
**Report To: Environment and Regeneration
Committee**

Date: 30 August 2012

**Report By: Corporate Director, Environment,
Regeneration and Resources**

Report No: E+R/12/08/02/SJ/FJM

**Contact Officer: F J Macleod, Planning Policy and
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Subject: Scottish Government Consultation on Development Plan Examinations

1.0 PURPOSE

1.1 The Scottish Government sought a response by 22 June 2012 from all stakeholders to a number of consultations, of which this is one, to measure the success or otherwise of the changes introduced by the Planning, etc. (Scotland) Act 2006. The Committee is asked to approve this report as Inverclyde Council's formal response to the consultation.

2.0 SUMMARY

2.1 The Scottish Government recognises that the full impact of the changes introduced by the Planning, etc. (Scotland) Act 2006 will take time to be realised and in many respects are still bedding down. However, it also recognises that there are already a number of issues emerging which may need to be addressed, one of which is the operation of the Development Plan Examination process and procedures associated with it.

2.2 Inverclyde Council has not yet reached the stage in the preparation of its first Local Development Plan (LDP) where an Examination has occurred. The LDP: Proposed Plan is expected to be approved for publication and public consultation in the late autumn/winter, at the earliest. The anticipated Examination of the LDP on this timescale is likely to be summer 2013. In view of this, we have no direct experience of the new Examination system.

2.3 However, Inverclyde as one of eight member authorities of the Glasgow and the Clyde Valley Strategic Development Planning Authority, responsible for the upper-tier of the Development Plan covering Inverclyde, held its SDP: Proposed Plan Examination from December 2011 to March 2012. Scottish Ministers have since approved the Reporters' report of the Examination for the first GCV SDP: Proposed Plan, with modifications, on 29 May 2012, the subject of a separate report on today's agenda.

2.4 In light of the above, the response submitted to this Consultation relies heavily on the experience of the SDP Examination and the lessons learnt. A report incorporating the response of the GCV SDPA was placed before the GCV SDPA Joint Committee in June, is attached as Annex 1, of which Inverclyde Council is a signatory.

Annex 1

3.0 RECOMMENDATIONS

3.1 That Committee note the response outlined in this report to the Scottish Government's consultation on Development Plan Examinations, including Annex 1 and confirm with the Scottish Government that this is Inverclyde Council's formal response.

4.0 BACKGROUND

- 4.1 The Scottish Government published a number of consultations on the operation and procedures associated with the introduction of the Planning, etc. (Scotland) Act 2006, in March, with a closing date of 22 June 2012. One of these concerned Development Plan Examinations and sought views on experience so far with the new arrangements.
- 4.2 It is appreciated by the Scottish Government that changes on the scale introduced by the new Planning Act will take time to settle down. However, based on the evidence from the Examinations completed or currently underway, and there are few in number, some stakeholders have expressed concerns about their experiences of the new system. These concerns include the following matters:
- (a) the length and therefore cost of some Examinations despite one of the main objectives of the new arrangements was to reduce both length and cost, and for it to be seen to be proportionate in terms of the issues raised for examination;
 - (b) continuing non-conformity in some plans with SDPs or the Scottish Government's SPP/NPF2, leading to quite extensive modifications;
 - (c) the new 'binding' nature of the Reporter's recommendations, particularly on the always sensitive subject of additional housing land releases, where the imposition of the additional land is potentially leading to the undermining of the role of elected members' and local stakeholders' contribution to the process; and
 - (d) the degree to which the examinations do provide the opportunity for unresolved issues to be considered and concluded in a way which does not undermine the reputation of the planning system.

These are some of the issues emerging that the Scottish Government wishes to address sooner rather than later. This is the subject of the Consultation.

