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

1.1 This is a difficult question to answer since, in many places, the Bill simply permits secondary legislation which will set out more detail on how the framework for the planning system will operate in future. The Bill could provide the framework for a balanced planning system, but changes will have to be made to the Bill to ensure that all parties with an interest in the development of land in Scotland are engaged in the planning process from the very outset. The draft does not, in some places, appear to fully deliver Scottish Government’s aspirations for the planning system and we highlight, in particular, the need to ensure that the Local Development Plan (“LDP”) preparation process is open and transparent and provides an opportunity for communities and the development industry to have their say at the earliest possible stage of Plan preparation.

1.2 We support the retention of a Plan led system, the strengthening of the role of NPF and the use of SPP as a vehicle for establishing standard policies across Scotland. In places we have identified areas where the Bill creates risks for the operation of the planning system and where secondary legislation must be carefully controlled to ensure that the outcomes that are intended are delivered by the new planning system.

1.3 We are aware of the continued lobby by some to substantially vary the rights of Appeal which currently exist in the planning system. We support Scottish Government’s position that it is not appropriate to introduce third party rights of Appeal. This would inevitably result in inappropriate delays in the planning system and could result in Appeals being taken by people with vested interests in frustrating sustainable economic development, rather than encouraging it. In our view, a planning system which engages better with local communities at the earliest possible stage on the needs and priorities for development in the area is the best way in which to encourage balanced planning decisions which take account of the views of the community as a whole.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?
2.1 There is nothing in the Bill itself that suggests higher level of house building will be achieved. Indeed, if anything, the lack of clarity in some areas within the Bill might point towards less houses being built. We touch on many of these points in more detail below but, in summary, key areas that could be improved in order to provide certainty and increased housebuilding include the following:

- establishing within the primary legislation that the National Planning Framework will be the vehicle to set national and regional housing targets. Whilst it is implied that this will be a function of the NPF it is important to ensure that it is specifically identified as one of its requirements;
- amending Section 23D of the 1997 Act to specifically identify a core list of agencies and bodies that would be expected to influence the shaping of development plans, as well as any others that may be designated by Scottish Ministers under secondary legislation. The core list should extend beyond the currently agreed list of ‘key agencies’ and should also include representatives of the wider development industry in Scotland. Homes for Scotland and the Scottish Property Federation are appropriate and representative bodies who must be involved in assisting with the preparation of the NPF and LDPs;
- ensuring that LDPs are required to be consistent with the NPF and its housing targets; ensuring that the LDP evidence report is widely consulted upon before being submitted for ‘gatecheck’ and that all interested parties have an opportunity to comment upon it prior to its submission for examination;
- providing clarity on the way in which Applications for approval of matters specified in condition are to be dealt with in the future. We can see no reason for radically reforming the current system which operates reasonably well in practice. The proposal to remove any time limit for submission of AMSC applications is likely to cause significant confusion in practice;
- providing clarity that Planning Obligations under Section 75 of the 1997 Act must relate to and be proportionate with the development which gives rise to them;
- ensure that any “infrastructure levy” is also related to the development that is the subject of the application or its immediate local area and does not impact upon the delivery of new housing, does not allow the duplicate requirement of payments for a ‘national’ infrastructure ‘pot’ as well as S75 requirements, thereby putting the viability of developments at risk;
- does not assume that only housing development should contribute to infrastructure and is not used as a development land tax by the back door.

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

3.1 There seems to be some risk that the regional planning requirement is not clearly defined and unless robust guidelines are provided through secondary legislation, a
risk of inefficiency arising in the crucial data-gathering phase of the NPF’s preparation. The Bill requires Ministers to prepare a National Planning Framework which sets out their policies and proposals for the development and use of land – this falls short of a commitment to provide housing land numbers although it can be inferred from other statements that this is the intention. As the NPF will be required to take on some of the core elements of regional planning, with advice from the local authorities and key agencies, it is important that this process is carried out effectively. Ministers have the ability to require local authorities to provide them with a range of information on the current and future demographics and environmental characteristics of their areas – the role of ‘regional planning’ under the new regime will therefore be more for local authorities to work with the Government to ensure that NPF identifies the core infrastructure and extent of new development required to meet needs and aspirations in their areas. Key agencies are under a duty to co-operate in the preparation of the NPF and this role will be very important particularly in relation to the NPF’s role in planning for infrastructure needs. We suggest that Ministers give consideration to involving representative bodies from the development industry such as Homes for Scotland and the Scottish Property Federation as well, in forming a view on housing land numbers.

3.2 In particular, having gathered the necessary information and having consulted more broadly upon the preparation of the NPF, we think it is essential that Ministers then set out clearly what they expect to be delivered by way of housing at both national and regional level within Scotland. There should then be a period of full public consultation before the NPF is finalised and referred to Parliament for approval. If housing numbers are not set out clearly, there will be a policy vacuum which will inevitably lead to endless debate on the number of houses required for any particular area and how those houses are to be delivered.

