

**Report To:** Safe Sustainable Communities Committee    **Date:** 18 January 2011

**Report By:** Corporate Director  
Regeneration and  
Environment    **Report No:**  
SSC/11/01/02/SJ/NMcL

**Contact Officer:** Development and Building  
Standards Manager    **Contact No:** 01475 712420

**Subject:** Scottish Government Consultation on Amendments to the  
Modernised Planning System

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**1.0 PURPOSE**

- 1.1 Scottish Ministers have undertaken a 12 month review of the planning system following the fundamental changes introduced by the Planning etc. (Scotland) Act 2006 and secondary legislation. This consultation seeks views, by 28 January 2011, on addressing implementation issues raised by practitioners.

**2.0 SUMMARY**

The consultation paper is a mixture of detailed draft legislative proposals and the scoping of potential options to address specific issues. The consultation poses 28 questions, which detailed with proposed responses in paragraphs 5.2 to 5.7.

**3.0 RECOMMENDATION**

- 3.1 It is recommended that the Committee agrees to submitting the consultation response to the Scottish Government.

**Stuart Jamieson**  
**Head of Regeneration and Planning**

## 4.0 BACKGROUND

- 4.1 Scottish Ministers have undertaken a 12 month review of the planning system following the fundamental changes introduced by the Planning etc. (Scotland) Act and secondary legislation. The consultation paper is a mixture of detailed draft legislative proposals and the scoping of potential options to address specific issues.

## 5.0 RESPONSE TO THE CONSULTATION PAPER

- 5.1 This consultation seeks views, by 28 January 2011 on addressing implementation issues raised by practitioners. The consultation poses 28 questions:
- 5.2 Section A - Statutory Pre-Application Consultation Requirements and Applications to Change Planning Conditions

Statutory requirements for Pre-Application Consultation (PAC) apply to major and national developments. PAC applies to applications for the alteration or removal of conditions on an existing permission (often referred to as a Section 42 application), for material changes to an existing permission and for relatively minor alterations (applications for minor material changes) in all major or national development. In some of these situations PAC is not considered to be a proportionate requirement, with the potential to add delay and cost to relatively modest proposals for change. It also has the potential to be a burden on communities and undermine their confidence in PAC.

Following discussions with a range of planning authorities, development, legal and community interests, the Scottish Government consider that an amendment to the provisions on PAC would be appropriate to address the concerns in this area. Views on the following options are sought:

### Option 1 - Remove *PAC* requirement for section 42 applications

This would remove the requirement for PAC for all Section 42 applications. It would be easy to interpret and implement. However, it would mean where PAC were considered appropriate in relation to a change of conditions in a particular case, none would be required by legislation.

### Option 2(a) - Reduce the 12 week minimum period for *PAC* generally

A key concern about PAC being potentially disproportionate relates to the minimum 12 week period before an application for planning permission can be made. The current minimum period was introduced to encourage prospective applicants to take sufficient time for meaningful engagement and reflection on the views offered prior to an application being submitted. The time was also to be used to engage with the planning authority and consultees to clarify the process for considering the particular application. A reduction in the 12 week period would reduce delay, but could also reduce engagement with communities and with consultees.

A requirement for some minimum period would remain so that an application could not be submitted until at least the end of the period (currently 21 days) within which the planning authority can respond with any additional consultation requirements. Thereafter a prospective applicant could submit their application as soon as they had complied with statutory PAC requirements and those of the planning authority.

### Option 2(b) - Reduce the minimum *period of 12 weeks for PAC for section 42 applications only*

This is similar to Option 2(a) though limited to Section 42 Applications. This approach would mean all Section 42 applications would require some form of PAC.

Option 3 - Create a power to specify types of application or applications in certain circumstances where PAC doesn't apply

This would enable Ministers to make regulations removing the need for PAC for certain types of application (e.g. Section 42 applications) or for applications made in certain circumstances.

Other Options

There are potentially any number of options involving amending time periods (the 12 weeks minimum for PAC, the 21 days for planning authorities to respond with additional consultation) and statutory minimum steps for PAC ( e.g. public events, consultation with community councils and so on) for different types of applications or circumstances. The more attempt to differentiate between different cases with different requirements, the more complex and difficult interpretation and implementation is likely to be.