- 4.3 Inverclyde Council has not yet reached the stage in the preparation of its first Local Development Plan (LDP) where an Examination has occurred. The LDP: Proposed Plan is expected to be approved for publication and public consultation in the late autumn/winter, at the earliest. The anticipated Examination of the LDP on this timescale is likely to be summer 2013. In view of this, we have no direct experience of the new Examination system.
- 4.4 However, Inverclyde as one of eight member authorities of the Glasgow and the Clyde Valley Strategic Development Planning Authority, responsible for the upper-tier of the Development Plan covering Inverclyde, held its SDP: Proposed Plan Examination from December 2011 to March 2012. The Reporters' Report on the Examination, incorporating Proposed Modifications to the SDP, was sent to Scottish Ministers for approval on 29 March 2012. Scottish Ministers have since approved the GCV SDP: Proposed Plan, with modifications, on 29 May 2012, the subject of a separate report on today's agenda.
- 4.5 In light of this limited experience of the new Examination procedures, the response submitted to this Consultation relies heavily on the experience of the SDP Examination and the lessons learnt. A report incorporating the response of the GCV SDPA was placed before the GCV SDPA Joint Committee in June, is attached as Annex 1, of which Inverclyde Council is a signatory. In addition, the response to the four set questions and three options presented in the Consultation for improving current practice, are outlined in Section 5.0 below.

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Annex 1

5.0 PROPOSALS

- 5.1 The consultation on Development Plan Examinations is organised around the identification of key issues, as outlined above, and four questions are posed to structure the responses. In terms of changing/improving current practice, three options are presented for comment. The response made to the Consultation is set out below.

5.2 **Question 1:** *How well do you think the examination process is functioning and should any changes be made to the process at this stage?*

Response: No direct experience of new examination system, just indirect through officer-input and liaison on relevant matters raised in the GCV SDP Examination. Changes at this time should be mainly limited to administrative matters. However, some of the options presented should be explored further for future consideration.

The SDPA response to this question concludes that the Examination process, overall, is functioning well and supports the mandatory need for an Examination on a Strategic Development Plan.

5.3 **Question 2:** *If you think changes are needed which option do you support, and why?*

Response: The approach in **Option 1 (improving current practice)** would allow early adoption of the majority of the plan, with only the “shortcoming” (possibly the identification of sufficient housing land) to be addressed by the planning authority. This option has some merits, but could lead to a lack of confidence in the system or to a challenge to it, particularly from housebuilders. However, planning authorities are best placed to address this sort of issue, knowing the specific sensitivities of each site, while importantly also allowing time for additional consultation. This option should be explored further.

Option 2 (greater discretion to depart from the reporter’s recommendations) reverts back to the former system in allowing planning authorities to set aside the reporter’s recommendation if a well reasoned case was demonstrated. This allows individual planning authorities, in exceptional circumstances, to make decisions which they consider are in the best interests of the area, and for which they have been elected. Clear guidance on ‘permitted reasons for departure’ would allow for greater overall consistency in approach throughout Scotland. This option should be explored further.

The recent change to an ‘examination’ process now groups individual representations together, while the previous ‘inquiry’ system dealt with objections on an individual basis. The suggested approach in **Option 3 (restrict the scope of the examination)** would further dilute the investigation of representations, with a potential loss of confidence by stakeholders. This option should not be pursued.

Option 4 (remove the independent examination from the process) is not a realistic option if confidence in the planning system is to be maintained. An independent examination of representations, at some level, is required. This option should not be pursued.

The SDPA response to this question considers Option 1 to be the favoured approach.

5.4 **Question 3:** *Are there other ways in which we might reduce the period taken to complete the plan-making process without removing stakeholder confidence?*

Response: Early engagement with stakeholders is a principle of the new planning process which the private sector has not fully taken on board. This matter could be raised by the Scottish Government directly with planning consultants and the housebuilders, to make it clear that only in exceptional circumstances will sites which have not been raised before publication of the MIR be further considered. This would allow potential time savings by avoiding additional consultation with communities.

The SDPA response to this question comments that delegated authority to the SDPA Joint Committee to approve and submit the SDP: Main Issues Report and the SDP: Proposed Plan has speeded up the process rather than seeking approval from each of the GCV constituent Councils.

5.5 **Question 4:** *Do you think any of the options would have an impact on particular*

sections of Scottish society?

Response: No.

6.0 IMPLICATIONS

6.1 **Legal:** none arising from this report but the Examination on the Inverclyde LDP: Proposed Plan (anticipated spring-summer 2013), will require liaison with Legal.

6.2 **Finance:** none arising from this report but as with Legal above, there will be a financial implication for the costs associated with the Examination in year 2013/14, which will be funded from the Service's Local Development Plan budget.