3.3 We are concerned that the way the draft Bill has been prepared means that Scottish Ministers would require to produce an NPF and to consider whether to revise it within 5 years of publication. However, if Ministers decided not to revise the NPF at that stage, it would not have to be revised for a further 10 years. This means that an NPF approved in 2020 might not be revised until 2035 (15 years after initial publication) and we would question whether this is truly Scottish Government’s intention. If the NPF is taking on the role of the regional plan, there is otherwise the risk that a delayed or out of date NPF reduces the overall effectiveness of a plan led system, as the key targets that will be more the role of NPF will fall out of date as the plan ages.

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 No. There is insufficient clarity on the way that LDPs will be produced and what it is that LDPs must do. The evidence report phase of LDP preparation seems sensible in principle but it is not clear what the evidence report will actually contain and how local communities and developers can engage in the process to assist the preparation of a Plan that is truly collaborative from the outset. The policy memorandum that accompanies the Bill suggests that the gate-check process which considers the evidence report might “include agreement of the amount of housing land required from the Plan...”. There is no requirement for this to conform with what is established at a regional level in the NPF. As drafted, the Bill does not require the local authority to consult any party on this matter whilst preparing the evidence report. Nor does it require (in the way it does for the proposed LDP itself) that the Council as a whole should approve the evidence report which sets the housing requirement. Council commitment and constructive independent scrutiny by third parties with an interest in housing are matters which are fundamental to delivering an appropriate housing requirement through the planning system. If these matters are not built in at the earliest possible stage, then the system proposed by the Bill will undoubtedly result in conflict at later stages in the process. One of Scottish Government’s primary objectives in introducing changes to the LDP process is to avoid conflict at later stages in the Plan when it was too late to address potential mistakes that could have been rectified earlier. The current proposals in the Bill are not sufficiently robust to avoid that and may in fact increase conflict as parties interested in the process may feel that they have not had an adequate opportunity to comment upon the housing land requirement, conformity with the NPF and the broadly proposed distribution of housing at an early enough stage.

4.2 It seems to us that if the evidence report and gate-check process are to result in a housing land requirement being set, they must involve adequate checks and balances to ensure that all parties with an interest are able to provide constructive input. If parties are not given that opportunity prior to the evidence report being passed to Scottish Ministers for examination, it is difficult to see how a gate-check Reporter can properly exercise his functions. He will be faced with a significant volume of information which will not have been subject to any consultation or comment and may not have been approved by the planning authority as the basis on which it wishes to prepare its Local Development Plan. If, on the other hand, the evidence report is simply a collation of available documentary evidence with no policy content whatsoever, there may be less risk in allowing the gate-check process to begin without a full consultation and scrutiny exercise on the draft evidence report. Scottish Government’s intentions are not, however, completely clear in this respect and further clarity would be welcomed.

4.3 We are concerned that the Bill appears to effectively abolish the hierarchical approach to planning which requires a local plan to conform to or be consistent with the relevant strategic plan and which has been in place since the 1970s. As matters stand at present, a Local Development Plan must be consistent with any Strategic
Development Plan in place for that area which has been approved by Scottish Ministers. The system going forward removes Strategic Development Plans and proposes that the National Planning Framework approved by Parliament will replace SDPs as the strategic layer of planning in Scotland. We would expect that LDPs would have to be consistent with the NPF, although we accept that the NPF itself as a policy document could set out circumstances where flexibility could apply depending on local circumstances. However, the Bill does not do this. It simply requires that Local Development Plans must “take into account” the National Planning Framework and any local outcomes improvement plan. Whilst this is the current wording in primary legislation, it is insufficiently robust for the new role that the NPF is taking on. The Bill envisages situations where a Local Development Plan would be “incompatible” with the National Planning Framework. We do not think that is appropriate. As mentioned, the NPF could set criteria for circumstances where Local Development Plans could approach matters in a different way to the national approach that Parliament had approved through the NPF. We do not think, however, it is appropriate for LDPs to simply “take into account” the NPF and provide reasons for not following the policies which had been prepared by Scottish Ministers in consultation with local authorities and key agencies and ultimately ratified by the Scottish Parliament itself.

4.4 A discrete but important point is that the amendment of Local Development Plans set out in draft section 20AA of the 1997 Act should follow the same approach for full LDP preparation and procedures for its preparation and examination should not be set out in secondary legislation. We cannot see any reason that these procedural matters should be left over in their entirety for secondary legislation at this stage and whilst we accept that it may be necessary to have some minor modification to the procedures for minor amendments, we believe that the legal framework for amending the Plan must be set out in the Bill at this stage.

4.5 We believe that Section 21(3) of the 1997 Act should be amended to add Homes for Scotland the list of consultees on the delivery programme. As the representative industry body for housebuilders in Scotland Homes for Scotland would be well placed to assist Local Authorities in ensuring that their delivery programmes achieve their aims.

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

5.1 We broadly support these measures.

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 support the early involvement of communities in planning at the point where decisions of principle are taken in the development plan process. The provisions of the Bill that will help to open up community debate and commitment to planning at an earlier stage are therefore welcomed. There are likely to be instances where community planning aspirations differ from the local authority’s and therefore we also support the requirement for the development plan to ‘have regard to’ the local place plan.

