholds for approval in a ballot, with Section 38 allowing BID promoters the discretion to set a higher threshold. The range of conditions required to be overcome by BID promoters is welcome, but will not in itself ensure that BIDs command a broad base of business support. For the long-term success and credibility of BIDs, it is important that they have the confidence of the wider business community. This would ensure that BIDs could not be introduced without the active support of a majority of those who will be paying for it. We therefore remain⁴⁵⁰ of the view that a minimum turnout of 60% of those entitled to vote is a preferable threshold to that contained within the Bill.

11. Section 39 allows local authorities to veto BID proposals. Clarity is required from Ministers as to what would happen if a BID straddled two local authority areas, and where one council opted to use its veto powers but the other did not. Where local authorities veto BID proposals, clarity will be required as to who will meet the already-incurred costs of the BID proposal.

12. Section 42 is effectively a sunset clause, capping the lifetime of a BID to five years unless it is subsequently extended by a further ballot. This is sensible, however there must also be an “escape mechanism” so firms can withdraw support from a failing BID if key performance indicators are not achieved. Details of how this could be achieved, together with the refund of BID levies, should be a matter for consultation, but business must not be locked in to failure. We welcome the commitment from Ministers to consider this in the supplementary guidance.

Conclusion

13. There is no appetite amongst CBI Scotland membership for repatriating control over non-domestic rates to local authorities; or indeed for handing councils additional tax raising powers as is currently being investigated by the local taxation in scotland inquiry under the chairmanship of Sir Peter Burt. However, our members are willing to support changes to the current system along the lines envisaged in this bill for business improvement districts. We also believe there is merit in examining the local authority business growth incentive schemes that exists south of the border.

7.

14. CBI Scotland recognises that business improvement districts provide a new means of harnessing private sector resources, talent and expertise to work to improve the commercial environment for firms. CBI Scotland is supportive of business improvement districts so long as:

- BIDs enjoy the confidence of local firms and have majority support from local businesses;
- BIDs are genuinely business led, and not simply a convenient vehicle for public sector and local authorities to pursue their own agendas;
- The activities of a BID would not otherwise be done by the council or other public sector agencies

SUBMISSION FROM COSLA

Thank you for the opportunity to provide written evidence on Part 9 of the Planning etc (Scotland) Bill (sections 31 to 46).

Overall COSLA accepts that, for some areas, BIDs, as outlined in the Bill, may be a useful tool.

However we must ensure that it is the most practical and cost effective tool it can be. The following summarises COSLA's position and main areas of concern.

⁴⁵⁰ CBI Scotland response to the Executive's BIDs Consultation, 2003

Landlord Involvement

COSLA seeks mandatory landlord involvement as part of any BID legislation. The current proposals will mean a tenant will pay a bid levy but the landlord/owner of the property will get many benefits from the bid but have no obligation to pay into it. Both the North American example and the experience of the London pilot BIDs suggest the need for mandatory landlord involvement. The lack of mandatory landlord involvement could be a significant hinderance to tenants investing into a BID – this lack of landlord involvement has created difficulties in previous public sector and business partnerships.

Non-Domestic Rate Income (NDRI) Retention

COSLA believes that bids provide an opportunity to again raise the issue of NDRI buoyancy retention. Improvements to a business area within a local authority will lead to an increase in NDRI. COSLA believes a local authority should be able to retain additional NDRI received as the result of a BID process. COSLA has previously stated that where a council's rating base increases as a result of economic growth in its area, a predetermined proportion of the increased NDRI could be fed into AEF calculations but the balance retained by the individual council for local use. This would appear to be a perfect example of where this should apply.

Cornseed funding

The initial set-up costs of a BID are not discussed in the planning bill. In London we understand that the cost of setting up the BID partnership as a legal entity was roughly £0.25m. No indication has been given of how such cornseed funding might be raised. This is a sizeable investment for any local authority but for rural authorities or those with small business centres it is a highly significant sum. If, as seems to be being proposed, the money should be raised from businesses, it may be a large enough sum to potentially deter them from a BIDs proposal. There are also such issues as determining which businesses are included within the BID area. In all the pilot schemes in England the BID area changed between the proposal stage and the establishment of the BID. Ensuring all businesses are included, as the Executive proposes, will incur further additional costs. Further, if a property becomes vacant during a BID's life the additional bid levy may deter other businesses from taking up the tenancy.

Local decision making

The Scottish Executive expects that the private sector and local authorities will embrace the BIDs process. When launched its high profile may lead the private sector to see the BIDs process as the best way forward. Local authorities may not agree that a BID is the best option and this could create a problem. COSLA reinforces that the local authority is a body of locally elected members who are elected to deliver local solutions to local situations and, accordingly, must have the power of veto. Whilst the policy memorandum states that BIDs can address "town centre improvement", local authorities must be in a position to decide on the best tool for tackling local issues. This is not to underestimate the dialogue which must take place between the local authority and business representatives. It is only through effective dialogue and a recognition of respective roles and responsibilities that areas of "concern" will be identified and the process of establishing a bid taken forward.

Linking with current/proposed executive initiatives/local authority initiatives

There is a need to see how BIDs fit in with existing and proposed Executive policy. Given that it will come with legislation and a high level of publicity at its launch, COSLA has concerns over existing town centre management projects or town centre initiatives losing focus and support as they are not the new tool in the tool box. There is no indication also of how this relates to urban regeneration companies another current executive proposal, which has a number of similarities to the BIDs proposal.

Base-level of service provision

If BIDs are to deliver services above and outwith the baseline service provided by a local authority, it must be for each local authority to set the baseline for the level of service provision and COSLA wants to reinforce this point.

Conclusion

COSLA does not oppose BIDs and acknowledges that they may have a role to play for some local authority areas. However, COSLA cannot accept BIDs unless the above concerns are taken into account. Local authorities are made up of democratically elected members, voted for at a local level on local issues. Therefore, local authorities must retain the right to decide on local decisions, local priorities, local services and the best tools to deliver these. We will be seeking further clarification within the bill to ensure this is the case.

SUBMISSION FROM FSB

Introduction

The Federation of Small Businesses is Scotland's largest direct member business organisation and campaigns for a social, economic and political environment in which small businesses can grow and prosper. The FSB represents over 18,000 members in Scotland, many of whom may be involved in the BID process in the future, and was one of the business organisations represented on the steering group that made recommendations to Ministers.

FSB Position on BIDs

The FSB is opposed to the concept of BIDs, largely because of concerns about the effect of increasing pressures on local authority budgets. It is also important to remember that small businesses already pay more in rates as a proportion of profit and turnover than their large competitors⁴⁵¹, and an extra levy would only exacerbate this difference.

We believe that many of the additional benefits (e.g. CCTV) proposed under BID schemes are, and have been, routinely funded from various other sources, such as local authorities and the Scottish Executive, as they do not only benefit the business community, rather they make a contribution to the improvement of the area for the benefit of the wider community.

Further, we are worried that over time and given constraints on council budgets, local authorities may come to rely upon BIDs to deliver services such as street cleaning and so on, which should be funded out of existing and not additional revenues.

It is clearly desirable to encourage local authorities to work with the business community to both promote and improve their local area. Indeed, many businesses already take the lead in choosing to make a voluntary contribution (whether financial or other) to additional services or spending in their area and this often involves some form of partnership with the local authority. However the FSB maintains that these projects should be business, and not council, led and we are not convinced that legislation which will often end up being council-initiated (and managed) is really the way to bring about a more productive relationship between local authorities and businesses.

However, if legislation is passed which sets up the framework to allow BIDs to be created, this must ensure that BIDs only go ahead when there is genuine and widespread support from the local business community. The worst case scenario for small businesses is that they end up paying a levy additional to their business rates for local services or capital projects that they do not want and that do not benefit their business.

⁴⁵¹ Evaluation of the Impact and Effectiveness of the Small Business Rates Relief Scheme. Final Report to the Scottish Executive Finance & Central Services Department, DTZ Pineda, 2005

We believe the Bill as introduced goes some way to ensure that BIDs only proceed when there is real support for their aims due to three key aspects of the legislation:

1. The need for 5 per cent of local businesses to demonstrate support before a BID ballot can take place.
2. 25 per cent of all businesses eligible to vote must do so for the ballot to be valid, and those businesses must represent 25 per cent of the aggregate rateable value of those eligible to vote.
3. The requirement for a dual mandate, i.e. a simple majority of those voting must be in favour of the BID, and those businesses must represent 25 per cent of the aggregate rateable value of those eligible to vote.

These measures will ensure that anyone proposing a BID must work hard to engage the business community and make them aware of the ballot and the BID proposal in order to meet the required minimum turnout. It should also ensure that local authorities, Local Enterprise Companies or Town Centre Management Partnerships cannot push through a BID without working constructively with the local business community and putting together a proposal which local businesses understand and support.

In terms of the workings of BIDs in England, it appears that the 'jury is still out', but the FSB understands that the ODPM is evaluating the impact of some of the first BIDs and the Committee may want to consider this evidence in its deliberations.

SUBMISSION FROM ROYAL INSTITUTION OF CHARTERED SURVEYORS IN SCOTLAND

The Royal Institution of Chartered Surveyors in Scotland (RICS Scotland) has noted the above call for evidence and is grateful for the opportunity to contribute to this debate.

RICS Scotland is the principal body representing professionals employed in the land, property and construction sectors. The Institution represents some 9,000 members: 7,000 chartered surveyors, 200 technical members and 1,800 students and trainees. Our members practise in sixteen land, property and construction markets and are employed in private practice, in central and local government, in public agencies, in academic institutions, in business organisations and in non-governmental organisations. As part of its Royal Charter, the Institution has a commitment to provide advice to the government of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

Having considered the Business Improvement Districts (BIDs) proposals contained in the Planning etc. (Scotland) Bill, RICS Scotland wishes to make the following comments.

RICS Scotland supports the principle of BIDs. We believe that investment in our towns and cities is required to counteract the impact of out of town retail and office developments. BIDs arrangements provide local business communities with the opportunity collectively to decide on initiatives that will have a positive impact on their areas.

We will be following with interest the progress of the Scottish Executive's two pilot projects, which are due to be announced shortly. It is our hope that as much information as possible can be gleaned from the trials and used to shape the BIDs legislation, and that the surveying profession will be utilised to provide advice to property owners, retailers, office occupiers and others on these matters.

In addition to these comments, I have also attached the RICS Scotland response to the Scottish Executive's prior consultation on BIDs arrangements for your attention (see Annex).

On behalf of RICS Scotland, I hope you will find our comments useful during the Stage 1 deliberation of the Planning etc (Scotland) Bill.

ANNEX

The Royal Institution of Chartered Surveyors in Scotland (RICS Scotland) has noted the above consultation paper and is grateful for the opportunity to participate in this debate.

RICS Scotland is the principal body representing professionals employed in the land, property and construction sectors. The Institution represents some 9,000 members: 7,000 chartered surveyors, 200 technical members and 1,800 students and trainees. Our members practise in sixteen land, property and construction markets and are employed in private practice, in central and local government, in public agencies, in academic institutions, in business organisations and in non-governmental organisations. As part of its Royal Charter, the Institution has a commitment to provide advice to the government of the day and, in doing so, has an obligation to bear in mind the public interest as well as the interests of its members. RICS Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

Having considered this consultation document at length, the RICS Scotland wishes to make the following comments.