Financial implications – one-off costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
00613 000 50064	Local Plan	2013/14	tbd	n/a	n/a

Financial implications – annually recurring costs/(savings)

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

6.3 **Personnel:** none arising from this report.

7.0 CONSULTATION

7.1 **Chief Financial Officer:** no requirement to consult.

7.2 **Head of Legal and Democratic Services:** no requirement to consult.

7.3 **Head of Organisational Development, HR and Communications:** no requirement to consult.

8.0 BACKGROUND PAPERS

8.1 (1) Scottish Government Consultation 'Development Plan Examinations' (March 2012)

ATTACHMENT

Annex 1 : Glasgow and the Clyde Valley Strategic Development Planning Authority
response: Report by SDP Manager, Item 9 of 11th June 2012 Joint
Committee.

Glasgow and the Clyde Valley Strategic Development Planning Authority

To: Glasgow and the Clyde Valley Strategic Development Planning Authority Joint Committee

On: 11th June 2012

Report by
Stuart Tait, Manager

Scottish Government Consultation on Development Plan Examinations

1. Summary

1.1 This report is to set out a proposed response from the Joint Committee to the Scottish Government recently published consultation paper on Development Plan Examinations.

2. Recommendations

2.1 It is recommended that the Joint Committee

- a) note the contents of this report; and
- b) agree that the report be submitted to the Scottish Government in response to its consultation paper on Development Plan Examinations.

3. Background

3.1 In response to concerns expressed by some stakeholders about their experience of the revised Examination process for development plans the Scottish Government, as part of its planning reform agenda, has issued a consultation paper on Development Plan Examinations.

4. Introduction

4.1 As part of the Scottish Government's commitment to a plan-led system up to date development plans play an important role. Some stakeholders have expressed concern about their experience of the revised Examination process for development plans. In response the Scottish Government, as part of its planning reform agenda, has issued a consultation paper on Development Plan Examinations. Responses are due to be submitted by 22nd June 2012.

5. Options for Change

5.1 The Scottish Government has set out four options (refer Appendix) which relate to the binding nature of the Reporters recommendation or the Examination process more generally, and three more general questions.

5.2 The options as set out appear to be more related to Local Development Plan Examinations in so far as they relate to the binding nature of the Reporters recommendation which does not apply at the Strategic Development Plan (SDP) level.

5.3 However there are a number of considerations from the GCVSDPA's experience of its first SDP Examination that can be addressed through the three questions raised as part of the consultation paper.

6. Consultation Questions

Question 1. How well do you think the Examination process is functioning and should any changes be made to the process at this stage?

- 6.1 The pre-Examination stage is important to help ensure that the processes which the Planning Authority is proposing are aligned with the Scottish Government's Directorate of Planning and Environmental Appeals (DPEA) and legal requirements. In this context early and continuous communication with the DPEA administrative staff has been proven to be important.
- 6.2 The legislation relating to Strategic Development Plans differs to that from Local Development Plans in a number of areas some of these should be reviewed, including:
- the Schedule 4 template form for SDP's does not provide for the SDPA to suggest or accept minor changes proposed through consultation without these being constituted as modifications and triggering the need to re-publish and consult. This differs to Local Development Plans where amendments can be suggested. It is recommended that thought is given to providing the same opportunity for SDP's. Such changes would relate only to minor modifications and would allow the SDPA to make the factual changes required e.g. grammatical errors, removing text which relates to the period for representations, amendments to the Glossary etc.
 - the Schedule 4 form works well when dealing with a single focus issue however when dealing with complex multi faceted strategic issues, for example housing, the template is considered restrictive. In the case of the GCVSDP Examination the housing issue was covered by 11 separate Schedule 4's (out of a total of 36 Schedule 4's).
 - the format of the Schedule 4 form can result in duplication particularly in terms of the 'planning authority's summary of the representations' and 'summary of responses' sections. To assist the planning authority it is considered that those seeking representations should provide a 200 word summary of their representation which would distil the issues and ensure that the main issues the representee wants to make are captured accurately.
 - on approval of the Plan, the Scottish Government should advertise its approval, and contact those who made representations rather than the SDPA. The six week legal challenge period should commence from that date (the effective date of the Plan). The SDPA is currently required to publish the SDP at this stage and this approach could potentially incur additional costs in the future if any legal challenge results in changes to the Plan and subsequent reprint is required. In addition the requirement to publish the SDP after Ministerial approval adds delay in the process as it has to be reprinted and deposited in local libraries and advertised in a local newspaper.
- 6.3 The Report of Conformity on the Participation Statement is required to be submitted alongside the Proposed Plan and other documents to Scottish Ministers for Examination. Compliance with their Participation Statement is the first stage within the Examination process and failure to comply results in the Examination being delayed. The Examination time could therefore be reduced if the Report of Conformity was to be submitted to Scottish Ministers for their consideration directly after the consultation stage on the Proposed Plan has been completed by the Authority and before submission to Ministers.
- 6.4 The requirement to submit hard copies of all documentation to the DPEA should be re-considered. Information now is largely accessed online and the Planning Authority can hold a hard copy should anyone wish to access the information in this way. This change would speed up the process and save both staff and printing costs. Related to this is the need to further consider how the library documents are provided to the DPEA. It is recommended that where documents are available online, a weblink is provided rather than the need to provide a full copy of that document.
- 6.5 Following submission of the Plan, there was no indication of when further information requests would be received from the Reporters. It is recommended that an indicative timeline is considered pre-Examination and publicised. When information requests are received they have tight deadlines to respond. A number of the responses to these information requests were lengthy. Information requests were received in batches making it difficult to manage the associated workload, particularly where there is a small team. It is suggested this could be managed by the Reporters better. The principle of information requests is supported.
- 6.6 Where the DPEA consider that there are to be no oral hearings the Reporter(s) should be required to publicise this and the reasons for that decision in a clear and separate statement. It is