**Q1. Do you think the Scottish Government should amend the requirements on PAC in the 1997 Act?**

**Response:** *PAC is intended to facilitate wider consultation and public involvement in large scale developments. The requirement for a further round of PAC minor change is disproportionate and should be amended.*

**Q2. Which of the Options identified would you prefer Option 1, 2(a), 2(b) or 3 and why?**

**Response:** *Option 3 is favoured, in that it provides the potential to remove the requirement for PAC for section 42 applications and other minor changes to major applications. Options 1 and 2(b) are not favoured as they relate to conditions only, and do not address minor changes. Options 2(a) and(b) continue to require PAC.*

**Q3. Which of the Options identified would be your least favoured, Option 1, 2(a), 2(b) or 3 and why?**

**Response:** *Options 1, 2(a) and 2(b) all require PAC in situations where not merited, and are equally unacceptable.*

**Q4. Is there an alternative approach you would prefer to the Options identified and, if so, what would it consist of and why would it be preferred?**

**Response:** *For pre application consultation to be effective and focused, it must concentrate on the bigger picture, ie the whole application. In this respect, section 42 applications and applications for changes to permissions should all be exempt from PAC.*

**Q5. If the statutory minimum 12 week period for PAC were to be reduced, what should the minimum be for:**

**New proposals which will be applications for planning permission?**

**Response:** *Assuming the practice of PAC will continue, the 12 week period is appropriate for major development, but not for alterations or amendments to major proposals.*

## **Section 42 Applications to change conditions?**

**Response:** *While not supporting the principle of PAC for section 42 applications, if it is to be undertaken it must be meaningful and require consultation and publicity. To fulfil this obligation 6 weeks is necessary.*

## **Other types of application you can describe?**

**Response:** *Applications for changes to permissions will also require 6 weeks.*

**Q6. Should the time period for planning authorities to respond to proposal of application notices with any additional consultation requirements be reduced from 21 days as part of any reduction in the 12 week period?**

**Response:** *No.*

### **5.3 Section B - The Neighbour Notification and Advertising of Planning Applications**

The new neighbour notification and advertising requirements have raised various concerns: the numbers of newspaper notices that are required, recovering costs for advertising after an application has been made and the differences in charges faced by applicants. Concerns also related to administrative burdens associated with large numbers of notifications being issued and the level of postal returns.

The proposals for change in relation to neighbour notification and advertising of planning applications are:

Proposal i) - remove the need to advertise an application in relation to certain neighbouring land which does not have premises to which notification can be sent.

The intention is to remove the need to place a notice in a newspaper where this would serve little or no purpose. Draft Regulation 2(2) in effect removes the requirement to neighbour notify or advertise in relation to neighbouring land which is a "road" under the Roads (Scotland) Act 1984. This will include trunk roads, roads whose responsibility rests with the local authority and private roads.

Regulation 25 (Consultation by the Planning Authority) will result in Transport Scotland being consulted on any applications affecting their trunk road interests. The local authority likewise will be aware of the application as planning authority There are no requirements to consult those responsible for private roads.

Where the planning authority owns neighbouring land with no premises, again it appears excessive to trigger advertising as the authority will be aware of the application. Where there are premises on the land to which notice can be sent, this would still need to be carried out so that those leasing or occupying buildings such as council houses and industrial units owned by the authority still have the opportunity to comment.

Similarly, requiring advertisement because neighbouring land is owned by the applicant does not have premises on it adds no value to the process.

Draft Regulation 2(3) - (6) add a requirement for a plan identifying neighbouring land owned by the applicant to be submitted with relevant planning applications. Draft Regulation 2(7)(b) removes the requirement to advertise where neighbouring land with no premises to which notification can be sent is owned by the planning authority or the applicant.

**Q7. Do you agree with removing the requirement to advertise applications in relation to neighbouring land which is a road?**

**Response:** Yes.

**Q8. Should there be a requirement to advertise applications where neighbouring land includes a private road?**

**Response:** *No. In such circumstances issues raised as a result of consultation tend to focus on non planning issues such as title and legal restrictions. A planning system that encourages representation and is then unable to respond to or consider issues raised is seen as ineffective.*

**Q9. Do you agree with removing the requirement to advertise applications in relation to neighbouring land which is local authority land with no premises on it?**

**Response:** *Yes. Advertising serves no purpose and burdens the applicant with unnecessary expense.*

**Q10. Do you agree with removing the requirement to advertise applications in relation to neighbouring land which is owned by the applicant but has no premises on it?**

**Response:** *Yes. Advertising serves no purpose.*

Proposal ii) - remove the requirement to advertise development plan departures while possibly adding advertising of major developments

The practical implications of advertising applications which are contrary to the development plan are hampering the efficient operation of the system. It may not be clear until near the end of the consideration of an application whether it constitutes a departure from the development plan. At that stage an authority has to then advertise and charge the applicant accordingly. This is not efficient.