General comments

RICS Scotland is supportive of the principle of BIDs and we are particularly encouraged by the examples included in the consultation paper of how successful BIDs have operated in North America and Canada. However, we have some concerns in relation to the differential benefits that may be experienced by funders within a single BID. We are also unclear about how the BID will be initiated and who will drive the concept forward. In order for the BID to be successful, someone will have to take the overall responsibility and the consultation document makes no reference to this.

There is also the potential for the BID to partly cover the initiatives currently being implemented by existing agencies and partnerships, in particular, those operated by Town Centre Management Companies. Again, the consultation document does not indicate how this situation will be resolved.

Issues regarding BIDs boundary areas should also be given some consideration. For example, if a BID were to be implemented in Rose Street, Edinburgh, who would be involved in this? Would it include shops in Princes Street as the premises include front and back shop outlets?

Local Solutions to Local Problems

Question 1: Do you agree with the proposed balance between a legislative framework and local choice? Do you think more (or less) aspects should be covered by legislation?

In principle, we agree with the balance. Any system, which is adopted, must be flexible to allow for amendments to be made once the BID is up and running.

Agreeing to a BID – ratepayers

Question 2: Do you agree with the voting scheme proposed? Is the dual 50% threshold by number and rateable value reasonable? Is it reasonable to base the percentage on those voting, rather than those eligible to vote?

RICS Scotland believes that it should be 50% of those who are eligible to vote and not 50% of voters as stated in the document. Other than that the threshold is reasonable.

Question 3: Should a minimum percentage of business have to vote (by number / rateable value) for the vote to be valid? Do you have a view on what the level should be?

There should be a minimum percentage. BIDs have to be community led projects and therefore the community should be seen to be involved. The calculation should be determined on eligibility to vote. An equal 50/50% appears to be the most equitable solution.

Question 4: Should there be a minimum level of support among businesses in the BID area before any vote goes ahead? Do you have a view on what that level should be?

This is difficult to determine and will very much depend on the individual proposal. RICS Scotland believes that it is important for local business to be actively involved in the BID committee. Perhaps the answer to question 3 is the solution?

Question 5: The proposed maximum number of years the BID mandate can last before a new vote is required is 5 years. Do you agree?

In the majority of cases, five years is satisfactory. However, consideration should also be given to 'sunk costs and lead-in times' of local consultations and assessments. Five years may be insufficient if the 'sunk' costs turn out to be one year's BID levy. Also, tenants with short-term leases may leave the BID during the five year period. Would the new tenant be responsible for paying the BID levy?

Agreeing to a BID – Local Authorities

Question 6: Do you agree that a local authority should have the right to veto a bid scheme under circumstances set out in legislation? Are there any other circumstances, apart from those listed in para 22, which you think should be considered?

The powers afforded to Local Authorities should be sufficient without the provision of a veto, that said however, there should be some form of appeal system.

RICS Scotland suggests that 'business needs' be added to list in para 22.

Question 7: Do you agree that local businesses supporting a bid should have the right to appeal to Scottish ministers if they disagree with the use of a veto by a local authority?

As in question 6, RICS Scotland agrees that an appeal system should be incorporated in the BID. An appeal to the Scottish Ministers, as in planning appeals, is a sensible approach.

Occupiers and Owners

Question 8: Do you agree with the approach taken towards landlords i.e that they are encouraged to participate in the development, implementation and funding of a BID through voluntary contributions and that the contribution is disclosed as part of the BID proposal? If not, do you have any other suggestions?

Agreed.

Rural areas

Question 9: We would welcome your views on whether there is a need for the BID concept to be developed further to be of greater use in rural areas and, if so, we would welcome suggestions on how this could be done?

Rural towns should not be excluded as they may have sufficient businesses to operate a successful BID. The added benefit is that a BID proposal may unite rural communities. The BIDs concept will be more difficult to operate in smaller communities, however, collective consideration and partnership agreements, no matter how small, should not be deterred. It should also be borne in mind the rateable value of businesses in rural areas tend to be lower than those in city centres and consequently the increase in the rate poundage would require to be greater in those areas compared to city centres.

SUBMISSION FROM SCOTTISH CHAMBERS OF COMMERCE

About Scottish Chambers of Commerce

1.1 The Scottish Chambers of Commerce is the umbrella organisation of the local Chambers of Commerce. Its prime functions are to promote and protect the interests of local Chambers and their member businesses throughout the length and breadth of Scotland. It helps promote co-operation between the local Chambers in the provision of services and represents the common interests of Chambers at a national and international level.

1.2 Scottish Chambers policy is determined by a Council on which all Chambers have equal representation, and is executed under their direction. Policy groups, formed from a wide cross section of member Chambers, are used to develop policy initiatives. The national body represents the interests of members to the Scottish, UK and European Parliaments, opposition parties, the Scottish Executive and other Government officials, Enterprise bodies, COSLA and other public bodies, and works with other private-sector business support bodies in Scotland on areas of mutual interest.

1.3 Membership is open to any firm or company irrespective of size. Collectively, Chambers in Scotland have an annual turnover of over £7.3 million and the current membership ranges from the country's largest companies to the smallest retail and professional operations. The present membership ranked by market capitalisation includes 23 of the top 25 companies, and 38 of the top 50 companies in Scotland. Together Scotland's Chambers provide well over half the private-sector jobs in Scotland and provide an unequalled geographical and sectoral representation throughout Scotland compared to other organisations representing Scottish business.

2. Background

2.1 Scottish Chambers of Commerce welcome the opportunity to submit written evidence on Part 9 of the Planning etc. (Scotland) Bill, which provides for the creation of Business Improvement Districts in Scotland.

2.2 SCC have been closely involved in the consultative process for BIDs. In October 2003, SCC submitted a response to the Scottish Executive's initial consultation on BIDs. Following the consultation, the Scottish Executive created a BIDs working group, comprising public and private sector stakeholders. SCC are happy to have had the opportunity to participate fully in this group. SCC continues to sit on the BIDs (Scotland) Steering Group and is actively working to help ensure the success of BIDs in Scotland.

3. Scottish Chambers' Position

The Reasoning Behind the Establishment of BIDs

3.1 Scottish Chambers of Commerce welcomes the broad principle of Business Improvement Districts. We believe that BIDs could provide a valuable opportunity for businesses and communities to come together and fund 'added value' investment in local areas.

3.2 SCC welcomes the proposal that BIDs management teams will have a majority private sector membership and will have a private sector Chair. It is hoped that this will ensure a strong business voice in determining how BIDs investment is directed.

3.3 SCC believes that agreed improvements arising from BIDs projects must be in addition to, rather than as a replacement for, services which are, or should be, provided by local authorities or other public sector bodies.

3.4 SCC recognises that current voluntary improvement schemes can generate unease where some firms have contributed to the scheme and others have not. BIDs will add an additional democratic element.

The Key Issues Raised by BIDs

3.5 Scottish Chambers of Commerce has not received any explicit objections from our network in relation to the proposed criteria set out in Sections 36 to 41 of the Planning etc. (Scotland) Bill regarding the ballot of non-domestic rate payers. Clearly it is necessary that a substantial number of ratepayers should be actively involved in the ballot process before a decision binding others can be taken, and the need to meet all four criteria set out in the Bill does seem to satisfy this requirement. The evidence from England suggests that turnout has been relatively healthy in BIDs ballots (38% in Reading, 56% in Liverpool, 46% in Rugby, 50% in Keswick, 40% in Blackpool and 65% in Birmingham).

3.6 SCC is concerned that the lead-in period to the establishment of BIDs in Scotland has been shorter than that south of the border, and that the awareness and preparedness of the business community for BIDs may have been compromised as a result. This shorter timescale may make BIDs less marketable.

3.7 Whilst SCC welcomes the fact that the demonstration and pathfinder projects being set up to pilot BIDs will cover a wide range of locales, a longer lead-in period and a greater degree of investment may have allowed for multiple projects within each geographical header. Without such a spreading of the risk, there is a concern that if a demonstration or pathfinder project in one locale is unsuccessful, then other similar areas will be discouraged from voting to create a new BID in future.

The Consequences of the Establishment of BIDs

3.8 Scottish Chambers of Commerce's primary concern is that BIDs must not replace services which businesses are already paying local authorities and other public sector agencies to provide. The purpose of BIDs must be to allow for additional investment in the area in question over and above existing contracted services. Businesses will only buy in to BIDs if they offer added value to what is already available to them. Given that the ballot to create a BID will rightly require both a majority vote and a substantial turnout of local businesses in order to be successful, the active participation of the business community will be essential. This will only be achieved if business has faith that BIDs will deliver the added value they are seeking.

3.9 The history of BIDs in England and the rest of the world is mixed in terms of their ability to deliver added value. A number of the examples from the United States of America reflect a situation where business had lost confidence in the ability of local government to provide certain services. In England one of the first acts of the Liverpool City Centre BID was to implement a

contract for additional street cleaning; highlighting the narrow margin which can exist between added value and services which ought to be provided by councils.

4. Summary

4.1 Scottish Chambers of Commerce welcome the principle of Business Improvement Districts and continue to work with other stakeholders to help ensure their success.

4.2 SCC does however have reservations over both the speed and scale of the pilot arrangements and the effect this may have on the saleability of BIDs to business.

4.3 SCC also believes that BIDs will only be attractive to business if they offer tangible added value to existing services.

SUBMISSION FROM SCOTTISH RETAIL CONSORTIUM

The Scottish Retail Consortium (SRC) was launched in April 1999 as a retail trade association for the full range of retailers in Scotland, from the major high street retailers and supermarkets to a number of trade associations representing smaller retailers. As a sector, retailing in Scotland employs 261,000 people (one in ten of the workforce) in 26,500 outlets across Scotland, and in 2005 Scottish retail turnover was £20.6 billion.

The retail sector is key to the revitalisation and renewal of urban and rural communities across Scotland. The SRC's members provide a vital community service, a focus for physical regeneration, and sustained investment in people and places.

The SRC's parent association is the British Retail Consortium (BRC) based in London and Brussels.

The SRC welcomes the opportunity to provide comment to the Local Government and Transport Committee on the general principles of establishing Business Improvement Districts (BIDs). This response will provide an overview on the SRC position regarding:

1. The importance of the retail sector to local communities.
2. A summary of the SRC position on BIDs.
3. Key criteria for the development of successful and sustainable BIDs.
4. Administration and procedure arrangements.

Retail in Scotland

There are few business sectors as important to community life as retailing. Shops are more than distribution points. Retailing is a vital local service, the mainstay of most town centres and rural communities. Whether in our towns and cities or in the countryside, retailers make an important contribution to the quality of people's lives.

Most people regard a thriving, prosperous retail centre as a key ingredient for the success of their community. The quality of retail provision can have an important bearing on the perceptions of a town or region and can help to contribute to the international reputation of Scotland as a premier destination in which to invest, work, visit and learn. Retailers recognise that to attract customers to town centres there must be variety and quality on offer on a high street, with a mix of businesses and an accessible, safe and enjoyable shopping experience.