considered that this will provide more clarity and better understanding of this part of the process to all interested parties.

- 6.7 DPEA took on the responsibility for hosting all information relating to the Examination on their website. This is strongly supported as it provides better customer service and keeps all related Examination information within the one website portal.
- 6.8 Section 12(6)(a) of the Planning etc (Scotland) Act 2006 does not allow an Examination of the plan to commence within 4 weeks after the direction is made. It is not clear why this is required and whether in practice this is resulting in some delay.
- 6.9 Overall, it is considered that the Examination process is functioning well and supports the mandatory need for an Examination on a Strategic Development Plan.

Question 2. If you think changes are needed which option do you support, and why?

- 6.10 Four options are set out in the consultation document (refer Appendix). It is considered that Scottish Ministers should continue to make a distinction between SDP Examinations and those for Local Development Plans.
- 6.11 In relation to SDP's, it is considered that *Option 1* is the favoured approach. For Strategic Development Plans, the Ministers decision on these has been binding for many decades and this is considered very important. Ministerial approval provides certainty for not only Local Development Plans but also for key stakeholders and investors. Where, for example, an additional strategic land allocation is considered to be required, this should be for the Planning Authority to consider rather than the Reporter.
- 6.12 There is currently no discretion for SDP's to depart from the Ministers decision and therefore Option 2 is only applicable to Local Development Plans. Restricting the scope of the Examination, Option 3, would be likely to take longer and be more open to legal challenge in respect of determining what issues are scoped in and out. Option 4 to remove the Examination is not supported. Introducing mandatory Examinations for SDP's has been widely welcomed and is important to ensure that all issues raised through representations to the Proposed Plan are considered independently.

Question 3. Are there other ways in which we might reduce the period taken to complete the plan-making process without removing stakeholder confidence?

- 6.13 Delegated authority to the SDP Joint Committee to approve and submit the Main Issues Report and the SDP has certainly speeded up the process from a GCV perspective rather seeking approval from each of the GCV constituent Councils.

7. Conclusion

- 7.1 The process of the first mandatory Examination of the SDP has, from a Glasgow and the Clyde Valley perspective, been a relatively positive experience, particularly DPEA hosting the Examination on their website. Issues remain around the Schedule 4 template in relation to the consideration of complex strategic planning issues along with the publication requirements following approval by Scottish Ministers.

Implications of this report

1. **Financial Implications - none.**
2. **HR and Organisational Development Implications - none.**
3. **Legal Implications - none.**
4. **Property Implications - none.**
5. **Information Technology Implications - none.**
6. **Equal Opportunity Implications - none.**

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