The proposal is therefore to advertise developments likely to be of significant interest to the community, rather than those which depart in some way from the development plan. To a large extent this should happen already. Draft Regulation 2(7)(a) removes the requirement to advertise applications which do not accord with the development plan, and sub-paragraph (c) makes a consequential change as a result of this removal.

**Q11. Do you agree that the requirement to advertise development plan departures should be removed?**

**Response:** Yes

**Q12. Do you think a requirement to advertise all major developments should be introduced?**

**Response:** *Inverclyde Council supports wider publicity for major applications, however it remains to be convinced that the current method of advertising, which is limited to newspaper notices, is effective and provides value for money.*

Proposal iii) - set nationally a charge for advertising to be paid when submitting an application where advertising will be required

The Act does not allow the setting of charges to be at the discretion of the planning authority. The current provisions require the planning authority to recover the cost of

the advertisement from the applicant; and where the newspaper notice covers a number of applications, the cost can be shared amongst the applicants. Variations in charges between newspapers and in the number of applications which may require to be advertised in a particular week mean there can be huge differences in the amounts an individual applicant has been charged.

With the proposed removal of the requirement to advertise development plan departures, the need to advertise should be more predictable. In order to have payment of charges made upfront, to avoid the issues around post application recovery, the charge itself also needs to be predictable. In the absence of powers to delegate to planning authorities the discretion to set such charges, the intention is to have a standard national charge. This charge would have to be paid upfront with the application before it could be validated.

An alternative is to make an adjustment as part of any future increase in planning fees so that the costs incurred by the planning authority in advertising applications is covered by fee income generally, removing the need for separate charging.

**Q13. In principle, do you support a nationally set standard charge for advertising (bearing in mind statutory planning powers do not allow such charges to be set at the discretion of the planning authority)?**

**Response:** *Inverclyde Council is concerned that a nationally set standard charge may not reflect the true advertising cost which varies nationally. The cost of advertising should, as it is at present, be cost neutral to the Council and this proposal will not provide this guarantee.*

**Q14. Would you support an adjustment to planning fees generally to cover advertising costs (rather than a charge on an application by application basis)?**

**Response:** *While Inverclyde Council favours a single fee approach to planning applications, it is mindful that the majority of small, householder development do not face advertising costs. Any adjustment to fees should be part of a joint approach to publicising planning applications – limiting the requirement to advertise major applications and introduce site notices to address neighbour notification issues and inform on “bad neighbour” local applications.*

**Q15. Of the two, which approach would you prefer?**

**Response:** *An adjustment to planning fees subject to the conditions informed in the response to question 14.*

#### 5.4 Section C - Other Changes to the DMR

##### New Consultation Requirements for Planning Applications

There are proposals for two new consultation criteria relating to Network Rail and to the Crofters Commission.

##### Development near a Railway Line

There is an outstanding commitment for government to consider a requirement for planning authorities to consult Network Rail on applications for development close to railway lines. The proposal includes the current requirements relating to level crossings, and extends to require consultation on development within 10 metres of a railway line.

**Q16. In terms of ease of identification would planning authorities prefer the distance criterion to relate to the railway line or the boundary of land which has a railway line on it?**

**Response:** *Of the two, boundary of land is the easier to identify.*

**Q17. Are there any other issues for planning authorities in interpreting or implementing this requirement?**

**Response:** *Both provide issues in terms of accurate calculation, although it is Inverclyde Council's approach to neighbour notify Network Rail of all proposals on land within the notification zone.*

**Q18. How many applications do planning authorities think might be covered by this requirement?**

**Response:** *In Inverclyde, less than 20 per annum.*

Development Affecting Croft Land and Crofting Communities

The proposal is to require consultation with the Crofters' Commission on applications "where development may adversely affect the continued use of land for crofting". This will only affect applications in those authority areas containing croft land, namely: Eilean Siar, Highland, Argyll & Bute, Shetland Islands, Orkney Islands, Moray and North Ayrshire Councils.

**Q19. What refinements to the consultation criterion would you suggest in order to meet the policy aim?**

**Q20. Do you think a crofting questionnaire is the best way to identify planning applications on which the Crofters Commission should be consulted, or is there a better way?**

**Q21. Planning authorities - Approximately how many applications a year in your area do you think would require consultation with the Crofters Commission using the proposed criteria?**

**Response:** *No comment on questions 19 – 21.*

#### 5.5 Section E - Changes to the Neighbour Notification Requirements on Permitted Development Rights for Demolition

There are currently permitted development rights (PDR) for building operations consisting of the demolition of a building. These have a prior notification/prior approval procedure as a condition of the permission, including a requirement for the applicant to neighbour notify. The proposal is to make neighbour notification a requirement on the planning authority.