Overview

The SRC supports the BIDs funding mechanism, and believes that if BIDs are developed and led by the private sector, they will be key to the continued regeneration of our towns and cities. There is a huge value attached to building such a partnership between the private and public sectors and this could lead to a positive and effective approach to urban regeneration in the future.

The SRC believes that the function of legislation is to ensure that BIDs throughout Scotland have the same basic constitutional and administrative format, and adhere to a set of rules rooted in basic principles. Legislation must strike a balance: ensuring uniformity in administrative structure while at the same time being sufficiently flexible as to allow for the BIDs to apply to a wide variety of functions and locations.

If such enabling legislation is passed, the SRC would urge the Scottish Executive to also publish clear guidance containing examples of best practice and defining the roles and responsibilities of all potential partners. This guidance should highlight protocols throughout the BID process from conception through to implementation of the business plan.

Criteria for successful BIDs development

The SRC believes that to ensure successful BIDs development, and sustainable BIDs partnerships the following key issues still need to be addressed:

Inclusion of property owners:

The SRC welcomes the acknowledgement in the original consultation that property owners will benefit from the creation of BIDs in their areas, however the SRC believes that their involvement should be mandatory. Property owners have a key long-term interest in urban management – whether through a BID or the continuation of an existing voluntary scheme. The owners of property and not those who occupy it will often feel the benefits of a successful scheme, such as higher land and property values leading to higher rents, most keenly. A system that did not include property owners would see occupiers being penalised for supporting a BID: paying once for the BID levy and then paying again in the form of increased rents (values are likely to rise as a result of the work of BIDs).

The SRC firmly believes that the non-inclusion of property owners would undermine the potential of BIDs from the start, removing the interest group that has the vested interest in and the most to gain from any successful BID model. As with existing town centre management schemes, gaining contributions on a voluntary basis is beset with problems. This will continue if property owners are asked to contribute on a purely voluntary basis. Such a situation is entirely inequitable, as occupiers will ultimately be penalised financially through higher rents. We believe that many occupiers may be forced to vote down the BID proposal on this basis.

The SRC asks the Committee to investigate options for the mandatory taxation of property owners as part of the powers granted to a BID through legislation. The SRC believes this is feasible in Scotland and would avoid the serious deficiencies of the English and Welsh legislation. Through our investigations of existing BIDs abroad, and those developing in England and Wales, we are without doubt that unless property owners are involved in the same mandatory manner as occupiers, many BIDs will be unable to gain sufficient support from occupiers to be successful, and many others will be seriously hampered from the start.

A possible method to include property owners would be for BID proponents to identify all the property owners in the BID area who would then be described in the BID arrangements, by name of the legal owner, an address and by reference to the relevant hereditament to which the superior property interest relates. The means of calculating the proportion of the BID levy to be paid by a property owner and that to be paid by an occupier of any one hereditament would then be set out in the BID arrangements.

Clear demonstration of additionality:

BIDs projects should be genuinely additional to activities already being undertaken by local authorities and not a substitution for local authority services. Projects must also demonstrate tangible benefits to both businesses and the community, with the focus of the BID on delivering a return on investment.

The SRC suggest that there should be a service-level agreement with a minimum standards specification between the BID company and the local authority, or an alternative mechanism if practicable e.g. the local authority could hand over the management of its services related to the

specific BID area to the BID company along with the budget reflecting those services. The service-level agreement should be tied into local authority's best value regimes with key performance indicators. The SRC also feel that there should be a mechanism for redress if the services the BID company is receiving from the local authority are not up to standard.

BIDS Structure and the Make-Up of the Board:

A BID should be a business led, not-for-profit limited company, independent from the local authority, with a minimum of 50% business stakeholder representation on its board with a chair from the private sector.

The local authority should also have representation on the board, along with other local interests such as transport organisations, police, community and voluntary sector representation if relevant. The local authority should be involved as a stakeholder, but it should not manage the BID.

SRC comment on proposed administration and procedure arrangements

The SRC would make the following comments on the administration of individual BIDs, and on the procedures relating to a BID prior to, and on implementation of a scheme:

Bid Revenue Account:

The Bid Revenue Account should not only include amounts paid to the authority for the purpose of the project, but also include a note of other sources of finance for the BID such as match funding and in-kind support.

BID proposals:

The SRC believes that the minimum threshold of support should be 25% of those entitled to vote in the ballot in order to discourage speculative BID proposals.

Furthermore, we believe that the drafting of supporting regulations must take into account the problems that may arise if individual BID proposals are given the responsibility of setting up schemes to deal with, inter alia, new hereditaments, split or merged hereditaments, deletions from the Valuation Roll, exemptions, and properties treated as part-domestic, in any BID levy arrangements.

Failure to deal with these matters clearly in BID arrangements could result in financial hardship for ratepayers and may create a series of legal disputes. Failure to specify clearly how these matters are to be dealt with in the regulations will also result in BID arrangements varying widely throughout Scotland. This will make it difficult for multiple property occupiers to respond to BID arrangements, as each BID arrangement will be different and will, therefore, need to be investigated individually.

Approval in Ballot:

The SRC believes that there should be a minimum turnout of businesses in a vote for a BID and this should be set at 45%.

It is also the SRC view that properties under the direct or indirect control of the local authority within the BIDs area should not be allowed to take part in the ballot if the local authority, or one of its agencies, is the initiator of the BIDs proposal.

Duration of BID arrangements:

The SRC would recommend that this Section should also include a provision to prohibit any:

- Extension to the duration of the BID.
- Fundamental alteration to the scope of works or services.
- Alteration to the identity of the service provider, without a further ballot.

In addition, BID proposals that fail to get the required support at ballot should not be allowed to be re-presented with modifications until a reasonable period of time has elapsed (at least one year).

Regulations about Ballots:

The SRC recommend that Regulations made under this section should require ballot papers and other documents to be sent by Recorded Delivery to the address the rates bill is sent to (which may not be the same as the property address).

We would also recommend a requirement that Regulations made under this section should include a provision that ballot papers should be sent at least 42 days before the date of the ballot and that the Notice of Ballot should be sent at least 56 days before the date of the ballot.

Extracts from written evidence received by the Communities Committee, on Part 9 of the Bill (Business Improvement Districts)

The Local Government and Transport Committee has been designated as a secondary committee on the Planning etc. (Scotland) Bill and is particularly concerned with Part 9 of the Bill, which introduces provisions for the establishment of Business Improvement Districts (BIDs).

The Local Government and Transport Committee is to report to the Communities Committee, which is the lead committee on the Bill.

The Annex to this covering paper sets out extracts from the written evidence which has been received by the Communities Committee which are relevant to BIDs. The full submissions on the Planning etc. Scotland Bill are published on the Communities Committee's webpages at:

<http://www.scottish.parliament.uk/business/committees/communities/inquiries/planning/co-planning-evid.htm>

Annex

WRITTEN EVIDENCE FROM UNISON SCOTLAND

Business Improvement Districts

UNISON is concerned that the proposals for Business Improvement Districts will potentially divide communities and create greater social exclusion, rather than promoting communities and social inclusion. Businesses will only be interested in developing a BID in an area which is attractive, successful and worthwhile investing in. In the more run down, deprived areas the private sector will see no interest in investing and working with what little community structure exists.

The arrangements are fundamentally undemocratic with voting being based on aggregate rateable value and a right of appeal to Scottish Ministers on what is essentially a local matter. UNISON believes that we should move away from this piece meal approach to community development, and focus on the existing democratic, transparent and representative structures we have to build and develop our communities.

UNISON Scotland believes that the best way to involve the business community in improving communities and in working with local authorities is to return the powers to set local business rates to local authorities. Local businesses should have a stake in local communities and services, and the most transparent and democratic means to do this is to enable local authorities to set business rates. We believe this is a positive way to revitalise local government finance, enable local authorities to have greater control over the finances they are able to raise, and to give local businesses a stake in the communities in which they are based.

WRITTEN EVIDENCE FROM BT PLC

VIII. Business Improvement Districts - Part 9 of Bill

1. Policy Objectives - Paragraph 222 of the Policy Memorandum, Additional Contributions and Action - Section 33(2)(b) of the Bill and Bid Revenue Account - Section 35(2) of the Bill

Paragraph 222 of the Policy Memorandum states that the policy is to ensure that “a fair system for privately-funded town centre improvement is put into place”. The paragraph also states that the present system of funding is voluntary.

This appears to suggest that there will be a compulsory requirement to fund town centre developments. In addition, there appears to be a requirement under sections 33(2)(b) and 35(2) to make arrangements for collection of monies. BT would like to see these issues clarified in the Bill. We would not favour any compulsory obligation to fund town centre improvements.

WRITTEN EVIDENCE FROM FALKIRK COUNCIL

2.18 Following consultation in 2003, the Bill takes forward the concept of Business Improvement Districts (BIDs), although at that time the response from Falkirk Council to the BID concept was not particularly supportive. Local authorities will be enabled to make arrangements for investment in improvements designed to enhance economic performance in a defined area, provided the local business community has agreed, by ballot, to pay for the improvements by means of a compulsory business rate levy.

| Topic | Bill Clause | 1997 Act | Comments |
|---|-------------|----------|---|
| Part 9 | | | <i>Business Improvement Districts</i> |
| <i>9(a) BID Arrangements</i> | | | |
| Arrangements with respect to business improvement districts | 31 | | <p>8. In October 2003 the Environment and Development Committee agreed a response to the Scottish Executive consultation on BIDs. The Sections of this bill dealing with BIDS hold no surprises.</p> <p>9.</p> <p>It empowers bodies to promote a BID “to allow local businesses to invest collectively in improvements to the area they operate in BIDs are not limited to Town Centres but can relate to other business areas and the purpose is for the benefit of the area or those who live, work or carry on any activity in the BID area.</p> <p>Some of the important detail is still to be set out in Regulations. For instance, which persons can draw up proposals, procedures and what is to be included in proposals. There is a burden on the Council to define the level of existing service.</p> <p>It has fixed a 5% threshold of supporters to even get to a ballot, which is significant, and would need quite an exercise in selling the idea and gaining signatures. Simple majorities of both the number and rateable value apply as a minimum but higher levels of support can also be set.</p> <p>As we expected the Scottish Executive has not bitten the bullet and introduced a compulsory levy on landlords as the significant beneficiaries of a successful improvement activities. The explanation also suggests that Local Authorities are anticipated to make a</p> |