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 have no particular comments to make on this point.

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 are concerned that the infrastructure levy is, in effect, a tax in all but name. We can see merit in having a system where a local authority is able to link the development of appropriate infrastructure within its area to the cumulative level of development proposed within that area. This is, in essence, what the Aberdeen and Aberdeenshire Strategic Development Plan Authority attempted to do with its strategic transport fund. The Supreme Court ultimately decided that this was not lawful within the current framework and we had anticipated that the infrastructure levy that Scottish Government would propose would simply seek to address that issue and provide a more robust framework by which developments within a particular defined area could proportionally pull together resources in order to fund infrastructure required for that area as a consequence of the cumulative impact of development. The proposals set out by Scottish Government go very much further and represent a fundamental policy change on the taxation of land in Scotland. They also present a risk to the viability of all development going forward, as coupled with the changes proposed to S75, they are, as drafted, sufficiently permissive to legitimise the requirement for major contributions to a national infrastructure pot, to fund proposals that may be entirely remote from a proposed development as well as potential increases to contributions under S75.
8.2 The infrastructure levy would allow Scottish Ministers to set a rate of tax that would apply to any site in Scotland. The Bill is unclear as to when the tax would require to be paid but, concerningly, suggests that it might have to be paid before Planning Permission was released for a site. This would have a significant impact on the prospects of sites being developed (given that most land purchase contracts are contingent on the grant of planning and therefore any land value that would be used to pay the levy cannot be released until planning is granted) and would be likely to discourage development activity in Scotland.

8.3 The Bill proposes that Scottish Ministers would be entitled to centrally collect all of the infrastructure levy received by local authorities in Scotland but would then have to redistribute the levy to other local authorities. Again, this is essentially a centrally administered tax which would involve Scottish Ministers determining that one local authority should not be entitled to keep the funds generated by a development in its area to pay for local infrastructure and, instead, that those funds should be redistributed to a part of Scotland that may, and possibly would, have no connection whatsoever with the development that had paid the tax in the first place. This is fundamentally wrong in our opinion. It seems essential that the link between the payment of planning obligations and the location, scale and kind of development proposed, which has traditionally been the accepted principle of ensuring the reasonableness of a request for an obligation, is not broken.

8.4 We are also concerned at the definition of “infrastructure”. The suggestion that infrastructure can cover water and energy supply, health facilities and communications appears to suggest that developments may be responsible for funding a series of projects that are currently subject to completely different regimes and funding streams. For example, is it intended that a developer in the central belt proposing to construct houses on a site that has all the necessary infrastructure in place to serve it would still be required to pay an infrastructure levy to fund a system for the “supply of energy” (e.g. a substantial power line in the north of Scotland)?

8.5 In summary, given Scottish Government’s uncertainty as to what the infrastructure levy might look like, what it might fund and how it might be administered, we would recommend that all reference to the infrastructure levy is deleted from the Bill at this stage. If Scottish Government has concrete proposals to put to the Parliament at a later stage, those should be set out clearly and in a way that all parties can understand exactly what is proposed and what benefits and disbenefits might arise from its operation.

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

10.1 We would suggest that the Monitoring Report referred to in Section 26 of the Bill should be submitted within a fixed period of time (e.g. 3 months). The Monitoring Report will be useful only if there is a quick scrutiny process and meaningful outcome. The system proposed seems to be convoluted and could result in substantial delays in implementing improvement recommendations. Fundamentally however, improvement will only result from ensuring that adequate financial resources are made available to planning departments by Local Authorities.

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 There is a broad acceptance of the principle that fees should cover the cost of providing development management services. If this is the case then it makes the adoption of robust service level agreements more achievable. An applicant would pay a fee to receive a service and would therefore expect that service to be provided in an efficient and auditable manner. Where we have concerns is around the lack of transparency as to what costs are being recovered by the proposed fee and charging levels and how reasonable these are in relation to the time it should take to provide the decision-making service effectively. A fee of £100,000 will pay for a significant amount of staff time in the processing of an application.

11.2 We do not believe it would be appropriate for appeals to be charged for planning appeals. The appeals system exists to provide appellants with an opportunity to review decisions which have been taken on applications where a substantial fee will already have been paid. In many cases the appeal is upheld.

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

12.1 The change to Section 75 proposed by Scottish Government on the face of it might be a reaction to the decision of the Supreme Court in Elsick, the Aberdeenshire Strategic Development Plan Authority. Its effect, however, could be much more profound. It appears to pave the way for payments under a planning obligation which have no linkage at all to the development in question and could lead to situations where either local authorities demand money which is not related to the development or, alternatively, developers offer money in exchange for Planning Permission. Clearly neither alternative is attractive and we would recommend that changes are made to the wording of the revised Section 75 to ensure that a linkage is retained between any funds sought or offered and the development to which they relate and that these are proportionate in scale and kind.