The requirements on the content of notification will also be changed so that the applicant has to provide the information the planning authority is required to put in the neighbour notification. This would normally mean that where there are no premises on neighbouring land to which neighbour notification could be sent a notice would need to be placed in a local newspaper, however, the Government consider it disproportionate to require advertising in the case of demolition and that the method of demolition and restoration can be left to the discretion of the planning authority and the requirements of Building Standards and Health and Safety legislation.

**Q22. Do you have any comments on the proposed changes to neighbour notification in relation to demolition?**

**Response:** *Neighbour notification provides those notified with expectations of the planning system. In this case, neighbours may oppose demolition, which the prior approval process cannot accommodate. There appears no benefit from this change.*

**Q23. In particular, do you agree with the removal of the requirement to advertise locally such proposals where there are no premises on neighbouring land to which notification can be sent?**

**Response:** *The response to question 22 equally applies to the requirement to advertise.*

## 5.6 Section F - Changes to Development Planning Regulations

Regulation 3(1) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (the Development Planning Regulations) sets out a list of considerations and items which strategic development planning authorities are required to have regard to in the preparation of strategic development plans (SDPs). Regulation 10(1) contains a similar list in relation to planning authorities' preparation of local development plans (LDPs). Since the coming into force of the Development Planning Regulations, new legislation relating to flood risk management and marine planning has been enacted, and the UK Government has moved to abandon regional spatial strategies in England. These developments make it desirable to amend the Development Planning Regulations.

### Flood Management

The Flood Risk Management (Scotland) Act 2009 provides for the preparation of flood risk management plans and local flood risk management plans. SEPA requires to take account of development plans in preparing a flood risk management plan. The Policy Memorandum accompanying the Flood Risk Management (Scotland) Bill set out the Scottish Government's expectation that planning legislation would be changed to introduce an equivalent requirement for local authorities to have regard to flood risk management plans when preparing development plans. In this way the hope and expectation is that development plans will be consistent with the provisions of flood management plans, and vice versa.

Draft Regulation adds the definitions of flood risk management plan and local flood risk management plan to the Development Planning Regulations and introduces consideration of these new plans as a requirement in the preparation of strategic development plans and local development plans.

### Marine Planning

The Marine (Scotland) Act 2010 provides for the preparation of a national marine plan and regional marine plans. Scottish Ministers are required to take all reasonable steps to secure that any regional marine plan is compatible with the development plan for any area which adjoins the relevant Scottish marine region. It is proposed to require authorities to have regard to marine plans. In this way the hope and expectation is that development plans will be consistent with the provisions of marine plans, and vice versa.

In the preparation of strategic development plans and local development plans it is proposed to change the Development Planning Regulations to make consideration of these new plans a requirement.

### Regional Spatial Strategies

In June 2010, the new UK administration revoked regional strategies in England with immediate effect. It also proposes to abolish the requirement to prepare regional strategies. The Scottish Government therefore proposes to delete the requirement



for local authorities adjoining land in England to have regard to such strategies.

**Q24. Do you have any comments on the changes to the list of considerations and items which strategic development planning authorities are required to have regard to in the preparation of strategic development plans?**

**Response:** *Inverclyde Council welcome the changes to make the provisions of Flood Risk Management Plans and local flood risk management plans / Marine Planning consistent with SDPs and LDPs, and vice versa.*

**Q25. Do you have any comments on the changes to the list of considerations and items which planning authorities are required to have regard to in the preparation of local development plans?**

**Response:** *Inverclyde Council welcome the changes to make the provisions of Flood Risk Management Plans and local flood risk management plans / Marine Planning consistent with SDPs and LDPs, and vice versa.*

## 5.7 Section G – General Questions

**Q26. Do you have any additional comments on any of the issues mentioned in this paper?**

**Response:** *No.*

**Q27. Do you have any comments on or information to help inform the partial Business Regulatory Impact Assessment?**

**Response:** *No.*

**Q28. Do you think any of the proposals in this consultation document will raise any specific issues for any of the equality groups (including race, disability, age, sexual orientation, gender or religion and belief)?**

**Response:** *No.*

## 6.0 IMPLICATIONS

### 6.1 Finance: Financial Implications – One off Costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

6.2 Personnel: None.

6.3 Legal: None.

## 7.0 LIST OF BACKGROUND PAPERS

Scottish Government – Consultation on Amendments to the Modernised Planning System – copy available in the Members Lounge.