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|-------------------------------------|--------------------|-----------------|---|
| | | | <p>contribution. The local authority will also need to supply the details of non-domestic ratepayers and existing service levels.</p> <p>Apart from not tackling the owners contributions issue the bill is in line with The Council views submitted when the consultation was issued in 2003.</p> |
| Joint arrangements | 32 | | This section allows the Scottish Executive to provide for joint working between areas in two different local authority areas. For Fife (and most areas of Scotland) it is difficult to see circumstances where this would be relevant. |
| Topic | Bill Clause | 1997 Act | Comments |
| Additional contributions and action | 33 | | <p>It is assumed, in the explanatory notes issued with the Bill, that local authorities would be making an additional financial contribution. It might also be a way of agreeing or requiring additional funds from other bodies such as Scottish Enterprise.</p> <p>It is not clear whether this Section would, if enacted, allow owners to be required to contribute.</p> |
| 9(b) Administration etc. | | | |
| BID revenue account | 35 | | A separate BID revenue account is to be set up into which the Local Authority gathers the funds. Costs can be recovered from the levy. Neither the legislation nor the guidance sets out the levy level or a maximum rate. It is not known what impact this will have at this time. |
| 9(c) Procedure | | | |
| BID proposals | 36 | | Proposals need to be approved by a ballot of non-domestic ratepayers. Regulations have still to set out who can promote a BID. This section specifically sets a minimum level of 5% support from prospective ratepayer voters being demonstrated before a ballot can proceed. This satisfies the Council's concern that some level of support should be demonstrated but that it not be too bureaucratic. The local authority is to conduct any ballot that is to take place. |
| Topic | Bill Clause | 1997 Act | Comments |
| Approval in ballot | 37 | | It proposes that, as a minimum, a simple majority of the vote and a majority of the value of rateable value should apply. This accords with the Council's views although those promoting the BID may put a higher level of required vote to establish the BID as set out in |

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| | | | the next Section. A minimum turnout of 25% is required and 25% of values reflected in the vote. All this would appear reasonable. |
| Approval in ballot – alternative conditions | 38 | | The proposers can set a higher test of support but not lower (- an option some might find useful to ensure a less divided business constituency when it comes to implementation). The Council response to the consultation felt that a simple majority of the vote in both numbers and value would be a sufficient test. |
| Power of veto | 39 | | Before the ballot is held a local authority can veto the proposals having regard to matters prescribed which it is assumed will be set out in a regulation. The Council has a need for such a veto. |
| Appeal against veto | 40 | | Any person who could have voted can appeal against the veto to the Scottish Ministers. It was also accepted by the Council that the veto should be able to be appealed against but Scottish Ministers should only accept an appeal and let the ballot go ahead if over-riding national policy was being undermined. |
| Topic | Bill Clause | 1997 Act | Comments |
| Commencement of BID arrangements | 41 | | This Section proposes that the local authority should make sure arrangements are in place to permit the BID to proceed on the date set out in the proposal. Principally this would relate to collection of levies and handing over the amounts to the BID operator. |
| 9(d) Miscellaneous | | | |
| Duration of BID arrangements etc. | 42 | | As supported in the consultation response by the Council, a 5 year period was seen as reasonable as a maximum with the option to extend by further periods of 5 years subject to a repeat of the ballot. The renewal could be used to amend the arrangements for the operation of the BID but the precise nature of the degree of amendments allowed is to be set out in a regulation. |
| Regulations about ballots | 43 | | Details about the ballot (timing, the non-domestic ratepayers able to vote, the question and other aspects) are to be set out in a regulation. |

| | | | |
|--|--------------------|-----------------|---|
| Further provision as to regulations under Part 9 | 44 | | The Statutory Instrument with the regulations can be made nullified by the Scottish Parliament. |
| Topic | Bill Clause | 1997 Act | Comments |
| Crown application of Part 9 | 45 | | Binds the Crown. |
| Interpretation of Part 9 | 46 | | Definitions relating to Part 9 and technical matters relating to collection of levy. |

WRITTEN EVIDENCE FROM EAST AYRSHIRE COUNCIL

Part 9 introduces the concept of Business Improvement Districts. First championed in the United States these allow local businesses to collectively invest in areas that they operate in whilst ensuring that they take account of plans agreed by the local authority.

7. PART 9 OF THE PLANNING BILL AND COMMENT

7.1 Procedures for the introduction and implementation of Business Improvement Districts (BIDS) are provided in part 9. Comments are provided in bold.

7.2 BIDS are a means to regulate and co-ordinate privately funded town centre improvements. At present private sector funding is voluntary and makes it difficult for projects to be undertaken on a consistent and sustainable basis. Over a dozen BID projects have been established in England which has provided a strong evidence base to demonstrate the type of benefits that can be secured from BID projects.

7.3 BID can only be created following a ballot of non domestic rate payers within the proposed boundary. The ballot will provide an opportunity for BID proposals to be agreed or otherwise. If agreed (certain conditions are specified) the local authority will be required to make the necessary "BID arrangements" that will specify the projects to be carried out. Once in force the authority must comply with BID arrangements in place however the authority has a power to veto BID proposals and prevent the ballot from taking place. If approved by ballot the BID arrangements will have effect for a maximum of 5 years. ***The Council has requested the Scottish Executive consider it for one of the pilot BID projects to be set up this year following the recently approved Kilmarnock Town Centre Strategy.***

WRITTEN EVIDENCE FROM WEST LoTHIAN COUNCIL

BUSINESS IMPROVEMENT DISTRICTS

Part 9 (31) Arrangements with respect to business improvement districts

The Bill makes provision for local authorities to identify Business Improvement Districts (BID). The purpose is to enable specified projects to be carried out for the benefit of the BID or those who live, work or carry out any activity in the district.

Part 9 (36) BID proposals

This section details that BIDs can only be established after approval by a ballot of non domestic ratepayers in the business improvement district.

A proposal has been submitted to the Scottish Executive that Bathgate is identified as a demonstration BID.

WRITTEN EVIDENCE FROM GLASGOW CITY COUNCIL

Business Improvement Districts (BID's) - this section of the Planning Bill stems from an earlier Scottish Executive consultation which was conducted in Summer 2003 (Print 4, Page 786). The introduction of BIDS, however, remains voluntary rather than mandatory.

WRITTEN EVIDENCE FROM HIGHLAND COUNCIL

The proposed legislative changes in respect of Tree Preservation Orders and the creation of Business Improvement Districts were both generally supported by the Council at the time of responding to Scottish Executive consultation papers.

Subordinate Legislation Committee

Report on Planning etc. (Scotland) Bill at Stage 1

The Committee reports to the lead Committee and Parliament as follows—

Introduction

1. At its meetings on 14 and 28 March, the Subordinate Legislation Committee considered the delegated powers provisions in the Planning etc. (Scotland) Bill at stage 1. The Committee submits this report to the Communities Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.
2. The Executive provided the Parliament with a memorandum on the delegated powers provisions in the Bill⁴⁵².
3. The Committee's correspondence to the Executive and the Executive's response to points raised are reproduced in Annexes 1 and 2.

Delegated Powers Provisions

4. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves without further comment: sections 1, 2 (new sections 8(1)(b), 9(4) and (6), 10(1)(d) and (7), 12A(8), 15, 16, 17, 18, 19A, 20B and 21), 3, 6, 7, 9, 11, 13, 18, 22, 23, 24, 26, 27, 29, 32, 36, 40, 42, 43, 49, 52 and 53.

Section 1 National Planning Framework

5. The Committee received representations from the Royal Society for the Protection of Birds. It agreed that the issues raised were of a policy nature, and therefore outwith the Committee's remit.
6. The Committee agreed to pass these representations on to the lead Committee, and a copy of the RSPB letter is attached at Annex 3.

⁴⁵² [Delegated Powers Memorandum](#)

Section 2 Development Plans

New section 4(1) – Power to designate a group of planning authorities to prepare a strategic development plan

87. This provision confers a power on Ministers, by order subject to negative procedure, to designate a group of planning authorities (“a strategic development planning authority”) for the purposes of preparing a strategic development plan in a prescribed area. The Committee asked the Executive about its plans for consultation in relation to such orders and why it had decided not to include a statutory requirement to consult in the Bill.

88. The Executive, in its response, stated that it will consult planning authorities on the proposed strategic development plan areas and cited two previous consultation papers from 2001 and 2004 (*Review of Strategic Planning* and *Making Development Plans Deliver*, respectively) where proposed geographical areas were set out and comments received.

89. The Committee was content with the Executive’s response. It was also content with the power and that it is subject to negative procedure.

New section 7(1) and (2) – Form and content of strategic development plan

90. This provision sets out the general composition of a strategic development plan but allows Ministers to prescribe in regulations, subject to negative procedure, further matters which must be included in such a plan. The Committee asked the Executive to comment on the Committee’s suggestion that the first set of regulations, which would set out the framework for development plans might merit affirmative procedure, with subsequent regulations subject to negative procedure.

91. The Executive stated that regulations made under this provision would update and replace the current provisions contained in the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983. These Regulations include requirements that local plans include justifications for policies and proposals and include diagrams to explain these. It was noted that the Executive is considering what further matters might be included in such regulations and that the Executive expects that it will include supplementary guidance and the form and content of maps and plans linked to the development plan.

92. The Executive considered that, because the provisions in the regulations “are likely to be focused more on matters of form than on the substance of plans”, negative procedure is appropriate.

93. The Committee notes that the content of these regulations is likely to be administrative, but observed that the power in new section 7(1)(d) is significant and in particular is drafted in such a way that it would be open to the Executive to prescribe more substantive matters for inclusion in strategic development plans. Accordingly, in the absence of sight of any draft regulations proposed to be made, the Committee felt unable on the material before it to exclude the possibility that regulations made under this power might include more substantive material than is currently envisaged by the Executive.

94. The Committee therefore recommends that the first set of regulations should be subject to affirmative procedure, with subsequent regulations subject to negative procedure.

New section 12- Examination of proposed strategic development plan

95. This provision sets out the circumstances in which Ministers are to appoint a person to examine a proposed strategic development plan. Subsection (3) confers a power on Ministers to make regulations, subject to negative procedure, as to the procedures to be followed at such examinations, though the form of the examination is to be decided at the discretion of the examiner.

96. It was not clear to the Committee as to the interaction of these provisions and in particular what will be set out in regulations and what will be left to the examiners’ discretion with regard to procedures at examinations. The Committee asked for clarification, given the potentially sensitive nature of such matters.

97. In its response, the Executive stated that the regulations are to set out the procedures for examinations. It confirmed that the examiner will have a choice over the form the examination is to take. The Executive also stated that the reporter “cannot invent new procedures but can select an appropriate procedure from those provided for in the regulations”.

98. The Committee acknowledged the helpful response from the Executive. However, it was the Committee’s view that the drafting of section 12(3) is not particularly clear, as it does not refer to any qualification of the examiner’s discretion.

99. The Committee was content that that the regulations should be subject to negative procedure. It found the Executive’s clarification helpful, but is of the view that this clarity is not reflected in current drafting of the Bill which appears both to prescribe the form of hearings, and also leave this to the reporter’s discretion. The Committee recommends that in order to achieve clarity on this issue, the Executive should reconsider the wording in the Bill in this regard at Stage 2.

New section 19 – Examination of proposed local development plan

100. The power at section 19(5) mirrors section 12(3) considered above, and the Committee made the same point about the conflict between procedures specified in regulations and giving the examiner discretion to determine the form of the examination. The Executive’s response was the same as that supplied in relation to section 12(3).

101. The Committee is of the view that clarity is not reflected in the current drafting of the Bill where procedures are specified, but also where an examiner is given discretion to determine the form of the examination. The Committee recommends that in order to achieve clarity on this issue, the Executive should reconsider the wording in the Bill in this regard at Stage 2.

