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

1.1 It is difficult to come to a conclusion on what the impacts of the Bill will be as so much of the detail is to be provided in secondary legislation. This lack of clarity on the final legislative provisions and the absence of a firm timetable for the introduction of the legislation is likely to create uncertainty for prospective developers and investors. We have some reservations about some of the proposed provisions, in particular the provision for local place plans (see Q6 below).

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

2.1 Without a national or regional target number of homes to be built in any stated period, and penalties if those targets are not achieved, it seems unlikely that higher levels of housing will be achieved. How does a reporter make a finding on whether a plan achieves the correct number of houses if there is no target against which to measure the supply?

2.2 Further, it is not clear the extent to which developers and landowners will be able to have an input to the gatecheck process as the detailed procedures, including consultation requirements, are to be set out in regulations. If key decisions on matters such as the amount of housing land required are to be made at the gatecheck stage, it is important that all stakeholders are consulted and the given the opportunity to participate fully in the process of giving evidence to the reporter.

2.3 It is not clear whether the reporter’s assessment report will be binding on planning authorities. While planning authorities are obliged to revise their evidence report on receipt of the assessment report, there is no requirement for the planning authorities to revise the reports so that they conform to the findings of the assessment report. If, for example, the planning authority does not accept the reporter’s conclusions on the amount of housing land required, the same arguments will be have to be made at the examination stage, which calls into question the value of gatecheck stage.

2.4 We consider that the introduction of a mandatory infrastructure levy and changes to section 75 to allow planning authorities to seek financial obligations which are not connected to the development or use of land are unlikely to assist in increasing housebuilding.

Do the proposals in Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?
3.1 We consider that the arrangements for strategic planning at a regional level are fairly weak. The experience of some SDPAs (e.g. in the SESPlan area) showed that, even where authorities are under a statutory obligation to work together, they can find it difficult to work collaboratively. We note that it is intended that planning authorities should have the flexibility to determine the best ways to work together in regional partnerships but there is no express provision in the Bill which obliges planning authorities to work together. The duty on planning authorities to co-operate in providing information in connection with the preparation of the NPF does not appear to fill this gap.

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

4.1 We welcome the proposals for delivery plans that require the sign off of the planning authority’s Chief Executive and full Council.

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

5.1 We consider that there needs to be some independent scrutiny of SDZ schemes as the planning authority’s aspirations for development may not align with those of landowners or residents. While the Bill at present contains provisions for consultation and hearings before a committee of the planning authority, there is no provision for appeals or review by Scottish Government reporters.

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

6.1 We consider that there should be a requirement for local place plans to be consistent with the LDP and NPF, rather than simply to have regard to them. It is not clear from the Bill whether a local place plan, which does not go through the procedures for adoption as part of the LDP, will nonetheless be a material consideration in planning decisions.

6.2 Experience of neighbourhood plans in England suggests that they are used by communities to thwart specific types of development or to sterilise certain areas from development. We note that the policy memorandum states that, “In all cases, LPPs are effectively an expression if the community’s view about the future development its place”. We consider that this will not always be the case. In our experience, community bodies do not always reflect the views of the wider community and often lack the democratic legitimacy of planning authorities (for example, many community councillors are not elected as their posts are uncontested).
7 Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

7.1 We consider that the proposed changes to enforcement may promote better compliance with planning control. However, increased fines will only operate as a disincentive to breaching planning controls if planning authorities take a more pro-active approach to investigating enforcement breaches and reporting cases for prosecution. We welcome the proposals for charging orders which should encourage more planning authorities to take direct action to remedy breaches of planning control.

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

8.1 We consider that the provision which permits deferring the grant of planning permission until the levy is paid in full is unreasonable and should be removed from the Bill. This would place a huge burden on developers who are unlikely to be able to raise the funds to pay the levy until (at the earliest) planning permission has been secured. The legislation does not appear to provide for repayment of the levy if the planning permission is not implemented. We consider that Bill should provide explicitly that the levy will not be payable until planning permission has been granted and development starts as it is only at that point will there be any certainty that the development will go ahead. The CIL regime in England does not require upfront payment of the levy.

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

9.1 Yes, but training needs to be more rigorous than training for councillors on licensing committees. Councillors need to have a better understanding of the legal framework for planning decision-making and the limits of their powers. We would suggest that some form of written examination (and not simply a multiple choice test) is required.

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

10.1 We certainly hope so. Improvement requires to occur very quickly to provide confidence in the system. As such, if there is under performance/clear failure to be assisting in the delivery of development, we would expect the Scottish Ministers to be more pro-active in using their powers to resolve issues.

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

11.1 We have no comment on whether the changes in the Bill will provide enough funding for planning authorities. We have concerns that every opportunity will be taken to charge fees, which will dissuade developers from progressing development. Any fees require to be proportionate to the service being delivered. We have recent experience of authorities charging a flat fee for a pre-application enquiry, without regard to the simplicity of the question. Equally, authorities have been charging for approval of roads construction and street naming based on the overall value of the development, not the time involved in providing the approvals.

11.2 We consider that the opportunity should be taken in the Bill to clarify that planning authorities should not be permitted to levy a separate fee for section 75 obligations. The (increased) planning application fees should cover the authority’s costs in entering into section 75 obligations and planning authorities should not be permitted to continue the practice which some authorities have adopted of refusing to issue permissions until the applicant has paid an additional fee for the legal costs of the section 75 obligation.

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

12.1 The proposed amendments to section 75 of the Act will decouple the link between the payment of contributions and the requirement for obligations to restrict or regulate the use of land. As was pointed out by the Supreme Court in the recent Elsick case, this would allow planning authorities to require contributions for purposes unrelated to the use of land i.e. would permit the buying and selling of planning permission. The CIL Regulations in England put the tests for planning obligations equivalent to the tests in Circular 3/2012 on a statutory footing. We would suggest that the same approach should be taken in Scotland to ensure that planning authorities can only seek planning obligations which are necessary to make the development acceptable in planning terms and are fairly and reasonably related in scale and kind to the development.

12.2 We consider that section 75C should be repealed insofar as it makes former owners liable for obligations once they have ceased to be owners. Section 75 agreements should only be enforceable against former owners if they were in breach of an obligation at the time that they ceased to be an owner.

12.3 We consider that section 75A should be amended to permit more flexibility for planning authorities and applicants to agree variations to section 75 agreements without going through the formal section 75A application process. In particular, we consider that the section 75A process should not have to be followed in every situation where a simple change to an existing obligation is required. For example, a simple change of house types where a new planning permission reference is to be included in an existing s75 agreement, should not have to follow the section 75A process. Likewise, where a planning application has been made and the planning authority is clear in its report of handling or report to committee that an amendment to an existing section 75 agreement is agreed as being required, the applicant should not then have to submit a separate section 75A application for that amendment. In the latter scenario, there is no further planning judgment required so there should be
no need for the section 75A process to be followed. It leads to unnecessary delay and wastes the time of planning officers that could be more usefully spent on applications where a point of principle is at issue.

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