102. There is also a power at section 19(10)(a)(i) which allows Ministers to prescribe in regulations, subject to negative procedure, the circumstances in which a planning authority is not obliged to take account of the reporter’s recommendations which include proposed modifications to the development plan. Apart from those as yet unknown circumstances, the planning authority will be required to make any modifications to the development plan proposed by the reporter.

103. The Committee was concerned that this significant change of policy was not reflected in sufficient detail on the face of the Bill. In particular, it asked the Executive why it had not included in the Bill the circumstances in which a planning authority will be entitled to depart from a reporter’s recommendations.

104. The Executive clarified that the policy intention is to move from a full right for planning authorities to depart from a reporter’s recommendations to a limited right to do so. The response listed some of the circumstances in which it is envisaged that authorities will be able to depart from recommendations. The Executive considered that these matters are suitable for secondary legislation in order that the criteria justifying departure from recommendations can be extended or reduced in light of practical experience.

105. Whilst acknowledging that policy is not a matter for this Committee, the extent and perceived importance of the policy change inevitably bears on the assessment of whether this is properly achieved by conferring a power on Ministers to make delegated legislation and, perhaps more importantly, on the balance between primary and secondary legislation.

106. The Committee concluded that the Executive had not provided sufficient explanation as to why this matter was appropriately delegated. It noted that as this power is presently drafted, Ministers have complete discretion to set out the criteria justifying departure from a reporter’s recommendations, and that this power is subject only to negative procedure.

107. The Committee accepts the justification for taking a power to make subordinate legislation in that the criteria may change over time. However, the Committee noted that the Executive helpfully listed a number of criteria in its response to the Committee which it considers will justify a planning authority departing from a reporter’s recommendations.

The Committee wondered why the Executive did not feel able to include these criteria on the face of the Bill, together perhaps with a power to amend the list from time to time. This is the approach the Executive is considering adopting in relation to section 39 (power of veto), considered below, in response to the Committee's questioning, and the Committee recommends a similar approach in relation to this provision.

108. The Committee further recommends that subsequent amendments to the specified criteria in the Bill, should be subject to affirmative procedure.

New section 22 – supplementary guidance

109. The Committee noted that this power allows planning authorities to adopt and issue "supplementary guidance" in relation to either a strategic or local development plan. Ministers may make regulations subject to negative procedure to make provision for procedures for the adoption of such guidance including consultation requirements.

110. The Committee asked the Executive about the voluntary nature of adopting such guidance and whether local authorities might avoid issuing such guidance to avoid regulation by Ministers. It also asked about the freedom of local authorities to adopt supplementary guidance where they saw fit subject to the procedural requirements set out in regulations.

111. The Executive responded that the Bill does not prevent planning authorities from preparing and adopting non-statutory guidance, nor does it require them to provide statutory supplementary guidance. The need for such guidance is a matter for the planning authority. The Bill proposes a higher status for supplementary guidance that has met prescribed procedures for consultation and adoption because such guidance would become a statutory part of the development plan for the purposes of determining planning applications. The Executive indicated that it is currently looking at the balance between planning authority discretion and Ministerial intervention in this section.

112. The Committee was content with the Executive's explanation of the purpose of this provision and noted that it is looking at the detailed drafting of this section again, and in particular the balance between planning authority discretion and Ministerial intervention.

113. On this basis, the Committee agreed to consider the provision again at Stage 2.

New section 23D – meaning of key agency

114. The Committee was concerned about the definition of a "key agency" in this section, and sought clarification of which bodies were likely to be covered by the term. It also asked the Executive whether it was possible to identify any key characteristics of such agencies on the face of the bill.

115. The Executive explained that it intends to designate key agencies and that these agencies will require both to be consulted by planning authorities, and have a duty to cooperate in the planning process. Key agencies would be those bodies *which hold information or provide services which are considered essential in the preparation or delivery of the development plan*. However, the Executive did not find it helpful or meaningful to include a description of key agencies on the face of the Bill.

116. The Executive did list (inexhaustively) the bodies intended to be included in any list of key agencies. It is intended that protocols will be developed between planning authorities and Executive departments/agencies so that the latter can be engaged in a similar way to key agencies.

117. The Committee is of the view that a working definition such as the Executive offered in its response and which is italicised above in paragraph 35 would give further clarification as to the scope and meaning of "key agency" and accordingly would have been helpful on the face of the Bill. If such further clarification could be given, the Committee would be minded to accept that negative procedure is appropriate.

Section 4 – Hierarchy of developments for the purpose of development management

118. This provision confers on Ministers a power, in regulations subject to negative procedure, to describe classes of development other than national developments and assign each class as either major or local developments.

119. The Committee asked the Executive for clarification of the scope of the meaning of “local” and “major” and in particular whether regulations will be made in such a way as to take account of the differing impact of developments in local and urban contexts. It also asked about plans to consult with planning authorities.

120. The Executive stated in its response that “major” projects will deal with the small number of large and complex applications in respect of which it is considered the current 2 month determination period is insufficient. The remainder will be “local” developments. The Executive is currently working on the thresholds for major developments and intends to consult on draft regulations setting out the proposed thresholds.

121. The Committee noted that the Executive intends to consult with planning authorities on draft regulations before the thresholds are finalised. However, the Committee was unclear about what status the 2 month determination period would have and, in particular, whether it would have a specific bearing on how the Executive defines “major” and “local” developments. Given the potential importance of the regulations, and in the absence of a satisfactory explanation from the Executive, the Committee recommends that the first set of regulations should be subject to affirmative resolution procedure, accepting that any subsequent changes might represent the fine tuning of practice in the light of experience and that accordingly negative procedure would be appropriate.

Section 10 – Pre-application consultation

122. New section 35A(7) provides for a 21 day time limit for a planning authority to provide its opinion with regard to whether a particular application falls within the category of those which require pre-application consultation. Subsection (7) allows Ministers to prescribe a different time period for responding.

123. The Committee observed that this is a Henry VIII power subject to negative procedure and asked why the 21 day period had been included in the Bill and not left to be prescribed in subordinate legislation.

124. The Executive explained that this is a new provision and that, while it believes the 21 day period strikes the correct balance between time for the planning authority to come to a view and not unduly delaying the application, acknowledged that it is prepared to amend this period if it becomes evident in practice that some other period is appropriate.

125. The Committee was content with the Executive’s response; with the provision; and that it is subject to negative procedure.

Section 12 – Keeping and publication of lists of applications

126. The Committee noted that this provision inserts a new section 36A into the Town and Country Planning (Scotland) Act 1997 (“the principal Act”) obliging planning authorities to keep lists of applications and proposal of application notices. They are obliged to revise this list weekly and publish updated lists.

127. The Committee was unclear as to the extent to which this obligation departs from the current position under the principal Act and sought clarification from the Executive to assist it in determining whether negative procedure was appropriate.

128. The Executive responded that while planning authorities currently *may* produce weekly lists of planning applications for various purposes, they are not (save one minor exception with regard to community councils) required by statute. Accordingly, this provision is a new statutory requirement and one that the Executive considers should be capable of being met within the stated weekly intervals.

129. **The Committee was content with the Executive's response which it found helpful in explaining the current and future legal position with regard to publishing lists of planning applications. The Committee was also content that the power is subject to negative procedure, and that any amendments to the time intervals between publications should also be subject to negative procedure.**

Section 15 – Manner in which applications for planning permission are dealt with

130. This provision extends the scope of an existing delegated power relating to the manner in which planning applications are dealt with. This provision is intended broadly to allow Ministers to influence planning conditions without having to call in applications.

131. The Committee noted that the provision seemed to represent a significant increase in Ministerial power and asked for justification of the use of negative procedure and some indication of its intended exercise.

132. The Executive stated that the power is aimed at avoiding a call-in procedure and will help streamline decision making. It explains in some detail how the procedure is intended to operate and the various appeals which are possible.

133. The Committee observed that the new power is to make regulations which enable Ministers to make directions and it is these directions, not the regulations, which will specify the class of development which may have the conditions attached. This is a potentially wide power of sub-delegation and it was not clear to the Committee why the power was being attached to a regulation making power rather than simply put in the Bill as a power to make directions, which in its view would be more transparent.

134. **The Committee noted the Executive's explanation of the policy background to this new power and its intended practical operation. However, it is of the view that the Executive has provided no justification for the use of the negative procedure, and fails to explain why the prescription of classes of development will be sub-delegated to directions and therefore not subject to Parliamentary procedure.**

Section 16 – Local developments: schemes of delegation

135. The Committee noted that this provision introduces a requirement that planning authorities prepare a scheme of delegation by which applications in respect of local developments are to be decided by a person appointed by the authority (such as an official) instead of by the planning authority itself. Subsections (9) to (11) of new section 43A confer powers on Ministers to set out in regulations subject to annulment the form and procedures of any review by the planning authority of a decision by the appointed person to refuse a planning application or to impose conditions on the grant.

136. The Committee was concerned at this apparent downgrading of the system of decision-making to an official and asked the Executive to clarify its understanding of the operation of this system and in particular its compatibility with the European Convention on Human Rights (ECHR). The Committee's concern stems from elected members acting as the appeal court for decisions that are made by officials of the same authority.

137. The Executive replied that regulations made under these provisions will provide a framework for a fair hearing which combined with the right of challenge to the courts will provide an Article 6 compliant procedure.

138. **The Committee observed that it was unable to make a judgement on the use of these powers without seeing the draft regulations and the importance they attach to this issue. In light of its own view that this provision is of a sensitive nature, the Committee recommends that the power should be subject to affirmative procedure.**

Section 35 – BID Revenue Account

139. The Committee asked the Executive about the width of the power conferred on Ministers in this provision to make "further provision" in relation to the BID revenue account.

140. The Executive provided a response outlining the likely content of these regulations and confirmed that they will be similar in nature to those set out in English regulations dealing with equivalent matters.

141. The Committee is content with the Executive's response and that the regulations are subject to negative procedure.

Section 39 – Power of veto

142. The Committee expressed some concern about this power which allows Ministers to prescribe in regulations subject to annulment the circumstances in which a planning authority will be entitled to veto proposals for BID schemes and thereby prevent a ballot being held. The Committee asked why, in respect of such an important provision, the criteria for veto had not been put on the face of the Bill.

143. The Executive indicated that it did not include reference in the Bill to the actual criteria which local authorities would require to consider in exercising a veto, as they consider this should be subject to further consultation. The Executive did however express a willingness to consider amending the Bill to expressly include on the face of the Bill some criteria for the exercise of the veto by planning authorities, a move which the Committee welcomed.

144. The Committee agreed, in light of the Executive's response, to note the Executive's willingness to reconsider the drafting of this provision. It agreed to monitor developments at Stage 2 when it hopes to be in a better position to determine whether negative procedure is appropriate.

ANNEX 1

CORRESPONDENCE BETWEEN THE SUBORDINATE LEGISLATION COMMITTEE AND THE SCOTTISH EXECUTIVE

Section 2

New Section 4(1) – Power to designate a group of planning authorities to prepare a strategic development plan

The Committee notes that there is no statutory requirement to consult planning authorities designated under any proposed order made under this new Section, before any Order is made and laid before Parliament. **The Executive is asked why it did not include a requirement to consult planning authorities on the face of the Bill.**

New Section 7(1) and (2) – Form and content of strategic development plan

The Committee notes that these sub-sections set out some matters to be included in the strategic development plan and also allow regulations, which are subject to negative procedure, to prescribe further matters. The Committee discussed whether the first set of regulations, which would set out the framework, might be subject to affirmative procedure with subsequent regulations being subject to negative procedure, given their “tidying up” nature. **The Executive is asked to comment on the suggestion and to provide further information on its justification for use of the negative procedure.**

New Section 12 – Examination of proposed strategic development plan

The Committee notes that this Section deals with the appointment of a person to examine a proposed strategic development plan and sets out some procedural safeguards on the face of the Bill on the content of the examiner’s report and its publication. Section 12(3) provides that Ministers may make regulations. **The Committee is not clear with regard to the balance between the procedures proposed at such examinations that will be laid down in regulations under subsection (3)(b) and those that will be at the examiner’s discretion, and asks the Executive for clarification.** (The discussion at cols. 1634-1635 may be helpful.)

New Section 19 – Examination of proposed development plan

The Committee made the same point in relation to Section 19(5) as it did with regard to Section 12(3) above, and the apparent conflict between Section 19(5)(b) which refers to procedures being specified in regulations, and the text that follows, which gives the person who has been appointed to conduct the hearing discretion to determine the form of the examination. **The Executive is asked to clarify the balance between procedures laid down in regulations and those left to the discretion of the person conducting the hearing.**

The Committee notes that the power at Section 19(10)(a)(i) deals with the action that planning authorities are required to take in response to reports that are made after assessments in public.. The Committee considers that this is a significant new power which prescribes the limitations within which local authorities may exercise the discretion they currently enjoy. The Committee seeks to establish whether the regulations that would be made under this Section would replace the roles of Ministers as defined under the principal Act, or whether this is genuinely a new power. **The Executive is asked for clarification.**

The Committee also notes that it is not immediately clear why the exceptions to adhering to the obligation under Section 19(10)(a)(i) need to be set out in subordinate legislation rather than on the face of the Bill. **The Executive is asked for clarification.**

New section 22 – supplementary guidance

The Committee notes that the power in this new Section is subject to negative procedure. It further notes that only if a planning authority makes supplementary guidance may Ministers make regulations to regulate the consultation requirements. It is not clear about the voluntary nature of the supplementary guidance and wonders whether the power would allow a local authority, or whoever issues the local development plan, not to issue supplementary guidance because it would be regulated by Ministers if it did so. **The Executive is asked for clarification.**

The Committee also seeks clarification of whether local authorities would be empowered to adopt supplementary guidance where they saw fit, subject to the procedural requirements that have been laid down by the Executive for consultation on, and the presentation of, supplementary guidance. **The Executive is asked for clarification.** (The discussion at cols. 1638-1639 may be helpful.)

New Section 23D – meaning of “key agency”

The Committee has concerns about the definition of a “key agency” in the Bill and seeks clarification of what bodies this term covers. In discussion (cols 1639-1640), the Committee asks whether the provisions could only apply to Scottish Executive agencies, or if it extends to such bodies as, for example, Scottish Water and the rail companies or other bodies that have significant infrastructural roles. **The Executive is asked for clarification; and for its comments on whether the key characteristics of a “key agency” would be capable of being identified in the Bill.**

Section 4 – Hierarchy of developments for the purposes of development management

The Committee notes that this Section sets out the 3 categories to which all developments will be allocated (national, major and local developments). Definitions of “local” and “major” are not clear however. This leads the Committee to question whether the regulations will be general regulations that will apply to all local authorities or whether, perhaps by using the power in new section 26A(4), there is the possibility of regulations specifying different thresholds in urban and rural contexts. **The Executive is asked for clarification.**

On the basis that the description of classes of development will have a bearing on the planning application procedures which apply, **the Executive is asked for clarification of its intentions with regard to consultation with planning authorities on the regulations which describe these.**

Section 10 – Pre-application consultation

New Section 35A(7)

The Committee notes that the power in subsection (7) is a Henry VIII power as the regulations can amend the period of notice mentioned on the face of the Bill (21 days). The Committee wondered why the period is specified in the Bill and not in regulations if it is anticipated that the periods will require to be altered. **The Committee asks the Executive to clarify why it has specified the 21 day period in the Bill; and whether it is considering any limitations within which it might be prepared to vary the period.**

Section 12 – Keeping and publication of lists of applications

The Committee notes that this provision inserts a new section 36A into the 1997 Act and that subsection (1) obliges planning authorities to keep a list of applications and notices for pre-application consultations. Ministers are conferred powers by regulations subject to negative procedure to prescribe the manner in which the list is kept. From the information available however, the Committee is unable to take a view on how significant the change to the principal Act is and wonders whether this perhaps gives local authorities longer in which to publish lists of applications. **The Executive is asked for clarification.**

Section 15 – Manner in which applications for planning permission are dealt with

The Committee notes that this provision amends and extends the existing delegated power which relates to the manner in which applications for planning permission are dealt with by planning authorities. The Committee considers that this provision seems to represent a significant increase in Ministerial power, and is not convinced that negative procedure is appropriate. **The Executive is asked to clarify its justification for the use of negative procedure; to set out the benefits of the amended and extended power; and to give some assurance that the conditions that it will attach to the provision will not be unduly onerous when compared with current processes and procedures.**

Section 16 – Local developments: schemes of delegation

New section 43A(7) to (14)

The Committee discussed the new procedures under which an applicant can require a review by a planning authority of a delegated decision, brought about by these new subsections. The Committee noted concerns that have been expressed to the Communities Committee about the provisions and that the Bill proposes that an authority will now hear appeals against its own decisions, rather than such appeals being heard by Ministers. In order for the Committee to consider whether negative procedure is appropriate with regard to these provisions, **the Executive is asked to provide the Committee with further information on what it considers will be necessary to ensure in practice that the proposed new system will be ECHR compliant.** (The discussion at cols.1646-1648 may be helpful.)

Section 35 – BID Revenue Account

The Committee expressed a concern about the width of the power conferred on Ministers in subsection (4) to make further provision in relation to the BID revenue account. It wishes to have further information before it takes a view on whether it considers negative procedure is appropriate. **The Executive is asked to provide further information on the need for this power and its anticipated use.**

Section 39 – Power of veto

The Committee notes that where a ballot is held under Section 36(1), a local authority may, in circumstances prescribed by Ministers in regulations, veto the proposal by a prescribed date before the date of the ballot. If a veto occurs, no ballot is to be held. The Committee considers that this is a significant piece of new policy, and questions why this has been delegated to regulations and not set out on the face of the Bill. **The Executive is asked for clarification.**

ANNEX 2

RESPONSE FROM THE SCOTTISH EXECUTIVE

Section 2

New Section 4(1) – Power to designate a group of planning authorities to prepare a strategic development plan

As was the case when defining the structure plan areas in the mid-1990s, the Executive will consult planning authorities on the proposed strategic development plan areas. This will follow on from the consultation papers *Review of Strategic Planning* (June 2001) and *Making Development Plans Deliver* (April 2004), where the proposed areas were set out and a variety of comments were received.

New Section 7(1) and (2) – Form and content of strategic development plan

The key elements of form and content are included in new Section 7. Regulations will update and replace the current provisions on form and content in the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983 (the 1983 Regulations), which include:

- The provision of proper titles for documentation;
- The need for clear distinction of policies and proposals from the rest of the plan content;
- The inclusion of justification for policies and proposals; and
- The inclusion of diagrams to explain the strategy, policies and proposals.

The Executive is currently examining the form and content of existing development plans in more detail to inform any further provisions in secondary legislation. At this stage, areas where we envisage further prescription are:

- The inclusion of a list of supplementary guidance linked to the plan; and
- The form of the maps attached to the plans, including the scale required and whether they are ordnance survey based, as well as the way in which proposals such as housing or employment land are named and presented.

Given that the provisions in secondary legislation are likely to be focused more on matters of form than on the substance of plans, we believe that the negative procedure is appropriate.

New Section 12 – Examination of proposed strategic development plan

The purpose of the examination of the strategic development plan is to independently assess the key issues around which there is debate. It will also examine the planning authority's report on the consultation statement to assess the extent to which it has been met or exceeded. The intention is for the reporter to have discretion over the style of examination for each submission. It is expected that written submissions will be used for many representations, with hearings and round table discussions being an effective forum for debate where necessary, and inquiries only being required where there are complex technical issues.

We intend that the procedures for examinations will be set out in secondary legislation. This is likely to include provisions relating to the holding of any preliminary procedural meetings; to set out the manner in which parties must meet the requirements for prior disclosure; to indicate how the reporter will obtain from the objectors and the strategic development planning authority any additional information needed for consideration of objections; and set timescales for the steps in the procedure. The procedures that the reporters will follow in assessing the consultation statement and ensuring that appropriate and effective consultation has been carried out by the strategic development planning authority will also be set out.

The reporter is intended to have a choice over the form the examination is to take. Section 12(3) establishes the discretion of the reporter to determine the most appropriate means for considering each objection, enabling the reporter to determine the administrative arrangements for the examination and the type of procedure that will be used to consider each objection, depending on its nature. The reporter cannot invent new procedures but can select the appropriate procedure from those provided for in the regulations. This allows for better management of the process, for the benefit of all participants.

New Section 19 – Examination of proposed [local] development plan

To a large extent, the process for examining a local development plan duplicates that for the strategic development plan. The purpose of the examination of the local development plan is therefore to independently assess the key issues around which there is debate. It will also examine the planning authority's report on the consultation statement to assess the extent to which it has been met or exceeded. The intention is for the reporter to have discretion over the style of examination for each submission. It is expected that written submissions will be used for many representations, with hearings and round table discussions being an effective forum for debate where necessary, and inquiries only being required where there are complex technical issues.

We intend that the procedures for examinations will be set out in secondary legislation. This is likely to include provisions relating to the holding of any preliminary procedural meetings; to set out the manner in which parties must meet the requirements for prior disclosure; to set out the manner in which parties must meet the requirements for prior disclosure; indicate how the reporter will obtain from the objectors and the planning authority any additional information needed for consideration of objections; and set timescales for the steps in the procedure. The procedures that the reporters will follow in assessing the consultation statement and ensuring that appropriate and effective consultation has been carried out by the planning authority will also be set out.

The reporter is intended to have a choice over the form the examination is to take. Section 19(5) establishes the discretion of the reporter to determine the most appropriate means for considering each objection, enabling the reporter to determine the administrative arrangements for the examination and the type of procedure that will be used to consider each objection, depending on its nature. The reporter cannot invent new procedures but can select the appropriate procedure from those provided for in the regulations. This allows for better management of the process, for the benefit of all participants.

In relation to S19(10)(a)(i), the planning authority is currently not obliged to take on board the reporter's recommendations. At present, the authority may make any modifications it sees fit, before submitting its intention to adopt the plan to Scottish Ministers, who have 28 days to decide whether to allow the plan to be adopted or call for further modifications to be made. This process, by which planning authorities may cast aside the reporter's recommendation, can undermine the purpose of the inquiry and be perceived as unfair, particularly where the council has a financial interest in the sites in the development plan.

As a result, S19(10)(a)(i) provides a new power to set out the circumstances under which the planning authority would be able to depart from the reporter's recommendations. Ministers will have the right to intervene in the adoption of the plan, as at present, where they are not content.

The key difference, therefore, is a shift from full rights to depart from the reporter's recommendations to a limited right to depart, with secondary legislation setting out the circumstances of that limited right. In terms of the detail of the secondary legislation, the White Paper *Modernising the Planning System* indicates that authorities would be able to depart from a recommendation where that recommendation is:

- not supported by the Strategic Environmental Assessment;
- not in accordance with the National Planning Framework/National Policy or strategic development plan; or

- based on flawed reasoning, which could include a failure to take proper account of the planning authority's position.

We consider that it is important to set out these circumstances in secondary legislation, rather than on the face of the bill, to provide scope to extend or reduce the criteria in light of experience, as the new system progresses.

New Section 22 – supplementary guidance

The Bill provisions do not intend to prevent planning authorities from preparing and adopting non-statutory guidance, nor do they *require* planning authorities to prepare any statutory or non-statutory guidance. The need for supplementary guidance of either kind is a matter for the planning authority, and will be informed by the policies and proposals in the relevant development plan.

The Bill does, however, propose a higher status for supplementary guidance that has met prescribed procedures for consultation and adoption. This would make such guidance a statutory part of the development plan, for the purposes of deciding planning applications. This aims to avoid the need for detailed guidance to form part of the strategic or local development plan itself, in order to reduce the length and complexity of the plans. Giving supplementary guidance this higher status warrants additional scrutiny over its content, to ensure that policy is not brought in by the back door. That said, we are currently considering the balance in section 22 between planning authority discretion and Ministerial intervention.

New Section 23D – meaning of 'key agency'

We intend to designate key agencies for development planning, requiring them to be consulted by planning authorities and placing a duty on the key agencies to co-operate in the process. The intention is that key agencies will be bodies that hold information or provide services that are essential to the preparation or delivery of the development plan. However, we do not consider it necessary or meaningful to include such a description in the bill, given that we intend to clearly set out in legislation who the key agencies are, and to provide additional guidance on what their specific role will be.

We intend the key agencies to include Scottish Natural Heritage, Scottish Environment Protection Agency, Local Enterprise Companies and Scottish Water. Other bodies may be added to the list, for example, Regional Transport Partnerships. While Scottish Executive agencies, such as Historic Scotland, Communities Scotland and Transport Scotland cannot be named individually in legislation, we do want them to engage in the development planning process in a similar way to key agencies. We therefore intend to support the development of protocols between planning authorities and Scottish Executive departments or agencies.

Section 4 – Hierarchy of developments for the purposes of development management

Under the terms of the hierarchy, the 'national' projects will be a small number of developments which are deemed by Ministers to be of national strategic importance. These will be identified in the National Planning Framework, with a broad indication of the area in which they will be located. Underneath this level will be the 'major' projects. The purpose of this category is to improve the efficiency in processing of the small number of very large and complex applications. These frequently involve a wide range of documents such as transport assessments, travel plans, retail impact assessments, design statements, and require complex negotiations with a range of consultees on many issues such as access to trunk roads, effect on motorway junctions, available capacity in local schools, health and safety, sustainable drainage. They often also require negotiation of section 75 agreements.

In present circumstances, each of these applications is subject to the normal 2 month determination period, although it is widely accepted that they will not be processed within this timescale. Their size and complexity means that they are frequently subject to very long delays, with periods of well over a year to reach a determination being common. This leads to great

uncertainty for applicants. The intention of the policy is to introduce the agreement of a timescale for processing the application, to the applicant and the planning authority will agree. This will acknowledge the complexity of the application, allow for a reasonable timescale for processing, and encourage the use of project management techniques to ensure that the timetable is adhered to.

All other proposed developments that require planning permission will fall within the local developments category. These will be the subject of robust scrutiny which will include neighbour notification, to ensure surrounding communities have an opportunity to express their views on the proposal.

Work is underway to determine the thresholds for major developments, to be defined in secondary legislation. It is not envisaged that these will need to be different for urban and rural authorities. As signalled above, it is the size of the application and its associated complexity that render it major, rather than its location. It is accepted that some applications have a differing proportionate impact than others, but this does not mean that they cannot be processed within statutory timescales, or that they are inherently complex to process, requiring them to become the subject of a processing agreement. It is quite possible that major applications will occur infrequently or not at all in some rural authorities. We will consult planning authorities on the proposed thresholds, which will also be included in consultation on the draft regulations, prior to their finalisation.

Section 10 – Pre-application consultation

New Section 35A(7)

The 21 day period specified in the Bill for screening on the need for pre-application consultation with local communities is on a par with the 3 weeks allowed for the screening of cases on the need for environmental impact assessment, one of the potential triggers for pre-application consultation. This however is a new requirement and, while we believe that the period of 21 days strikes a reasonable balance between allowing the planning authority sufficient time to provide a screening opinion without delaying unduly the prospective applicant's submission of an application for planning permission, we are prepared to amend the period of 21 days by regulations if it becomes evident that some other period would be more appropriate. We have specified the 21 day period in the Bill because that makes clear the policy intention. We have provided for amendment by regulations because that allows for variation of the 21 day period if this is required without the need to introduce primary legislation

Section 12 – Keeping and publication of lists of applications

While planning authorities may produce weekly lists of planning applications for all manner of purposes, these are not required by statute. The only statutory requirement in this regard is in article 12(9) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. This is a relatively limited requirement for a list of applications received to be sent to community councils at weekly intervals.

The Bill provision in section 12 is a new statutory requirement to provide a weekly list showing all applications and proposal of application notices before the planning authority; to keep this up to date; to publish its existence regularly and make it available to a wider audience than just community councils. We envisage that these statutory requirements to produce weekly lists should be capable of being carried out on a weekly basis; however, we have retained flexibility to change this in the unlikely event that it should prove impractical.

Section 15 – Manner in which applications for planning permission are dealt with

Section 15(a)(i) inserts a new power allowing Ministers to direct that planning authorities consider attaching specified conditions to a planning permission and that permission not be granted until either they have demonstrated to Ministers that the condition will be imposed or need not be imposed. This could be used, for example, where the planning authority declines to attach

conditions recommended in certain cases by statutory bodies, such as Scottish Natural Heritage, a result of which would be notification of the application to Ministers who, in the absence of the requested condition, would probably call-in the application for their determination.

This proposed procedure avoids call-in and leads to a decision being issued within a much shorter timescale. If the planning authority does not wish to attach the condition, but cannot persuade Scottish Ministers that the condition is not needed, it is open to them to refuse planning permission, in which case the applicant can appeal against the refusal. Alternatively, Ministers might call-in the application at that stage if it were clear that the planning authority would not attach the condition. If the planning authority attach the condition and the applicant does not like it, he or she can appeal against the condition to the Scottish Ministers and will be able to put a case for not having the condition.

If the planning authority is content to impose the condition and the applicant accepts it, then a wasteful call-in procedure has been avoided. If the planning authority or the applicant does not accept the condition, then the door is open to have the case considered by Ministers on appeal or possibly call-in, in effect no time is saved, but we are in no worse a position than currently where Ministers would have had to call-in the application and determine it.

The power is therefore a potential shortcut, but still leaves opportunities for the planning authority or the applicant to challenge conditions attached in this way. We therefore believe that a negative procedure for the secondary legislation in this regard is appropriate.

Section 16 – Local developments: schemes of delegation

New section 43A(7) to (14)

The Committee asked the Executive to provide further information on what it considers will be necessary to ensure in practice that the new system will be ECHR compliant. The Executive assumes that the Committee has particularly in mind compliance with Article 6 of the Convention. The regulations to be made under section 43A will set out the procedures for a review conducted by virtue of section 43A(7) and the form that such a review will take. The regulations will provide a framework for a fair hearing which combined with the right of challenge to the courts will provide an article 6 compliant procedure. The Executive consider that regulations under section 43A have the same essential characteristics as any rules or regulations which govern the procedure at hearings and inquiries, and that negative procedure is normally used in such cases.

Section 35 – BID Revenue Account

The provisions related to the BID revenue account will ensure a consistent approach is taken towards the accounting of the BID levy funds (and other voluntary contributions). These details will be technical in nature, containing similar provisions on the application of credits and debits to the account that are contained for England in Regulation 14 and schedule 3 of the Business Improvement Districts (England) Regulations 2004. They will require further consultation with local authorities and Audit Scotland in particular. A BID revenue account will be separate from all other local authority accounts and can only be accessed and used by the BID Board.

Section 39 – Power of veto

We did not include reference in the Bill to actual criteria which local authorities would require to consider in exercising a veto, as we considered that this shall require further consultation before finally framing detailed criteria, and these criteria may need to alter as BIDS develop. However, broadly speaking, we propose that the right of veto is to be used so that there should be a veto power available to local authorities to allow them to veto any proposals that:

- conflict with any of their own adopted development plans for the area, or wider agreed policy objectives

- place a disproportionate financial burden on any business or class of business, in comparison to other contributors

Further conditions pertaining to the right of veto may be required to ensure a veto is exercised appropriately in the defined circumstances, and proper consideration given by a Council. In principle, we would be agreeable to taking forward an amendment to provide that local authorities would be able to use the veto where the circumstances above generally applied, and we will discuss this further with Parliamentary Counsel. However, we think it would be appropriate to have the power to prescribe additional conditions that a local authority must take account of, when deciding to use the veto, or to amend the criteria or conditions.

ANNEX 3

E-MAIL FROM THE RSPB

Dear Committee Member,

The agenda for the meeting of the Sub-Leg Committee for the 14 March indicates that you will be considering the delegated powers provided for in the Planning etc. (Scotland) bill. RSPB Scotland welcomes the aims of this legislation and was pleased to provide oral evidence to the Communities Committee in February. However, we do have a number of concerns about the extent to which the draft legislation will be able to deliver these aims.

With regard to the remit of the Sub-Leg Committee we wondered whether committee members might consider the appropriateness of the process to be adopted. The Memorandum on Delegated Powers indicates that the majority of delegated powers are to be subject to a negative resolution procedure. This is a large bill which relies heavily on secondary legislation. In particular, virtually all aspects of consultation and public involvement are to be determined in secondary legislation. Given that one of the two aims of the planning bill is to strengthen public involvement in the planning process we are concerned that reliance on a negative resolution procedure limits the opportunities for MSPs to engage with these issues and sends a powerful message that this is not a matter which the Parliament seeks to actively endorse.

In terms of the National Planning Framework we are aware that while the NPF will be placed before Parliament for 40 days it is not a delegated power. Whilst we welcome both the NPF and the role of Parliament in considering the document we are keen to ensure that in scrutinising the NPF MSPs are offered the same advantages that Ministers will enjoy when considering Local Development Plans or Strategic Development Plans. To this end we would recommend that the Parliament is able to appoint an 'assessor' or 'Reporter' from the Scottish Executive Inquiry Reporter Unit to undertake a public examination of the NPF and then present his/her findings to Parliament. This is done for most spatial plans in the UK and takes on average 6 weeks. We also note that the legislation allows for Scottish Ministers to determine the nature and extent of consultation for this document - would it be more appropriate for this to be done via subordinate legislation subject as an affirmative resolution of the Parliament?

If you would like to discuss any of these points in more details please contact: Anne McCall, Head of Planning and Development, RSPB Scotland, anne.mccall@rspb.org.uk or (M) 07734 717 019

14 March 2006

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

1st Meeting, 2006 (Session 2)

Wednesday 11 Jan 2006

Present:

Scott Barrie

Christine Grahame

John Home Robertson

Mary Scanlon

Cathie Craigie

Patrick Harvie

Euan Robson (Deputy Convener)

Karen Whitefield (Convener)

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Jim Mackinnon, Chief Planner, Michaela Sullivan, Assistant Chief Planner,
Tim Barraclough, Head of Planning Policy and Casework and Lynda
Towers, Deputy Solicitor, OSSE, Scottish Executive.

Planning etc. (Scotland) Bill - witness expenses: The Committee agreed to delegate to the Convener responsibility for considering any claims for expenses by witnesses received during its consideration of the Bill.

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

2nd Meeting, 2006 (Session 2)

Wednesday 18 January 2006

Present:

Cathie Craigie
Patrick Harvie
Euan Robson (Deputy Convener)
Karen Whitefield (Convener)

Christine Grahame
John Home Robertson
Mary Scanlon

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Professor Alan Prior, School of the Built Environment, Heriot Watt University

Professor Greg Lloyd, School of Town and Regional Planning, University of Dundee.

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

3rd Meeting, 2006 (Session 2)

Wednesday 25 January 2006

Present:

Cathie Craigie

John Home Robertson

Mary Scanlon

Karen Whitefield (Convener)

Patrick Harvie

Euan Robson (Deputy Convener)

Sandra White (Committee substitute)

Apologies: Scott Barrie, Christine Grahame and Tricia Marwick.

Also present: Jackie Baillie.

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Graham U'ren, Director and Ann Faulds, Legal Associate Member, Royal Town Planning Institute (RTPI) in Scotland

Richard Hartland, Chairman and Steve Rodgers, Member, Scottish Society of Directors of Planning (SSDP)

Andrew Robinson, Chairman, Scottish Planning Consultants Forum (SPCF).

COMMUNITIES COMMITTEE

MINUTES

4th Meeting, 2006 (Session 2)

Wednesday 1 February 2006

Present:

Christine Grahame
John Home Robertson
Mary Scanlon
Karen Whitefield (Convener)

Patrick Harvie
Euan Robson (Deputy Convener)
Sandra White (Committee substitute)

Apologies: Scott Barrie, Cathie Craigie and Tricia Marwick.

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Frances McChlery, Convener and John Watchman, Member, Planning Law Sub-Committee, Law Society of Scotland

and then from—

Roy Martin QC, Dean and Ailsa Wilson, Advocate, Faculty of Advocates

and then from—

John Thomson, Director of Strategy and Operations West and Mark Wrightham, National Strategy Officer, Scottish Natural Heritage (SNH)

Cheryl Black, Customer Service Director, Scottish Water

Neil Deasley, Principal Policy Officer (Planning & Environmental Assessment), Scottish Environment Protection Agency (SEPA)

Paul Lewis, Director of Competitive Place, Scottish Enterprise and Allan Rae, Manager of Competitive Place, Scottish Enterprise Grampian.

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

5th Meeting, 2006 (Session 2)

Wednesday 8 February 2006

Present:

Cathie Craigie

Patrick Harvie

Christine May (Committee substitute)

Sandra White (Committee substitute)

Christine Grahame

John Home Robertson

Mary Scanlon

Karen Whitefield (Convener)

Apologies: Scott Barrie, Tricia Marwick and Euan Robson (Deputy Convener).

Also present: Jackie Baillie

Christine May declared an interest as a trustee of Fife Historic Buildings Trust.

John Home Robertson declared an interest as a trustee of the Paxton Trust.

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Jim McCulloch, Chief Reporter and Mike Culshaw, Deputy Chief Reporter, Scottish Executive Inquiry Reporters Unit (SEIRU) and Lynda Towers, Office of the Solicitor to the Scottish Executive (OSSE), Scottish Executive.

and then from—

Anne McCall, Convener, John Mayhew, Deputy Convener, Bill Wright, Member and Stuart Hay, Member, LINK Planning Task Force, Scottish Environment LINK.

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

6th Meeting, 2006 (Session 2)

Wednesday 22 February 2006

Present:

Scott Barrie
Christine Grahame
Euan Robson

Sandra White (Committee substitute)

Cathie Craigie

Patrick Harvie

Mary Scanlon

Karen Whitefield (Convener)

Apologies: John Home Robertson and Tricia Marwick

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

David Lonsdale, Assistant Director, CBI Scotland

Susan Love, Policy Development Officer, Federation of Small Businesses in Scotland

Iain Duff, Chief Economist, Scottish Council for Development and Industry

Anthony Aitken, Scottish Chambers of Commerce

Planning etc. (Scotland) Bill: The Committee considered and noted supplementary evidence from the Scottish Executive.

COMMUNITIES COMMITTEE
EXTRACT FROM MINUTES
7th Meeting, 2006 (Session 2)
Wednesday 1 March 2006

Present:

Scott Barrie
Christine Grahame
John Home Robertson
Mary Scanlon

Cathie Craigie
Patrick Harvie
Euan Robson
Karen Whitefield (Convener)

Apologies: Tricia Marwick

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Michael Levack, Chief Executive, Scottish Building

Allan Lundmark, Director of Planning and Communications, Homes for Scotland

Colin Graham, Developments Manager, Miller Developments

Richard Slipper, Partner in Edinburgh office, GVA Grimley LLP

Hugh Crawford, Convenor of the Environment, Housing and Town Planning Board, Royal Incorporation of Architects in Scotland (RIAS)

and then from—

Maf Smith, Chief Executive, Scottish Renewables Forum and Harry Malyon, Development Manager (Scotland), npower Renewables.

Debbie Harper, Development & Policy Manager, Scottish Power

Alasdair Macleod, Development Manager Scotland, Airtricity.

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

8th Meeting, 2006 (Session 2)

Wednesday 8 March, 2006

Present:

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|-------------------------------------|-----------------------------|
| Cathie Craigie | Christine Grahame |
| Patrick Harvie | John Home Robertson |
| Euan Robson | Mary Scanlon |
| Sandra White (Committee Substitute) | Karen Whitefield (Convener) |

Apologies: Scott Barrie and Tricia Marwick

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Ann Coleman, Community Development Advisor, Greengairs Environmental Forum, Greengairs Community Council

Harald Tobermann, Chairman, Pilrig Residents' Association

Douglas Murray, Secretary, Association of Scottish Community Councils and Jean Charsley, Secretary, Hillhead Community Council

Deryck Irving, Senior Development Officer, Greenspace Scotland

Petra Biberbach, Executive Director, Planning Aid for Scotland

Adam Gaines, Director, Disability Rights Commission, Equalities Co-ordinating Group

Stuart Hashagen, Co-Director, Scottish Community Development Centre

Roger Sidaway, Scottish Mediation Network

Anna Barton, Community Liaison Officer, Cairngorms National Park Authority.

COMMUNITIES COMMITTEE
EXTRACT FROM MINUTES
9th Meeting, 2006 (Session 2)
Wednesday 22 March 2006

Present:

Scott Barrie
Patrick Harvie
Euan Robson
Karen Whitefield (Convener)

Christine Grahame
John Home Robertson
Mary Scanlon

Apologies: Cathie Craigie and Tricia Marwick

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Councillor Trevor Davies, City of Edinburgh Council

Councillor Gordon MacDonald, East Dunbartonshire Council

Councillor Eddie Phillips, East Renfrewshire Council

Councillor Willie Dunn, West Lothian Council, COSLA spokesperson on
Economic Development and Planning

Richard Hartland, Development and Building Control Manager, West
Lothian Council.

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

10th Meeting, 2006 (Session 2)

Tuesday 28 March 2006

Present:

Scott Barrie

Christine Grahame

John Home Robertson

Mary Scanlon

Cathie Craigie

Patrick Harvie

Euan Robson

Karen Whitefield (Convener)

Apologies: Tricia Marwick

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Johann Lamont MSP (Deputy Minister for Communities).

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

11th Meeting, 2006 (Session 2)

Wednesday 29 March 2006

Present:

Scott Barrie

Christine Grahame

John Home Robertson

Sandra White (Committee substitute)

Cathie Craigie

Patrick Harvie

Alex Johnstone (Committee substitute)

Karen Whitefield (Convener)

Apologies: Tricia Marwick, Euan Robson and Mary Scanlon.

Also present: Bill Aitken.

Planning etc. (Scotland) Bill: The Committee took evidence at Stage 1 from—

Johann Lamont MSP (Deputy Minister for Communities).

COMMUNITIES COMMITTEE
EXTRACT FROM MINUTES
12th Meeting, 2006 (Session 2)
Wednesday 19 April 2006

Present:

Scott Barrie
Christine Grahame
John Home Robertson
Karen Whitefield (Convener)

Cathie Craigie
Patrick Harvie
Euan Robson

Apologies: Tricia Marwick.

Planning etc. (Scotland) Bill: The Committee considered its draft report on the Bill at Stage 1.

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

13th Meeting, 2006 (Session 2)

Wednesday 25 April 2006

Present:

Scott Barrie

Christine Grahame

John Home Robertson

Mr Dave Petrie

Karen Whitefield (Convener)

Cathie Craigie

Patrick Harvie

Tricia Marwick

Euan Robson

Planning etc. (Scotland) Bill (in private): The Committee considered its draft report on the Bill at Stage 1.

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

14th Meeting, 2006 (Session 2)

Wednesday 26 April 2006

Present:

Scott Barrie
Christine Grahame
John Home Robertson
Mr Dave Petrie
Karen Whitefield (Convener)

Cathie Craigie
Patrick Harvie
Tricia Marwick
Euan Robson

Planning etc. (Scotland) Bill (in private): The Committee considered its draft report on the Bill at Stage 1.

COMMUNITIES COMMITTEE

EXTRACT FROM MINUTES

15th Meeting, 2006 (Session 2)

Wednesday 3 May 2006

Present:

Scott Barrie

Christine Grahame

John Home Robertson

Mr Dave Petrie

Karen Whitefield (Convener)

Cathie Craigie

Patrick Harvie

Tricia Marwick

Euan Robson

Planning etc. (Scotland) Bill (in private): The Committee considered its report on the Bill at Stage 1 and agreed to finalise its terms by correspondence.

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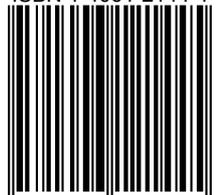
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